

**THE HIGH COURT
FAMILY LAW**

[2021] IEHC 579
[2020 No. 67 M]

**IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT, 1964, AS AMENDED
AND IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND
CHILDREN) ACT, 1976 AS AMENDED
AND IN THE MATTER OF PC, A CHILD**

BETWEEN

D.H.

APPLICANT

AND

K.C.

RESPONDENT

JUDGMENT of Mr. Justice Jordan delivered electronically on the 13th day of May 2021

1. These proceedings were commenced by a special summons which issued on the 28th September 2020. The applicant ('the mother') is the mother of the child (C) who was born on the 24th June 2018. For ease of reference C will be referred to in this judgment as 'the child'. The respondent is the father of the child ('the father').
2. These proceedings fall into that category of family law proceedings which are often referred to as "relocation proceedings". The primary relief being claimed by the mother is an order pursuant to s.11 of the Guardianship of Infants Act 1964 (as amended) granting her liberty to remove and relocate the child to the United Kingdom.
3. The mother was born in 1995 in the United Kingdom and the father was born in 1987. The parties met in the United Kingdom and were in a non-marital relationship for a period prior to and subsequent to the birth of the child. That non-marital relationship ended when the child was approximately 20 months old.
4. The mother is at present residing along with the child in an apartment in the northwest of the country. The father is residing in his parent's home also in the northwest, , some 90 miles distant from the residence of the mother and child.
5. At present the mother has sole custody of the child but the father does have regular overnight access or contact, primarily at weekends. Contact has given rise to issues between the parents and it has not been regulated by any court order or mediated agreement.
6. The mother is a British citizen and the father is an Irish citizen. They met in late July, 2017 in the United Kingdom. Due to a new job opportunity the father relocated to the east of Ireland in September 2017 and the parties continued in a long distance relationship. On the 2017 the mother discovered that she was pregnant and she then agreed to relocate to the east of Ireland from January 2018. The parties initially resided in rented accommodation in the east but they subsequently moved to the northwest in September 2019.

7. According to the mother the father had always agreed that they would return to the United Kingdom if she wished to do so and she says he also told her that his old job would be open to him if he did return to the United Kingdom. She gave evidence that this agreement was in the context that she was very upset at the thought of leaving her family and she had only met his family once or twice. In fact, this assertion concerning the agreement on the part of the mother is not really in contest. In evidence the father accepted that "early on" he may have said that – but he went on to say that he was in good employment and on good money in Ireland and this was no longer the correct thing to do as time went by. When asked as to whether his old job was still available to him in the United Kingdom the father indicated that he did not know. Nonetheless, as a matter of probability, it does seem to be the position that the father has employment opportunities in the United Kingdom. It is also established by the evidence that the father has hoped for a reconciliation with the mother since the relationship ended – and it is established that he did make efforts to persuade the mother to reconcile. Indeed, part of the mother's case is that the father was agreeable to returning to the United Kingdom as a family if there was a reconciliation. When this was put to the father in cross-examination he acknowledged that he may have suggested this "*once upon a time*".
8. Difficulties arose in the relationship and according to the mother the father consented in February 2020 to herself and the child returning to reside in England. She made arrangements to do so. He then withdrew his consent. The mother left anyway with the child. As a result, the father initiated child abduction proceedings through the central authority for Ireland on the 11th March 2020 seeking the return of the child to Ireland. On the 11th May 2020 a Consent Order was made by the High Court Family Division of England regarding residence and maintenance of the child. It was ordered, *inter alia*, that the child was to be returned to Ireland no later than the 8th June 2020.
9. The parties were engaged to be married but this also ended in February 2020.
10. After the parties relocated from the east of the country to live in the paternal grandparents' home in late 2019 the father continued to work in the east and he returned to the northwest at weekends. According to the mother she felt lonely and isolated in the north west and she says that the relationship deteriorated in circumstances where the father would insist on socialising to her exclusion on his return at the weekends. In terms of her return to the United Kingdom with the child she acknowledges that she did so in the full knowledge that the initial consent given by the father in this regard was withdrawn quickly afterwards.
11. Essentially, the mother says that she has few friends and no family support network of her own in Ireland.
12. The mother's ambition and request are to be allowed to return to the midlands area of the United Kingdom where she has a supportive family network which would be available to her and to the child.

13. The mother gave evidence that she hopes to qualify in the healthcare area and that she intends to do a general healthcare qualification first, starting in September of 2021, in a college in the area to which she wishes to relocate – before training and qualifying in a specific healthcare area. Insofar as third level education is concerned the mother says that there is a crèche available on campus at the third level institution which she intends to enrol at which would be available for childcare. Her father is retired and her mother works part-time in a professional firm. The mother says that she could do a similar degree in Ireland but it would be more difficult for her and more expensive with the added difficulty of no childcare availability on campus. In the United Kingdom she would be able to avail of free childcare and after-care support. The mother has also considered and given evidence in relation to suitable primary and secondary school availability in the midlands of the United Kingdom. The mother gave evidence that she would find it very difficult if she had to remain in Ireland because of the isolation and lack of support in circumstances where she has no family and few friends in Ireland. In her evidence the mother did make it clear that there were no circumstances in which she would leave her child behind her in Ireland. In other words, if the father is awarded custody or if she is refused permission to bring the child to the United Kingdom then she will remain in Ireland for his sake and because she cannot part from him.
14. It is the position that the mother has been the primary carer for the child since he was born. It is also clear from the evidence given by the father and by the mother that the child is thriving and happy.
15. The Court is without any report from an expert although such reports are ordinarily available in relocation cases. However, the parties explained that they did not apply for any direction for the provision of such an expert report because of the tender age of the child. Although not articulated as a reason the Court appreciates also that the cost of obtaining such a report was probably an added consideration. If the Court felt it necessary or desirable that such a report be obtained it would not hesitate in directing that one be obtained. However, it is clear from the evidence that the child is well cared for by his mother and when on access with the father. In the latter respect, it is clear that the paternal grandmother is significantly involved in the care of her grandchild when the opportunity presents itself. It is also clear from the evidence that the father, the mother and the extended family on both sides care deeply for the child and do look out for his best interests. Equally, the child has formed strong attachments with his parents and with the extended family on both sides. This young child is much loved and is well looked-after.
16. The education system and the availability of education to the child is good in Ireland and in the United Kingdom. However, it is the position that the availability of free full-time placement in a crèche facility for the child in the United Kingdom is a distinct advantage for the mother (and to some extent the father) if the mother and child are resident in the United Kingdom. The child does not currently attend crèche in Ireland. The mother says that she is not in a financial position for him to attend. In this regard, it must be said that the cost of childcare facilities is likely to be a bigger issue going forward than it has

been to date in circumstances where the child is not yet three years of age and has lived through one year of the Covid-19 pandemic and the lockdowns and restrictions it entailed.

17. The child is entitled to free medical care in the United Kingdom and is a registered patient with a local physician in the area where the mother wishes to move to. On this, it must also be said that such free medical care is also available in Ireland for the child.
18. The mother's family continues to pay the rent on the property in which she and the child resided from March 2020 until the return to Ireland – and this home is therefore still available to the mother and child if the relocation is permitted. This home is a ten-minute walk from the maternal grandparents' home, a three-minute walk to the child's proposed nursery school and a fifteen-minute walk to the local town.
19. In her evidence the mother was careful to acknowledge the importance of the father in the life of their son. She made a point of acknowledging the support she had received from the paternal grandmother whilst in the northwest and she was careful to acknowledge that the father loved their child very much. She did explain how the cracks in the relationship started to appear when they were in the northwest in circumstances where she felt the father did little to improve on the sense of isolation which she experienced in the northwest. In addition, she felt that the father was not involving himself with the child – she says he was not involved in any aspect of the childcare. She went further to say that it is the paternal grandmother who assumes the role of mother and primary carer when the child is in the father's care – to the point that the child sleeps with his granny at night time. The paternal grandparents collect the child from where the mother is living in the northwest of Ireland for access visits and the father returns with him after access. The mother said that it is the paternal grandmother who keeps her updated in relation to how access goes and how the child is during access and she said that the father is very vague when she asks questions at handovers on return.
20. On this point, it was evident during cross-examination that the father was vague and uncertain when asked specific questions about childcare matters.
21. The mother also explained how she formed the impression that the father hoped to win custody and felt that she would then leave and return to the United Kingdom – leaving him with the child. The mother was understandably perplexed that the father would even consider this to be a possibility – and she explained how she had no intention of returning to the United Kingdom and leaving the child behind her.
22. An alternative option proposed by the father was that the mother could go back with the child as long as there was a reconciliation and he was going with them. The Court accepts that the father did tell the mother that they would be back in England if they got back together. This is of some significance given the complaints which the father advances about the mother's character and the concerns he expresses concerning the welfare of the child if she remains primary carer and if she can return to the United Kingdom. This significance is all the greater when one considers that the father did, and the court is satisfied of this, tell the mother when she was coming to Ireland originally

that if she was not happy they would return to the United Kingdom – whilst adding that his former manager in the midlands of the United Kingdom had told him that his job there would remain open for him. The father seeks to be more circumspect on this in his replying affidavit which was sworn on the 20th November 2020. He says on this point that *“the possibility of return to the UK was left open on the basis that the parties agreed to see how things went in Ireland, and it was agreed that, if things were going well, there would be no return to England.”*

23. This averment is included in paragraph 7 which is dealing with the absence of the father’s consent to the mother and child leaving the jurisdiction when they did. However, the sworn averment shows, in addition to his evidence on cross-examination at the hearing, that there was an understanding that there would be a return to the United Kingdom if things did not work out in Ireland.
24. During the case, both in affidavits filed on his behalf and in his oral evidence, the father has unfortunately been keen to emphasise a number of negative allegations concerning the character of the mother, including: -
 - (a) He asserts that the mother has a serious alcohol problem. There is certainly evidence to the effect that the mother did drink to excess on occasion – and she did indeed receive a fine for a “drunk and disorderly” incident on the 10th October 2018 whilst on a night out around the time of the christening of the child. Against that, the Court is also satisfied that the father did drink to excess on occasions – and that excessive consumption of alcohol at weekends was part of his lifestyle whilst the parties were together. The Court is not satisfied on the evidence that the mother has any greater issue with alcohol than does the father. It does seem on the evidence that both need to behave more responsibly in terms of alcohol consumption. In this regard, the Court is satisfied that the mother does behave responsibly in terms of alcohol consumption when she is looking after the child but she has, in the past, consumed excessive amounts of alcohol when the child is in the care of other responsible adults.
 - (b) This Court rejects the father’s assertion that the mother leads a highly chaotic lifestyle and “continues” to suffer from serious alcohol issues such that she would not be in a position to consistently or safely meet the child’s needs and such that it would not be in his best interests to be in her sole custody. The uncontroverted evidence from both sides is that the child is thriving and happy – and in circumstances where the mother is and has been his primary carer.
 - (c) It is the position that the father has an extended family network in the north west and there are excellent childcare and early school facilities as well as primary and secondary level education available there. The father makes the point that the child will be able to avail of excellent free medical care in Ireland and can be registered with a GP in the northwest . He makes the point that the child currently has a medical card which he will retain until the age of six and after which the father says he will arrange comprehensive private medical cover for the child. The

father makes the point that the area where he lives in the northwest is a predominately rural place with a low crime rate and a good way of life which he contrasts with what he says are the high crime rates in the part of the UK where the mother proposes to move. On this, it is true that rural areas do usually have lower crime rates than urban areas - in the UK, Ireland and elsewhere.

- (d) Unfortunately, in his assertions concerning the character of the mother the father has seen fit to call into question the level of support available to the mother and child from her family in the UK. In his affidavit evidence the assertions made in this regard amount to bare assertion but he did take the opportunity in oral evidence to go further and to make what can only be described as seriously disparaging comments concerning the family of which the mother forms part. While allowing for the raw emotion concerning the matters at issue it is necessary to point out that the mother is enduring the same or very similar pressures but did manage throughout to be more magnanimous to the father and his family than he managed to reciprocate. This is of concern because the child needs a good relationship maintained and fostered with both parents on both sides of the family. It is in the interests of the child's welfare that parental contact and contact with the extended family on both sides is nurtured and respected by the parents in particular.
25. It is the position that the father did acknowledge the fact that the child's mother is one of the two main attachment figures in his life and is an integrally important person to the child - and that therefore there should be a wealth of access and meaningful contact with both parents built into any Court Order. The father asserts that if he is afforded custody of the child that he will ensure that the child is able to avail of extensive access with the mother. The apparent sincerity of this averment regrettably rings somewhat hollow when contrasted with other sworn averments of the father and when contrasted with his sworn evidence in these proceedings.
26. In questioning the character of the mother the father refers to "*clear serious issues with alcohol and issues regarding her lifestyle generally*". The issue of alcohol is referred to above. The mother did turn to alcohol and did abuse alcohol on occasion on finding herself in a very unhappy and deteriorating relationship and when she felt isolated and without support in Ireland.
27. Insofar as the reference to "lifestyle generally" is concerned, there is a complaint about the mother's compliance with Covid-19 regulations when travelling between England and Ireland. Concerns in respect of compliance with Covid-19 regulations surrounding the father's access arrangements also feature in the mother's evidence. Insofar as this issue is concerned, this Court is satisfied that entertaining allegations and explanations concerning compliance with Covid-19 regulations during the pandemic is something other than a worthwhile exercise when dealing with the substantive matters at issue in these proceedings.

28. The father is entitled to express real concern about the availability of access and respect for court orders in that regard if the relocation to the United Kingdom is allowed. But whether the child is living in the United Kingdom or in Ireland there will be an enforceable court order regulating contact between the parents and child.
29. It is worth pointing out also that the father does have family residing in the midlands in the United Kingdom and did himself attend third level education in the United Kingdom – where he was subsequently working at the time he met the mother. In terms of his current employment opportunities it is probable that his employment opportunities are greater in the east and greater in the United Kingdom than they are in the northwest. His own evidence indicates job opportunities of late in the east and it also seems likely that there are good job opportunities in the United Kingdom given what his former employer said to him on leaving his job there some few years ago. The father did produce a letter from a local authority in the northwest dated the 3rd November 2020 referring to the position of “Clerk of Works/Building Inspector” and a recent interview which he had. The relevant paragraphs of the letter read: -

“I refer to your recent interview for the post of Clerk of Works – Building Inspector with this Council. The results of the interviews have now been returned to this office.

I wish to advise that you have been placed at number 15 on the panel of qualified candidates”.

30. Although not without some ambiguity, the letter and the evidence about it suggest a “post” being available and certainly not several – although presumably there would be other posts becoming available now and then. On the face of it however, this letter surely confirms the difficulty people with the father’s qualifications have in securing employment in the northwest – and most likely along most of the western seaboard and outside major urban areas.
31. Very late in the day in the context of the affidavits filed in court and the hearing date fixed the father swore and served an additional affidavit on the 14th April 2021. This affidavit avers to the events of the 24th August 2020. At this time it appears that the mother had in fact been back in Ireland for a period of in or around seven weeks following the court ordered return to Ireland under The Hague Convention on Child Abduction. (It seems that the mother and child arrived in the northwest on the 1st July 2020). According to the father, and this is not in dispute, he and the mother had begun to meet more and were on reasonably friendly terms at this stage. He says that they had been spending some time together over the previous couple of weeks in the mother’s apartment. When the father dropped the child back to the apartment following access on Sunday the 23rd August he stayed overnight at the mother’s “request or permission” before bringing the child to a bird show the following day and staying to have drinks in the mother’s apartment on the Monday evening of the 24th August 2020.

32. It is worth pausing at this point to observe that it is quite inconsistent with the father's asserted concern in relation to the mother's alcohol use that he would stay overnight in her apartment and drink alcohol with her – which alcohol he apparently purchased and brought to the apartment – and while the child was in the apartment.
33. According to the father, during the evening, the mother began to talk of a friend of hers who was making a considerable amount of money through selling sexual services. The father then provides considerable detail in relation to the conversation which he recorded without the knowledge of the mother (although he says that he felt justified in this at the time as the mother had recorded him a number of times and even admitted to this on affidavit).
34. Without going into the same level of detail as the father does in his affidavit the essence of the averments made by him in this regard are that the mother had become involved in prostitution. The father says that he accepts and has been advised that the admission of this evidence is very late in the day and will undoubtedly be controversial. He says that he had always had a concern around this issue – but that he had hoped that they would be able to ultimately agree on the care of the child in a reasoned and balanced manner. He says however that he is concerned that the contrasting portrayal that the mother has now endeavoured to place both parties in in the eyes of the court is at significant odds with the actual reality. The father says that he is putting this matter before the court because he is concerned that the activity of the mother is a danger to the welfare of the child. He feels it "*incumbent*" on him "*to give the court a fuller picture of the mother's character and lifestyle choices and how it may affect the child's upbringing if he was removed again...*". He says that he has a real and valid concern that if the mother was to engage in these behaviours in this jurisdiction then she might also do so in the UK if her relocation application is granted and that the child's welfare and best interests may be adversely affected without his presence to oversee and monitor his care and welfare.
35. In replying to these allegations, the mother comprehensively rejects the father's assertion that he is concerned for the welfare of the child by reason of the matters raised. She points out that if he was it would be a matter for the Gardaí and Tusla and this Court to remove the child from her care immediately – rather than raising the matter eight months after the fact and one week or so prior to the full hearing. The mother goes on to say that she is not surprised by this tactic and that it is indicative of the behaviour that she has expressed throughout – that the respondent is controlling, bullying and manipulative. She says that this is his final attempt to have her withdraw these proceedings and to get back together with her. She says that she does not say this lightly but points out that the father has been threatening her for some time that he - "*has something to blow me out of the water*".
36. The mother's position in relation to the allegations is detailed in an affidavit sworn by her on the 15th April 2020.
37. The mother says that the conversation which was recorded occurred at a time during which the father was doing all in his power to rekindle the relationship. She says that she

does not drive and that the father was offering to bring her and the child to the beach and on a number of day trips and that this was what was occurring on the 24th August 2020 - in circumstances where he has an innate ability, she says, to intrude in her life. She says that is what he was doing at that time as she has no connections in this jurisdiction. She says that at no time did she request the father to remain in her home overnight - rather he commenced drinking alcohol so that he could not drive back to the northwest.

38. The mother admits that she spoke of her friend's new financial venture but she denies that it is anything that is akin to prostitution. She says that her friend had recently joined a site which is akin to a dating website and colloquially known as "sugar baby/sugar daddy website". Apparently, according to the mother, this is an arrangement whereby the older gentleman would pay the younger female for their companionship and not pay them for sexual favours as is done with prostitution. One might say this is potentially a rather fine distinction in the real world - but the issue raised does not really centre on this.
39. The mother utterly denies that she made any admissions or otherwise that she had or planned to sleep with men for money. She says that she admits that she informed the father that she had started a profile on the site but that she had not met with any men. She says that she imparted this information to convey to the father her desperation to return to the UK and the fact that she was solely reliant on him for money.
40. The mother swears that she has never engaged in sexual favours in exchange for money and that she has not met any individual from the website. She did consider doing so as she was desperate to have money and to return to the UK and she also admits that she spoke to one man online - but all contact ceased on the 9th September 2020 and she deleted her profile at this time. According to the mother in evidence "*I never did follow through at the time*" although she was "*incredibly desperate and vulnerable*". In her most recent affidavit she says "*despite my desperation, I was unable to meet someone in this way.*"
41. In this regard, the mother in evidence during the hearing emphasised that the import of the conversation which she had that night with the father - and what she intended to convey - was how desperate she was to go home to the UK.
42. Having considered this aspect of the evidence - both the sworn affidavits and the oral evidence given - the Court is satisfied that: -
 - (a) The mother is in a very difficult financial situation. A real pressure and dilemma for both parties in this dispute is and has been the cost of legal representation. As an aside, it is clear from the affidavit of means of both parties that they have little or no assets. Indeed, the court did wonder on reading the papers before the hearing how or why this matter was being litigated in the High Court. It should be said however that the case was presented by both sides in a considered, concise and ordered fashion and the oral hearing via a remote platform concluded within the one-day timeframe which both sides had agreed. This is commendable in a difficult

high conflict case when time estimates in such matters are rarely adhered to. It is obvious that the legal teams on both sides have been focussed and efficient in their use of court time and their clients very limited resources. They have managed to litigate this fraught matter in the High Court expeditiously (given the current Covid-19 regime) and probably at no greater cost to their clients than if the matter had been litigated in the Circuit Court. This is a necessary observation and praise - in circumstances where the legal costs involved have been a huge pressure, worry and stress for both parties. Another necessary observation is that this case illustrates yet again that the Civil Legal Aid system in Ireland requires urgent review and increased resources.

- (b) It is clear from the evidence on this issue and from the other evidence in the case that the father has hoped and tried for a reconciliation. His ambitions in this regard are wholly inconsistent with the picture he seeks to paint of the character of the mother and her care of the child.
 - (c) The quite unseemly attack by the father on the mother's character in his affidavit sworn on the 14th April 2021 is undoubtedly the ammunition that he believed would provide the means of blowing the applicant's case out of the water - and the court accepts the mother's evidence in relation to this threat. The assertions made in the father's affidavit and the chronicling and repetition of the recorded conversation are disingenuous and opportunistic. The mother is and has been quite desperate and vulnerable since returning to Ireland with the child against her wishes - as a result of the child abduction proceedings in the UK. The conversation which took place does no more than prove how desperate the mother has been, and remains, to go home to the UK with the child. This evidence paints a sad picture of the mother's dilemma.
 - (d) The court accepts without reservation the substance of the mother's evidence and her reply to the father's attack on her character by reference to the matters referred to in the conversation which he recorded.
43. The Court needs also to observe that there is no cogent evidence to suggest that the child's welfare has ever been in danger or threatened whilst in his mother's care. All the evidence is to the contrary.
44. In an apparent change from an earlier impression the mother in her affidavit of the 15th April 2020 says, at paragraph 13, that she believes "*that the respondent's sole aim in these proceedings is to have your deponent return to [REDACTED], be heavily reliant on him as I will have no job, no friends, no family, accommodation provided by his family nor will I have a car.*" She thinks the father believes that she will then reconcile with him. In this regard, the father's affidavit which was sworn on the 14th April 2020 does lend some credence to the mother's belief - even if it is largely speculation on her part.
45. At paragraph 15 of her affidavit sworn on the 15th April 2021 the mother says that she genuinely believes that if she had reconciled with the father, as he has asked on

numerous occasions, she would be in the UK with her child now. In this regard, having considered the evidence the Court is of the view that it is probable that the mother is correct in this belief.

46. The child was born in Dublin and lived in the Dublin area in rented accommodation with both parents before the mother and child moved to the northwest and lived there in his parents' home from September 2019 to February 2020 - with the father travelling up at weekends and during time off work. At the time of her swearing of the affidavit on the 15th April 2020 the father was paying maintenance of €500 per month but no longer paying the additional payment towards accommodation of €500 per month. It is the position that the Annex A obligation of the father in the Hague Order concerning accommodation costs was for a six-month period only and his financial circumstances have been and remain strained due to he being unemployed since April 2020. Although the mother does not believe he is unemployed he gave sworn evidence that he is not working and no concrete evidence to the contrary was presented to the Court. In any event, the evidence is that parties are both in poor financial circumstances at present.

Reliefs sought.

47. The relief claimed by the applicant in the special summons which issued on the 28th September 2020, is: -
- (a) An Order pursuant to the provisions of s.11 of the 1964 Act granting the applicant liberty to remove and relocate the child to the United Kingdom pending further order;
 - (b) an Order pursuant to s.11 of the said Act setting out the access to be enjoyed by the respondent;
 - (c) such Orders pursuant to s.5A of the 1976 Act providing for such periodical payments order, secured periodical payments and lump sum payments for the support of the dependent child as this Honourable Court may deem appropriate in the circumstances;
 - (d) such further and other relief as this Honourable Court shall deem fit and meet;
 - (e) an Order providing for the costs of and incidental to these proceedings.
48. After some correspondence concerning the issues to be tried the respondent delivered a defence and counterclaim on the 15th January 2021. To put the defence and counterclaim in context it should be said that the father had issued an application in the northwest in August 2020 in which he had sought the court's direction regarding the question of access and custody between he and the child in accordance with s.11(4) of the Act (as substituted by s.53 of the Children and Family Relationships Act 2015). Although these District Court proceedings were issued some weeks in advance of the High Court proceedings the father discontinued the proceedings with a view to allowing all issues in dispute to be determined in the High Court proceedings.

49. In the defence and counterclaim delivered on the 15th January 2021 the father counterclaimed the following reliefs pursuant to the Guardianship of Infants Act 1964 as amended and the Family Law (Maintenance of Spouses and Children) Act, 1976 as amended:
- (a) An Order refusing the applicant liberty to remove and relocate the child to the United Kingdom pending further order;
 - (b) an Order pursuant to the provisions of s.11(4) of the 1964 Act granting the respondent the right of custody to the child and the right of access thereto;
 - (c) an Order pursuant to s.11 of the 1964 Act permitting/granting the applicant liberty to remove and relocate the child to [REDACTED], the place of residence of his father;
 - (d) an Order pursuant to s.11 of the said act setting out the access to be enjoyed by the applicant;
 - (e) such Orders pursuant to s.5A of the 1976 Act providing for such periodical payments order, secured periodical payments order and lump sum payments for the support of the dependent child as this honourable Court may deem appropriate in the circumstances;
 - (f) if required, an order under s.6B(2)(b) of the 1964 Act as amended by s.49 of the Children and Family Relationships Act, 2015 confirming or declaring the respondent herein, the child's father, to be a guardian of his child;
 - (g) such further and other relief as this Honourable Court shall deem fit and meet;
 - (h) an order providing for the costs of and incidental to these proceedings.
50. At the hearing counsel for the mother confirmed that there was no objection to an order declaring the father to be a guardian of the child – and this declaration will be included in the Court Order.
51. In terms of proximity of family members from her proposed residence in the midlands of the U.K., the applicant provided the following information: -
- (a) Her mother and father are within a four-minute drive or a twenty-minute walk.
 - (b) Her maternal grandmother is twenty-five minutes' drive away.
 - (c) Her brother and sister-in-law are ten minutes' drive away. They have twins who are four years of age and a long term foster child who is fourteen months old. The twins are a boy and a girl and the foster child is a boy.

- (d) A sister and brother-in-law are forty-six minutes' drive away. The brother-in-law is the godfather of the child the subject matter of these proceedings. They have three children – aged 14, 12 and 10 – two girls and a boy.
- (e) A sister and brother-in-law reside thirty-four minutes' drive away.
- (f) A brother and his partner reside one minute's drive or six minutes' walk away.

52. The father has provided the following information in relation to proximity of family members: -

- (a) He is presently resident with his father and mother – the paternal grandparents.
- (b) He has a sister and her family living in Northern Ireland.
- (c) He has a brother and sister-in-law who reside in the U.K. with a toddler son.
- (d) There are many second cousins of the child the subject matter of these proceedings living in reasonable proximity to the father's family home in the northwest, such as:
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 - i. The father has a first cousin living approximately two miles away who has a son and daughter who are in a similar age band to the child and would be attending the same schools as he (along with many more second cousins).
 - ii. Another cousin lives one mile away and has five children ranging in age from 2-16.
 - iii. Another cousin lives approximately two miles away and has a son aged 4 years and a daughter aged 7.
 - iv. Another cousin lives approximately one mile away and has two daughters – aged 4 and 6 years.
 - v. An aunt lives nine miles away and has three boys who are aged 9, 12 and 16.
 - vi. His cousin E. has three girls aged from 2-9 years of age.
 - vii. A cousin P. has two girls and a boy of the same first name as the child the subject matter of these proceedings – who is three years old.
 - viii. A cousin C. has a son who is three and a daughter who is one and a half.
 - ix. A cousin F. across the border in Derry has two daughters.
 - x. Another cousin K. across the border in Derry has three sons.
 - xi. Another cousin D. in Derry has a daughter the same age as the child the subject matter of these proceedings.
 - xii. Another cousin F. in Derry has four children aged 1-7 years.
 - xiii. Approximately twelve miles away in the northwest another cousin S. has a daughter and son aged one and three respectively.
 - xiv. The father also makes the point that the child has other friends in the neighbourhood of his parents' home and the father has lots of other family in the northwest.

53. Undoubtedly the father has a large extended family in the northwest and further afield. But the court is not to be exercised by a head count of cousins – whether they be first cousins or second cousins or further removed. The court is concerned about the availability and existence of family support and close family relationships. It is abundantly clear that the mother has family support and close family relationships in the area where she wishes to relocate to and that the child will also have the benefit of this family support and family relationships. Likewise, the father has family support and extended family relatives in the northwest and in proximity to his parents’ home where he is resident. He is close to his sister and her family in Northern Ireland and to his brother and his family in the U.K.. It is of some relevance to note that these strong bonds and relationships continue although these immediate family members are some distance from the northwest. The immediate and important family support which the father has in the northwest is from his parents. This family support would clearly be available to the child if the child was living in the northwest with the father – and there cannot be any doubt that the paternal grandmother would be a significant and beneficial presence in the life of the child. Nor can there be any doubt but that the paternal grandmother has been an extremely hands on and doting grandmother whenever the opportunity has presented itself since he was born. Of some relevance also is that the paternal grandparents are young active retirees – both 65. The maternal grandparents are older – and in particular the maternal grandfather.

The Law

54. The law in relation to the matters at issue is clear and is dealt with in several decisions of the Superior Courts spanning many years. Although involving repetition it is nonetheless useful to set out the law as it has been previously set out in earlier cases including the decisions of this Court in *L.C.W. v. K.C.* [2019] IEHC 945 and *L.D. v. N.D.* [2020] IEHC 267.

55. The applicable principles to be applied in the context of relocation applications have been considered by the Irish courts in a number of decisions. In *E.M. v. A.M.* (Unreported, High Court, 16th June 1992), Flood J. identified the following criteria as being relevant:

- “(1) Which of the two [hypothetical outcomes] will provide the greater stability of lifestyle for [the child].
- (2) The contribution to such stability that will be provided by the environment in which [the child] will reside, with particular regard to the influence of his extended family.
- (3) The professional advice tendered
- (4) The capacity for, and frequency of, access by the non-custodial parent.
- (5) The past record of each parent, in their relationship with [the child] insofar as it impinges on the welfare of [the child].
- (6) The respect, in terms of the future, of the parties, to orders and directions of this Court.”

56. The applicable principles were further considered by MacMenamin J. in *U.V. v. V. U.* [2011] IEHC 519 and the criteria set out by Flood J. were referenced with approval. It was a marital case in which the High Court was assessing the relocation to Spain by two children, aged twelve and six years respectively. The applicant mother was a Spanish native. Refusing the application to relocate, MacMenamin J. rejected the suggestion that there was a presumption in favour of the custodial parent and he pointed out that:-

“The fundamental constitutional and legal principle applicable here is the children’s right to have decisions taken as to their welfare with that welfare being the prime concern.”

57. This Court must also have regard to the decision of the Court of Justice of the European Union of the 5th October, 2010, in *J. McB. v. L.E.*, Case C-400/10 PPU, where, referring to Article 7 of the Charter of Fundamental Rights (respect for private and family life, home and communications), that Court observed at para. 60 of the judgment, that the Article must be read in such a manner so as to respect the obligation to take into consideration the child’s best interest, and the fundamental right of the child to “*maintain on a regular basis personal relationship and direct contact with both of his or her parents*, stated in Article 24(3)”.

58. The Court further in Case C-540/03 *Parliament v. Council* [2006] ECR I5769 considered issues which are also pertinent to this case. The Court observed, at paragraph 58;

‘The Charter likewise recognises, in Article 7, the right to respect for private or family life. This provision must be read in conjunction with the obligation to have regard to the child’s best interests, which are recognised in Article 24(2) of the Charter, and taking account of the need, expressed in Article 24(3), for a child to maintain on a regular basis a personal relationship with both his or her parents’ – *Parliament v. Council* [2006] ECR I-5796.

59. The above principles should be respected by this Court and they accord with the basic welfare considerations which apply under Irish Law.

60. In the Court of Appeal decision in *SK v. AL* [2019] IECA 177, Whelan J. clearly and comprehensively sets out the law pertaining to relocation of children. The following extract from the judgment is worth quoting in full; -

‘The law

38. In an application by a parent seeking liberty to remove a minor who is habitually resident within the jurisdiction of the courts of this State for the purposes of relocation to another state where the other parent or holder of rights of custody does not consent to such relocation, the approach of the court is governed by the provisions of the Constitution, the Guardianship of Infants Act 1964 (as amended) and the jurisprudence governing the best interests of the minor in question.

39. In the instant case it is of relevance that the proposed relocation was to a non-EU State – a so-called “Third State”. Significant distance can impact on the frequency and modalities of contact and generally can be a relevant factor in judicial consideration of the minor's best interests in the context of such an application.
40. In any trans-national child relocation case there are a variety of conflicting or competing interests potentially engaged, including the best interests of the child in question, the rights and interests of the parent who proposes to relocate and including their circumstances vis-à-vis any spouse, partner or family and the rights and interests of the left-behind parent and his or her spouse, partner or family.

Such an application frequently, if not invariably, brings into stark relief the conflicting aims and objectives of the parent who proposes to relocate and who is usually the primary carer of the child with the rights of the left behind parent to maintain a relationship with the minor.

41. Whilst in the English case of *Payne v. Payne* [2001] E.W.C.A. Civ. 166 Thorpe L.J. observed that the refusal to recognise the right to freedom of movement beyond the jurisdictional boundary of a parent's own country is “*a stance of disproportionate parochialism*” (pg. 487) such an approach does not reflect the law in this jurisdiction where the application falls to be determined in light of the Constitution having due regard to the best interests of the child concerned.

No presumption for or against relocation

42. In this jurisdiction, having regard to the constitutional mandate and the clear provisions of the relevant legislation, including the Children and Family Relationships Act, 2015, Part 4, and the Guardianship of Infants Act 1964 (as amended), in any application to relocate a child there can be no presumption in favour of or against either the applicant parent or the remaining parent. It is purely an exercise in welfare assessment.

Article 42A of the Constitution

43. As is clear from Art. 42A of the Constitution, the best interests of [I] was required to be the paramount consideration when the High Court determined the application for liberty to remove and relocate. Article 42A.1 provides: -

“The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.”

44. Article 42A.4.1 provides: -

“Provision shall be made by law that in the resolution of all proceedings –

(i)

- (ii) *concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.*"

Article 42A.4.2 provides that: -

"Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child."

Relevance of prior child abduction claim to relocation application under Guardianship of Infants Act 1964 (as amended)

45. At the level of principle it must be borne in mind that in circumstances where a wrongful removal or retention of a minor occurs which has resulted in the making of orders pursuant to the Hague Convention for the summary return of a minor to the State of her habitual residence, it remains open to the parent who is the subject matter of such an order of return, whether made on consent or otherwise, to bring an application before the courts of the state of habitual residence of the minor seeking leave to temporarily or permanently remove the child and liberty to relocate to a new jurisdiction.
46. The latter proceedings, such as in the instant case, are brought pursuant to domestic legislation governing child welfare. In determining an application pursuant to the Guardianship of Infants Act 1964 a judge is unfettered by any order, be it interim or otherwise, direction or step taken or as may have occurred in the context of the Hague Convention proceedings.
47. The functions of a judge dealing with any aspect of an application pursuant to the Hague Convention or the Child Abduction and Enforcement of Custody Orders Act 1991 are wholly distinct from the functions of a judge dealing with issues of custody, welfare and the best interests of a minor. In making determinations concerning a minor pursuant to the Guardianship of Infants Act 1964 (as amended), no breach of any principle of comity can arise since the functions of the judge under each regime are wholly distinct and different. The best interests of the minor is the paramount consideration in all determinations of welfare pursuant to the Guardianship of Infants Act 1964 (as amended). However, the best interests of a minor are not paramount pursuant to the Hague Convention since the purpose of that instrument is to achieve restoration of the status quo ante leaving all considerations of welfare and best interests to the courts of the habitual residence of the minor in question.

Relevance of parent's conduct

48. It is noteworthy that in making a determination on an application pursuant to the Guardianship of Infants Act, 1964 (as amended), the trial judge is expressly limited in considering the conduct of either parent. S.31(4) provides:

"For the purposes of this section, a parent's conduct may be considered to the extent that it is relevant to the child's welfare and best interests only."

Part V of Guardianship of Infants Act 1964

49. In light of the constitutional provisions, the Children and Family Relationships Act 2015, section 63, inserted Part V into the Guardianship of Infants Act 1964.

50. Section 3 of the Guardianship of Infants Act 1964 (as amended) now provides:

"(1) Where, in any proceedings before any court, the—

- (a) guardianship, custody or upbringing of, or access to, a child, or*
- (b)*

is in question, the court, in deciding that question, shall regard the best interests of the child as the paramount consideration.

(2) In proceedings to which subsection (1) applies, the court shall determine the best interests of the child concerned in accordance with Part V."

51. Part V of the Act in particular includes s.31 which is of relevance in the instant case and which informed the determination of the trial judge as the applicable law governing the application of the mother seeking liberty to remove and relocate. It provides as follows: -

"(1) In determining for the purposes of this Act what is in the best interests of a child, the court shall have regard to all of the factors or circumstances that it regards as relevant to the child concerned and his or her family.

(2) The factors and circumstances referred to in subsection (1) include: -

- (a) the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships;*
- (b) the views of the child concerned that are ascertainable (whether in accordance with section 32 or otherwise);*
- (c) the physical, psychological and emotional needs of the child concerned, taking into consideration the child's age and stage of development and the likely effect on him or her of any change of circumstances;*
- (d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his or her parents and*

- the other relatives and persons referred to in paragraph (a), and the desirability of preserving and strengthening such relationships;
- (e) the child's religious, spiritual, cultural and linguistic upbringing and needs;
- (f) the child's social, intellectual and educational upbringing and needs;
- (g) the child's age and any special characteristics;
- (h) any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being;
- (i) where applicable, proposals made for the child's custody, care, development and upbringing and for access to and contact with the child, having regard to the desirability of the parents or guardians of the child agreeing to such proposals and co-operating with each other in relation to them;
- (j) the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives;
- (k) the capacity of each person in respect of whom an application is made under this Act—
 - (i) to care for and meet the needs of the child,
 - (ii) to communicate and co-operate on issues relating to the child, and
 - (iii) to exercise the relevant powers, responsibilities and entitlements to which the application relates.”

52. The objectives underpinning the legislative approach is to direct the focus of the enquiry away from recriminations, blame or fault finding with regard to the past conduct of either parent unless it is “relevant to the child's welfare and best interests only” (s.31(4)). Thus, for instance, it was not open to the trial judge to engage with speculation and surmise advanced by the father as to whether conduct of the mother in deciding to remain in the United States, in pursuance of enhanced economic security or arising from the advantageous opportunity available to her husband was premeditated or merely reflected short-term intentions which may have subsequently metamorphosed into more long-term prospects. There was no evidence adduced that any conduct on the part of the mother was adverse to [I]'s welfare and best interests and accordingly the trial judge correctly disregarded such allegations as he was obliged to do.

Ascertainable views of minor

53. In an application of this nature it is imperative that the views of the child are considered and taken into account as they clearly were. The s.32 report records two interviews with [I] and details of same are set forth. The author of the report was cross-examined at length by the father at the hearing.

54. The constitutional mandate to obtain the ascertainable views of the child was met in my view on the facts of this case. It is clear from s.31(6) of the Guardianship of Infants Act 1964 (as amended) that: -

“In obtaining the ascertainable views of a child for the purposes of subsection (2)(b), the court—

- (a) shall facilitate the free expression by the child of those views and, in particular, shall endeavour to ensure that any views so expressed by the child are not expressed as a result of undue influence, and
- (b) may make an order under section 32.”

In the instant case an order pursuant to s.32 was made. Therefore, the consultant clinical psychologist was a witness of the courts and not a witness for either party.

55. In carrying out a Best Interests Assessment in the context of a proposed relocation particular factors may be of relevance including: -

- (a) The minor's emotional and/psychological dependency upon the primary carer.
- (b) The relationship between the child and the remaining parent.
- (c) The relationship between the child and his or her extended family, including siblings, step-siblings, step-parents and grandparents and the extent to which the dynamics of those relationships that operate positively and beneficially for the minor may be affected by the relocation, and considerations as to how such changes might be ameliorated or addressed.
- (d) The reasonableness of the proposed relocation and, so far as relevant, the motivation of the parent who proposes to relocate which is required to be objectively assessed.
- (e) The practical consequences of a refusal of the application for all of the directly concerned parties and in particular the minor, the directly concerned parents or guardians.

Balancing the rights of the parties.

56. Parents in relocation proceedings may invoke rights, including freedom of movement under the EU treaties and Protocol 4, Art. 2 of the European Convention on Human Rights which provides, “Everyone shall be free to leave any country, including his own.” In the case of a remaining parent, Art. 8 ECHR rights to family relations may also be invoked.

However, the paramount consideration in an application seeking leave to relocate must always be the best interests of the child. The High Court correctly applied the relevant legal principles to the facts and made his decision based on the best interests of [I].

Access

57. In evaluating the right of a parent to access, it is to be borne in mind that not alone is access a right of the parent, particularly a non-custodial parent, it is also a right of the child and is, in the absence of evidence to the contrary, presumed to be in the best interests of the child that they maintain a constructive relationship with the non-relocating parent. Care must be taken, accordingly, to structure contact arrangements so as to preserve and vindicate the child's relationship with the non-relocating parent so as to minimise disruption to same and ensure so far as practicable that the relationship is maintained in such a manner as operates in the best interests of the minor.

Washington Declaration

58. Whilst no international convention or protocol at this time governs international family relocation, in March, 2010 following a conference considering issues arising in the context of international family relocation, the Washington Declaration on International Family Relocation was published with the support of the Hague Conference on Private International Law International Centre for Missing and Exploited Children.

The said declaration provides, *inter alia*: -

"Factors Relevant to Decisions on International Relocation

.....

3. In all applications concerning international relocation the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.
4. In order to identify more clearly cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors listed in no order of priority. The weight to be given to any one factor will vary from case to case: -
 - i) the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;
 - ii) the views of the child having regard to the child's age and maturity;
 - iii) the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;
 - iv) where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;
 - v) any history of family violence or abuse, whether physical or psychological;
 - vi) the history of the family and particularly the continuity and quality of past and current care and contact arrangements;

- vii) pre-existing custody and access determinations;
- viii) the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;
- ix) the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;
- x) whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;
- xi) the enforceability of contact provisions ordered as a condition of relocation in the State of destination;
- xii) issues of mobility for family members; and
- xiii) any other circumstances deemed to be relevant by the judge."

59. The Washington Declaration has no legal effect and can be characterised as "soft law". Neither was Ireland represented at the conference where the declaration was drafted. At most, it is merely representative of international juristic thinking in an area concerning children which is increasingly litigated. It does appear to resonate with the provisions of the Guardianship of Infants Act 1964 (as amended).

UN Convention

60. It will be recalled that pursuant to Art. 3 of the UN Convention on the Rights of the Child the best interests of a child shall be a primary consideration and further, pursuant to Art. 12, the child's views must be considered and taken into account in all matters affecting him or her"

Analysis

61. The written submissions on behalf of the applicant are dated the 14th. April 2021. They refer to the case law referred to above and submit that the Court must determine the child's best interests as a paramount consideration and that, due to the fact that the parties are unmarried, the welfare of the applicant should also be determined. The introductory section concerning the facts refer to matters dealt with elsewhere in this judgment. The written submissions on behalf of the applicant repeat, in large measure, the case law set out above.

62. The respondent's written submissions are dated the 16th April 2021. There is no longer any issue concerning the entitlement of the father to be recognised automatically as the child's guardian and the declaration sought in this regard will be included, as already stated, in this court's order.

63. The father's legal submissions again rely on the well-established law in relation to applications such as this. Understandably, there is a difference in emphasis between the applicant and the respondent in relation to the authorities and how they should be applied.

64. In terms of the manner in which the law ought to be applied to the present facts in light of the evidence adduced, it is submitted on behalf of the respondent that: -

- (a) The applicant's unfair and unilateral withholding of access has caused retrospective and continuing prejudice to the son's relationship with his father since February 2020 and has also raised a spectre of future prejudice to the relationship by the arguable potential future refusal to support the relationship.

It is clear that the relationship between the father and mother has been quite acrimonious at times between the breakup of the relationship in February 2020 to date. There has been considerable anger and upset and upheaval on both sides. The situation of anger, upheaval and upset must also be viewed in the context of the father's attempts at reconciliation during the period since February 2020 – and which ambitions concerning reconciliation the Court considers have only recently been abandoned by him, if abandoned at all. Contact between the father and his son has fallen victim to the volatile relationship between the father and the mother since February 2020 in circumstances where there has been no adequately ordered access regime in place – whether mediated or pursuant to Court Order. Going forward, there will be a Court Order governing access which court order will be amenable to enforcement in the United Kingdom. This Court is satisfied that the mother does have an appreciation of the importance of the relationship between the father and son and the Court is satisfied that the mother does appreciate the need to facilitate the continuance and nurturing of that relationship – including the relationship between the son and the relations on his father's side.

It should also be said that the Court is far from satisfied that the father's life will remain in the northwest. In his evidence the father himself seemed quite uncertain in this regard. The evidence presented to the court satisfies the Court that the father is looking at employment opportunities in the Dublin area – and he has not ruled out employment opportunities in the United Kingdom.

The cost and the financial implications of travel arrangements between the northwest (or indeed elsewhere) in Ireland and the United Kingdom are raised by the father in the legal submissions. This is undoubtedly a consideration. However, this Court is not satisfied that the welfare of the child mandates the child living with the father in the northwest or the child and mother living in proximity to the father's parents' home in the northwest. The relationship has ended. The mother is English and her family and support base is in England. The father is Irish and his parents with whom he presently resides live in the northwest. The father's situation may change in terms of his geographical location and employment opportunities availed of by him. This Court is satisfied that the father's situation will probably change by reason of employment opportunities – and is likely to change significantly. In any event, both parents are likely to suffer the cost and inconvenience of travel to facilitate contact with their child. In this regard, the time

burden and inconvenience of such travel is as great as, if not greater than, the financial burden that such travel will entail.

- (b) The father refers to the proceedings under The Hague Convention and the application for a Prohibited Steps Order in the UK which he submits are relevant to this case in circumstances where the mother's attitude to compliance with the various undertakings made to the High Court should be examined. Suffice it to say, without repeating what is stated in the case law, that the Court does not consider it worthwhile embarking upon a discussion concerning the UK proceedings in the context of the child welfare assessment which this Court is concerned with. Ultimately, undertakings were given by the father and the mother as set out in Annex A and Annex B attached to The Hague Order dated 11th May 2020 and the mother agreed to return the child voluntarily to Ireland in accordance with the court order which speaks for itself.
- (c) The father asserts that he has justification for his fear that without his oversight, the mother will inexorably drift back into her past behaviours of excessive partying and tendency towards alcoholism. He submits that it is his position that she has still not given up alcohol, despite her admitted problem. It is submitted that the impact of these behaviours together with the recent position advanced by the father around the mother's potential involvement in prostitution (though denied by the applicant) is centrally germane to the best welfare interests of the parties' son and that the alcohol related behaviours of the past could represent a clear risk to the child's welfare if left unchecked.

This submission on behalf of the father seeks to ignore the following facts: -

- (a) The father has the same tendency to abuse alcohol as does the mother;
- (b) The father was quite content to purchase alcohol and bring it to the mother's apartment in the northwest and consume it along with her, notwithstanding the undertakings contained in the Hague Order. It is also clear that the father did, in mid-July and perhaps on other occasions, express the view to the mother that the court order only applied to the UK.
- (c) The father's attempts to reconcile with the applicant are completely at odds with his assertions concerning her tendency towards alcoholism and "potential involvement in prostitution". The Court has already expressed its view concerning the latter allegation.
- (d) The father says that quite apart from the minimisation of the father's parental role made out in the mother's affidavits, he is in a position to care full-time for the child and wishes to be guardian and primary custodian with immediate effect. He asserts that in contrast to the dearth of actual detail laid out in the mother's affidavit of welfare, and notwithstanding the limitations of his position as de facto non-custodial parent for the last fourteen months, he nevertheless has a prima facie appropriate infrastructure

made out in his affidavit of welfare together with a dedicated and loving supportive family network to assist him.

This Court does not doubt the love, affection and commitment of the father to the child. Equally, the mother's love, affection, commitment and dedication to the child is well-established by the evidence. The Court is however concerned that, in addition to what the court considers to be quite unfair and unfounded attacks on her character, the father appears to lack an appreciation of the true importance and significance of the mother in the child's life. While the couple were together it is manifest from the evidence that the mother was the primary carer of the child and the court is satisfied that she, almost exclusively, looked after his daily needs while the couple were together. Since February of 2020 the father has been largely excluded from any real opportunity to be involved in a hands-on way with the care of his child. The opportunity to be so involved has however arisen on the occasions when he has had contact with his son including periods of overnight stay in the northwest. Yet, on considering the evidence the court is left convinced that the paternal grandmother is, in real terms, the main carer of the child whilst he is in the father's care. This is not to question the enjoyment that the father derives from access nor is it to question his genuine desire to have more contact in a regular and defined way. And it is also probably the case that the father could improve his skills as a parent – and should do so.

65. It is the position that the mother has had significant support, including financial support and childcare support from her family and including the hands-on involvement of the maternal grandmother.
66. On the evidence, this Court is satisfied that the mother is a capable, successful and caring mother to the child. Her evidence was re-assuring in terms of her day to day care of the child. That contrasted with the father's evidence. For example, in evidence the father was uncertain as to when the child started eating solid foods. His evidence lacked substance in terms of the day to day needs and life of the child – and this is making all due allowance for the difficulties concerning contact after the break-up. He did, and it is understandable, emphasise the beauty of the northwest and that part of it in which he lives at present – with lots of beaches, hills and beautiful scenery. He emphasised his great love of sports and his wish to encourage his son to become involved in sports and to attend various sporting fixtures with him. He expressed his plans for his son's education going forward and the benefit of his son having a traditional Irish upbringing as he did. He emphasised the advantages of northwest and life there as opposed to life in the United Kingdom where the mother hopes to relocate to with his son. In contrast, the mother dealt in a practical way with the challenges of parenting, the needs of the child and the needs of both parents. Her direct involvement in putting the child's welfare first was obvious from the evidence.

67. The father's written submissions touches also upon the question of a s.32 report and states that, at an early stage of the proceedings, given the level of maturity and tender years of the child, and indeed given the potential further delays (particularly during Covid times) that awaiting an assessment might attach to the case (when both parties presented as seeking quick resolution), the initial agreement between the parties was around not seeking that an assessor be appointed. The submissions do go on to say that the father remains in the Court's hands as to whether the Court wishes that an assessor be appointed – save and insofar as he submits that an assessor could only ever comment on the child's best interests, his direct views being unascertainable as he is still not yet three years of age. As touched on earlier, if the Court considered it desirable or necessary or worthwhile, it would direct that a report of an expert be obtained. It does not.
68. The Court is satisfied in this case that all relevant evidence is available to it to enable it to consider fully the issues which require to be considered. Given the child's age – and although the Court has considered directing that such a report be obtained before making a decision in the matter - it has decided that this is neither warranted nor desirable. This child is not yet three years of age. He is living in an apartment in the northwest with his mother since July of last year and away from his mother's family and friends. The father is living with his parents in the northwest. The father has hoped for a reconciliation, but the mother has not. The life-plan of both parents is in flux. The child is thriving and happy despite all the upheaval. This child is too young to have formed or to express his own independent views and the Court must decide what is in his best interests on the evidence available and in line with the authorities.
69. The Court is satisfied that the following is the position – having regard to the law, the evidence and the facts established by the evidence to the satisfaction of the Court : -
- (a) The proposed relocation is to the United Kingdom and is likely to impact on the nature and frequency of contact between the father and child if the father remains resident in the northwest. However, and albeit it with some effort and inconvenience, the father will be able to have frequent and meaningful contact with his son, regulated by a precise and enforceable court order, even if his son is normally resident in the United Kingdom and the father is resident in the northwest or elsewhere in Ireland.
 - (b) The proposed relocation by the mother to her home place in the United Kingdom along with her son is a reasonable request. It is the position that she has family support and friendships which are long standing in the United Kingdom and which she does not have in Ireland. It is the position that she wishes to pursue education in the United Kingdom and does have opportunities to do so which, the Court is satisfied, are greater there than in Ireland because of the family support and State support which is available to her.
 - (c) The mother does feel alone and isolated in Ireland and this is understandable. She is English by birth and the father is the only reason that she relocated to Ireland. She did so with a clear understanding between them both that they would return to

the United Kingdom if things did not work out in Ireland. It is beyond doubt that things did not work out in Ireland and it is in those circumstances entirely reasonable for the mother to seek to return to the United Kingdom with her son and on the basis that she will facilitate contact between the father and son and abide by any court order made in that regard.

- (d) There is no doubt but that the father has significant family support, and in particular from his parents in the northwest. Against that, his employment opportunities in the northwest are less than what they are elsewhere. His employment opportunities in the Dublin area are better and it is probable that his employment opportunities in the United Kingdom are good. The Court is satisfied that there is a very big question mark over whether the father will remain in the northwest. At the very least, it seems probable that he will be working away even if returning at weekends to the northwest. It is true that the Covid-19 Pandemic has created uncertainties for many people, including the father, in terms of employment and job opportunities. Against that, it is the position that the father was working in the United Kingdom when he met the mother and that his employment was in Dublin pre-Covid-19. While there is no certainty for the future on either side it is the position that the mother's proposal carries with it greater certainty than does the proposal of the father. In conducting the child welfare assessment which the Court is engaged in, and having regard to the best interests of the child as the paramount consideration, the Court must have regard to the stability, certainty, consistency and feasibility of the proposals, including employment opportunities and accommodation – along with a host of other matters.
- (f) If the child was older the Court would speak to him and/or obtain an expert's report with a view to ascertaining his views. The truth of the situation is however that the child is too young to form and/or to independently articulate his views in relation to the proposed relocation. There cannot be any doubt but that he is well looked after and cared for by his parents and by the grandparents. The paternal grandmother clearly has a strong bond with the child. It is also clear that the maternal grandmother is very involved with the mother and child and there is undoubtedly a good bond between the maternal grandmother and the child. It is a fact that the paternal grandmother has been more involved with the child since birth – largely because of geographical location. In terms of a relocation to the United Kingdom the Court Order will provide for ongoing contact between the child and the paternal grandparents and relatives on the father's side as it is in the interests of the welfare of the child that these relationships be maintained.
- (g) This Court must be unfettered by the orders made in The Hague Convention proceedings and the events surrounding same. This Court is concerned with what is in the best interests of the child – a function quite different from that of the Judge in The Hague Convention proceedings.

- (h) It has been necessary in the course of this judgment to deal with aspects of the parents' conduct – and in particular allegations made by the father against the mother, negative statements concerning her family and attacks by him on her character and parenting ability. These issues are relevant only to the extent that they might impact on the child's welfare and best interests. It should also be said that it is quite clear that the father is and has been struggling to cope with the breakup of his relationship with the mother. It is clear from the evidence that he has hoped for a reconciliation and he is no doubt saddened and somewhat angry that this has not occurred. People react in different ways to the loss of a relationship – and the father's reaction is not unusual or unique. This Court must and will disregard the father's conduct and in particular his attacks on the character of the mother save to the extent that it is relevant to the child's welfare and best interests. In the latter respect, this Court must be alert to the risk that the father's conduct does place a question mark over his willingness or commitment to ensure that the child growing up has the advantage of both parents respecting the position of the other – and working in a collaborative way to avoid unnecessary rancour between them both adversely impacting on the child's welfare. In evidence, the mother displayed an understanding of the need for respect and collaboration by both parents – and a willingness to do her best in that regard. Unfortunately, the father's presentation and evidence did fall short in this regard.
- (i) The Court is satisfied that it is important that the child has a meaningful relationship with his father and his mother and with the paternal and maternal grandparents and other relatives on both sides. The Court is satisfied that the necessary and adequate provision for such contact can be provided for in a Court Order if the mother and child are allowed to relocate to the United Kingdom.
- (j) The Court is satisfied that the mother has been the primary carer for all of the child's young life. The Court is satisfied that his welfare and best interests do require that she remain his primary carer. Removing him from her custody and entrusting him to the care of his father would be most unwise and would be detrimental in terms of his welfare and best interests. He would be lost without her.
- (k) It may well be that the father and mother have different religious, spiritual and cultural values. However, provided adequate contact is provided for the father will have the time and opportunity to impart his values and to exert good influence on his son as he grows up – and indeed the father's evidence indicated a desire and willingness to do so. The father and mother are fortunate in that there is no real linguistic barrier between them both – nor will one be created if the mother and child are relocating to the United Kingdom.
- (l) In terms of the child's social, intellectual and educational upbringing and needs, it is the position that the U.K. and Ireland have much to offer. Importantly, the Court is satisfied that the child's social, intellectual and education upbringing and needs will

be well catered for in the United Kingdom. He will not be disadvantaged by living there as opposed to living in Ireland (whether in the northwest or elsewhere in Ireland).

- (m) Notwithstanding the not insignificant acrimony between the parents as a result of the breakup of their relationship, there is no evidence that their son has been in the way of harm, or at risk of suffering harm, at any point in his young life. Nor is there any question of violence on the part of either parent towards the other. On the contrary, notwithstanding the breakup of the relationship and the mother leaving and going to England and taking the child with her – and The Hague Convention proceedings and the outcome which followed - it is a credit to both father and mother that they have managed to spend time together with the child since the mother's return – and that they did so in a civilised fashion. There was of course the incident in the northwest when the Gardaí were called – but this was a minor incident in the overall scheme of things. It depicts a couple quite tired, emotional and with alcohol on board – and no more than that.
- (n) The mother's proposal in terms of relocating to the U.K., pursuing an education and living independently in proximity to close family support is a proposal which has been thought out and does commend itself to the court. The evidence presented did not satisfy the Court that the father's proposal is as well thought out or as definite – whether one looks at his proposal that he have custody and live in the northwest or his proposal that the mother and child remain in Ireland and that he have regular contact. Beneath the surface is the father's ambition for a reconciliation which has been strong throughout and may well remain as a faint hope. It is the position that the father did indicate a willingness for the mother and child to return to the United Kingdom – provided there was a reconciliation and he was with them. This fact established by the evidence is significant. It is the position that the father has expressed the view that his concerns would be largely removed if he was present to keep an eye on things. The Court does not accept as valid his asserted causes for concern surrounding the parenting capacity and character of the mother. It is thus very difficult to identify what true concerns the father has about the mother and child living in the U.K. and his son being brought up there in circumstances where he does not have a fundamental objection to the entire family living there. It is also of some relevance to recollect that his brother, his wife and their toddler son are living in the midlands of the U.K.
- (o) The Court is impressed by the considered access proposal of the applicant in the event that the relocation is permitted by this Court. While the Court appreciates that the respondent did give consideration for the need for proper contact between the mother and son in the event that he was awarded custody and that his son was living with him the court is not persuaded that this is an arrangement which is in the best interests of the child – and this is already dealt with above.

- (p) Although the evidence and presentation of his case by the father did raise in the Court's mind a question mark as to the willingness and ability of the father to facilitate and encourage a close and continuing relationship between the child and the mother and to maintain and foster relationships between the child and his relatives on his mother's side – the Court does believe that a clear Court Order setting out the parameters of contact will assist the father (and indeed the mother) in appreciating and facilitating what is required in this regard.
- (q) The Court is satisfied that the mother is the person best placed to care for and meet the needs of the child on a day to day basis. The Court is satisfied that she is willing and able and anxious to communicate and cooperate with the father (and indeed with the paternal grandmother) on issues relating to the child and is also capable (as she has shown to date) to exercise her powers, responsibilities and entitlements as the primary carer in a proper manner. It is also clear from the evidence that the father does not have the same capacity to care for and meet the daily needs of the child. The mother has been doing so since the child was born with little real input from the father even whilst the child was in their care when they were together. It is clear from the evidence that the paternal grandmother is greatly involved in the day to day care of the child when he is with the father. It is also likely that the father's capacity to care for and meet the needs of the child would improve if he did not have his mother's help. The Court is satisfied that the father's capacity to communicate and cooperate on issues relating to the child does require improvement – and the mother is much better in this regard. Leaving those issues aside, insofar as that can be done, the Court does believe that the father tries to be and has the capacity to be a responsible parent and guardian of his son - and wishes to be. The Court's findings in relation to his capacity to care for and meet the needs of his son are findings based on the evidence presented to the Court and are not intended to be, and should not be viewed as, a criticism of the father. The simple fact is that the mother has been the primary carer always.

70. The practical consequences of refusing to allow the mother to relocate with the child to the United Kingdom would be :

- (a) That she must remain in Ireland as she is not prepared to go back to the United Kingdom without him.
- (b) That she must remain in Ireland in circumstances where she is lonely and feels isolated here – because her family support network and friends and her "home" as she sees it are in the United Kingdom.
- (c) That she will continue to struggle financially – and to a greater extent than she would in the United Kingdom given the level of supports available to her there (both family supports and State supports).
- (d) That she will have difficulty pursuing the nursing career which she hopes to pursue.

- (e) That she is likely to become embittered and angry at being forced to stay in Ireland against her will because the father of their son has insisted. Such feelings would adversely impact on the child's welfare and best interests.
- (f) That the agreement between both parties that if she was not happy they would return to England, in circumstances where he told her that his manager had said that his job there would remain open, would be entirely disregarded - and would count for nothing.
- (g) That the loneliness, sense of isolation and despair which the mother felt - and which clearly caused her to take refuge on occasion in the excessive consumption of alcohol - would not only remain but likely be exacerbated.
- (h) That all of the above would occur to a young single woman with a young son to care for.

71. The Court finds that it is in the best interests of the child that he be allowed to relocate with his mother to the United Kingdom as she has requested. The Court will make the necessary Orders in that regard, including a clear and comprehensive contact Order. It will order child maintenance to be paid by the father of €500.00 per month to be paid into the mother's bank account as at present. Although this is a modest amount, the father is in weakened financial circumstances at present and the Court is not going to order any increase on what is currently being paid. The Court will also declare the father to be a Guardian of the child but the mother will have custody of the child subject to the Court Order regulating contact. The Court proposes to make no order as to costs but it will list this matter on Wednesday the 19th May 2021 at 10.30 am to hear the parties in relation to the form of the Order, the issue of costs and any other matters arising. It is important to note that the actual Order is not yet made pending the submissions on behalf of the parties as to its form. Relocation is *not* therefore permitted yet, but the order will be made after hearing both sides on Wednesday the 19th May 2021.