IMPORTANT NOTICE

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 child and members of the 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.

IN THE HIGH COURT OF JUSTICE FAMILY DIVISION **CASE NO: FD20P00173**

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

IN THE MATTER OF CHILD K

Neutral Citation Number: [2020] EWHC 2394 (Fam)

The Royal Courts of Justice
The Strand
London
Date: 4 September 2020

Before:

MR DARREN HOWE QC
Sitting as a Deputy High Court Judge

BETWEEN

NT

Applicant

and

LT

Respondents

K (A Child) (Stay of Return Order: Asylum Application) (Contact to a Parent in Self-Isolation)

Mr Richard Harrison QC, Mr George Gordon and Dr S Chelvan (instructed by Goodman Ray LLP) appeared on behalf of the Applicant (mother)

Mr James Turner QC and Ms Kathryn Cronin (instructed by instructed by Charles Russell Speechlys LLP) appeared on behalf of the Respondent (father)

Hearing date: 27 August 2020

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email. The date and time for hand-down will be deemed to be 1.00pm on 4 September 2020.

The Parties and the Application

1. These proceedings concern a 9-year-old boy who I shall, for the purposes of this judgment, refer to as K. In a judgment dated 16 July 2020, published with neutral citation [2020] EWHC 1903 (Fam), Cobb J granted the mother's application under the Hague Child Abduction Convention and made an order for K to return to Russia.
2. It is not necessary for the purposes of this judgment to repeat any of the historical detail provided by Cobb J. This judgment addresses an application made by the father, and through him an asylum application made by K, in an attempt to avoid the consequences of the return order made on 16 July. Mr Turner QC, who represented the father before me on 27 August 2020, accepted the father's efforts to avoid K's return to Russia can properly be characterised as 'tactical'. However, it is his case that those tactics are, in the circumstances, entirely justified. On behalf of the mother, who is represented by Mr Harrison QC and Mr Gordon, it is argued that K's application for asylum is a sham. Mr Harrison submits that this court should not permit itself to be manipulated by the father, as granting a stay to Cobb J's order would 'drive a coach and horses' through the efficacy of the Hague Convention.

The Procedural History Since the Making of the Return Order

3. Following the delivery of Cobb J's judgment on 16 July 2020, a hearing was listed on 24 July 2020 for the receipt of consequential applications. The father made an unsuccessful application for permission to appeal but the time period for the father to lodge an application with the Court of Appeal was abbreviated to 12 noon on 3 August 2020, in which event a stay of the order was to operate until the determination of the appeal.

4. It was still not possible for the parties to agree the terms of an order, so further submissions were made by email; submissions that resulted in an order made on 3 August 2020 but backdated 16 July 2020. At 11.50am on 3 August 2020, the father lodged his appeal with the Court of Appeal. That application was dealt with swiftly and the following day, 4 August 2020, an order of Peter Jackson LJ dismissed the application for permission to appeal. The father then made a submission to the Court of Appeal asserting that the speed of the decision deprived the court of the opportunity to consider documents that the father had not yet provided. On 5 August 2020, a Master of the Court of Appeal refused the father's invitation for the appeal to be reconsidered.
5. On the same day, 5 August 2020, the father served those representing the mother with an application seeking a stay of the return order made by Cobb J; the stay granted by reason of the appeal having then come to an end. That application was filed with a copy of a witness statement made by an immigration solicitor, Ms Tsirlina, and a submissions document from Mr Turner. The application came before Moor J who was, on 6 August 2020, the urgent applications Judge. The mother was represented by Mr Harrison. Moor J heard submissions from both counsel, gave a short judgment (a transcript of which I have read) and granted a stay of the return order until a hearing that was fixed before me on 27 August 2020, with a time estimate of 2 hours.
6. Following the hearing on 6 August 2020, the parties were (again) unable to agree the terms of an order and written submissions were made to Moor J. On 10 August he handed-down a short judgment and his approved order. An application was then, on 10 August, made on behalf of the mother for the stay granted on 6 August to be lifted. The reasons given for the application were a suggested inaccuracy in submissions made on 6 August. On 6 August, Moor J was told that an asylum application was validly commenced by the making of a telephone call to the Home Office's Asylum Intake Unit Appointments Line; a call made by the immigration solicitor acting for K who had been engaged by the father. On 10 August 2020, it was the mother's submission that such steps do not commence a valid asylum application. In support of her application, the mother relied on a written opinion provided by immigration counsel, Dr Chelvan. On 10 August, only representatives for the mother were before the court. Moor J did

not discharge his 6 August order but adjourned the arguments raised in the mother's application to be heard together with the father's application on 27 August 2020.

7. Whatever might have been the correct procedural position concerning the commencement of an asylum application during a period of Covid-related restrictions, it is an issue that no longer requires my consideration. It is now accepted that there is an extant asylum application, as K has been issued with an application registration card showing his status as a claimant for asylum. I, very shortly before the commencement of the hearing, was provided with a legal opinion by immigration counsel instructed on behalf of the father, prepared by Ms Cronin and Mr Chirico. I have read that document alongside the entirety of the bundle for the application before me, the 2 authorities bundles, the additional authorities that were sent after the hearing had concluded (at my invitation or otherwise) and large parts of the bundle that was before Mr Justice Cobb.

Issues to be Determined

8. I received both detailed written submissions and extensive oral submissions. Having carefully considered the issues raised, the matters that require my determination can be summarised as follows:
   (a) Does the commencement of an asylum application by, or on behalf of, a child prohibit the enforcement of a return order made under the Hague Convention 1980?
   (b) If a prohibition on removal does arise by reason of (a) above, is that prohibition removed if this court concludes that the asylum application is a 'sham', made solely for the purpose of defeating the return order?
   (c) If the court is persuaded that a prohibition by reason of (a) above does arise and a stay of the return order is granted, (i) does this court have jurisdiction to require the father to file a statement detailing the grounds relied on by K in his asylum application, and (ii) if the court does have jurisdiction to require the father to provide this information in a statement, should the court exercise that jurisdiction and make the order sought?

(d) If a stay is granted and an order for contact is appropriate, should any order require contact between K and his mother during the period when she is required to self-isolate by reason of The Health Protection (Coronavirus, International Travel)(England) Regulations 2020 or does the requirement on the mother to isolate herself prohibit her having contact with K?

(e) If a stay is granted, what should be the arrangements for K spending time with his mother during the period of that stay? Should an order for direct contact be made without K's wishes and feelings being established by way of the appointment of CAFCASS or an independent social worker to provide a 'wishes and feelings' report?

A. <u>Does the commencement of an asylum application by, or on behalf of, a child prohibit the enforcement of a return order made under the Hague Convention 1980?</u>

9. Mr Turner submits that the existence of an undetermined application claiming asylum prohibits the state, in the guise of the court, from returning a child to the country of their habitual residence, as is required by the July return order. He relies on the decision of Mostyn J in E v E (Secretary of State for the Home Department intervening) [2017] EWHC 2165, [2018] Fam 24. The relevant facts of that case were that mother of the subject children had first made an application for asylum with the children listed as dependants but later made free-standing applications for the children themselves. A few days prior to the hearing before Mostyn J, the applications had been refused but were subject to appeal, so were treated as unconcluded asylum applications.

10. At paragraph 17 of his judgment, Mostyn J said:

"17. Approaching the matter from first principles I have no hesitation in concluding that where a grant of asylum has been made by the Home Secretary it is impossible for the court later to order a return of the subject child under the 1980 Hague Convention. Equally, it is impossible for a return order to be made while an asylum claim is pending. Such an order would place this country in direct breach of the principle of non-refoulement. It is impossible to conceive that the framers of the 1980 or 1996 Hague Conventions could have intended

that orders of an interim procedural nature could be made thereunder in direct conflict with that key principle. In my judgment, the existence and resolution of the asylum claim amount to "exceptional circumstances" within the terms of article 11.3 of the Brussels 2 revised regulation.

18. If I needed to find a source of the power to refuse to make an order in such circumstances it would be article 20 of the 1980 Convention, which is plainly part of our national law notwithstanding that it escaped incorporation by the Child Abduction and Custody Act 1985.

19. If an asylum claim has been refused but an appeal has been mounted, then it is possible, indeed desirable, for the court to hear the return application but to provide that no return order shall take effect until, at the earliest, 15 days after the promulgation of the decision by the tribunal (that is one day more than the time allowed for seeking a further appeal). That is what I have ordered in this case. I believe that the tribunal would be assisted by my view of the merits of the mother's defences. If the appeal were allowed, then it would be necessary for a stay to be imposed on the return order. Plainly, the court has power to impose a stay in such circumstances under section 49(3) Senior Courts Act 1981, as well as FPR 4.1(3)(g). If the appeal were dismissed, but the claimant for asylum signified an intention to seek leave to appeal to the Upper Tribunal, the court can legitimately assess the prospects of success of the application for leave to appeal before deciding whether to allow the return order to be implemented, or for it to be further stayed. In my judgment, the court pays proper respect to the terms of Article 39(1)(a) of the Procedures Directive by recognising an absolute bar up to and including the conclusion of the appeal to the First-tier Tribunal. Beyond that it becomes a matter for the discretion of the court."

11. In an earlier decision of Hayden J, F v M (Joint Council for the Welfare of Immigrants intervening) [2017] EWHC 949, [2018] Fam 1,, a similar conclusion was reached regarding the effect of the grant of refugee status on the ability of the court to enforce a return order made under the inherent jurisdiction. The child in the F v M case had been granted refugee status prior to an order for return having been made. The decision of the Deputy High Court Judge to grant a

return order was successfully appealed (reported at *Re H (A Child)* [2016] EWCA Civ 988, [2017] 2 FLR 527) and the rehearing came before Hayden J, the Court of Appeal having posed a number of questions to be answered at the rehearing. The first of those questions was "whether A's refugee status was an absolute bar to the Family Court ordering his return to Pakistan". Hayden J analysed the provisions of the 1951 Geneva Convention, EU Council Directive 2005/85/EC (The Procedures Directive 'PD'), which provides for 'minimum standards on procedures in Member States for granting and withdrawing refugee status', the Immigration Act 1971 and the relevant Immigration Rules and Council Directive 2004/83/EC (the Qualification Directive 'QD') that sets "minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted".

12. I need not repeat any of Hayden J's analysis of the aforementioned provisions for the purposes of this judgment. At paragraph 44, Hayden J concludes "it seems clear that the grant of refugee status to a child by the SSHD is an absolute bar to any order by the Family Court seeking to effect the return of a child to an alternative jurisdiction."

13. Mr Turner has also referred me to the decision of Cohen J in F v M [2018] EWHC 2106 (Fam), [2018] 3 FCR 301. That case concerned the enforcement under the 1996 Hague Convention of an order made in a Russian court requiring the return of a child to that jurisdiction. By the time of the hearing before Cohen J, who was hearing an appeal from the decision of a lower court, the child had been granted refugee status by reason of her dependency on her mother; the mother having made the application for asylum. At paragraph 58, Cohen J said "I apply the same principles as those adopted by Hayden J in F v M and I regard myself as barred from ordering a return."

14. There is a further decision of a High Court Judge that has addressed the issue that I have to decide today. It is a recent unreported decision of Lieven J that has been the subject of an appeal. The appeal was heard on 10 and 11 August 2020 but a decision has yet to been delivered. I was told by Mr Turner and Mr Harrison, who both appeared before the Court of Appeal, that the court is to give a judgment not just on the issue upon which Hayden J, Cohen J and Mostyn J all

agreed, that the grant of refugee status is a bar to the court ordering a return, but also on the issue of whether an undetermined application for asylum prevents the enforcement of a return order, Leiven J having stayed proceedings pending the resolution of an asylum application.

15. As no date has been identified for receipt of a decision from the Court of Appeal, I have not been invited by either party to adjourn determination of this application. Indeed, both counsel have sought a decision from this court, Mr Harrison describing determination of the application as extremely urgent given the delay to the implementation of the return order that has occurred. Mr Turner submits that I should follow the decision of Mostyn J. Mr Turner relies on the decision of Lord Neuberger in Willers v Joyce (No 2) [2016] UKSC 44, [2018] AC 843 where, at paragraph 9, he said "So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so. And, where a first instance judge is faced with a point on which there are two previous inconsistent decisions from judges of co-ordinate jurisdiction, then the second of those decisions should be followed in the absence of cogent reasons to the contrary".

16. During the course of oral submissions, I asked Mr Harrison whether he accepted that a legitimate claim for asylum acted as a bar to the enforcement of a return order and if it is his complaint that K's application is a sham that, if accepted, distinguished the facts of this case from the decision of Mostyn J in E v E. However, Mr Harrison did not accept that any application for asylum, however genuine, acted as a bar to the enforcement of a return order. He relied on the decision of Re S (Child Abduction: Asylum Appeal) [2002] EWCA Civ 843, [2002] 1 WLR 2548 in which the Court of Appeal determined that section 15 of the Immigration and Asylum Act 1999 applied only to the executive. Mr Harrison relies on paragraph 21, where Laws LJ said "These materials seem to me powerfully to demonstrate that the prohibition in section 15 is directed to the immigration authorities - who are of course part of the executive - and imposes upon them a most important negative duty in the context of their administration of immigration law and practice in the United Kingdom. The section is not intended to occupy any wider canvas. It cannot I think sensibly be read as

creating a substantial exception or any exception to the obligations arising under Article 12 of the Hague Convention or be intended to circumscribe the duty and discretion of a judge exercising the wardship jurisdiction." It was Mr Harrison's submission that the decision in Re S was not addressed by Mostyn J in E v E, although it is clear from the case report that it is an authority that was put before him.

17. Re S was considered by the Court of Appeal in Re H (A Child) [2016] EWCA Civ 988, [2017] 2 FLR 527, together with the decision of Wilson J, as he was then, in *Re H (Child Abduction: Mother's Asylum)* [2003] EWHC 1820 (Fam), [2003] 2 FLR 1105. In Re H [2016] it was argued before the Court of Appeal that the decision in Re S was a 'green light' to the Court making a return order despite the presence of an asylum claim by a child. At paragraph 31, Black LJ said:

"I would not accept Mr Vine's argument that *Re S* and *Re H* give the green light to a return order in the present case. Neither *Re S* nor *Re H* decided that the grant of asylum to a child is no bar to an order in the family court requiring the return of that child to the country from which he has been granted refuge. The children in those cases had not been granted asylum themselves. It was their mothers who claimed to be/had been accepted to be at risk of persecution and in each case the child was a dependant on the mother's claim. Mr Vine argued that this was not a material difference. He relied upon two paragraphs from Laws LJ's judgment in Re S as support for this submission. These paragraphs refer to two situations in which dependants will be permitted to stay in the UK. The first is where the principal asylum claimant has been granted asylum and the dependant is therefore granted leave to remain for the same duration. The second is where the asylum seeker has an appeal pending in relation to his claim and the dependant is not removed pending determination of the appeal. Of the latter case, Laws LJ said that the practice "would no doubt be protected by the courts either under Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or as a matter of legitimate expectation or both." This does not, however, carry Mr Vine as far as he would wish. I cannot accept that the position of a dependant who is permitted to stay in this country by virtue of his or her relationship with, say, a parent who is claiming or has been granted asylum can be equated with that of a child who has been granted

asylum on the basis that he or she personally is at risk of treatment contrary to Article 3 ECHR if returned to a particular country."

18. In his submissions before me, Mr Harrison sought to distinguish earlier decisions on the basis that they did not involve an application made by a child, submitting that a direct application for asylum by a child had not previously been considered so the principles that have been applied to an application by a parent with the child gaining protection as a dependent did not apply and the law should be looked at afresh. I reject that submission for the same reasons a similar argument was rejected by Black LJ. If the child is personally at risk rather than being at risk by association with a parent, in my view that feature of the case must attract at least equal consideration, if not more but certainly not less.
19. It is perhaps not surprising that the decision in Re S did not feature in the judgment of Mostyn J as the obligations on the state as considered by the Court of Appeal in 2002 in Re S had, by the time of the decision of Mostyn J in 2017, developed. As described by Hayden J in F V M, it was the cumulative effect of the Geneva Convention and Protocol relating to the Status of Refugees, the immigration legislation and rules but also Council Directives 2004/83/EC and 2005/85/EC that resulted in the determination of the refugee status of any adult or child being entirely within an area entrusted by Parliament to the Home Secretary. Both Hayden J and Mostyn J concluded that the High Court could not exercise its powers, however wide, so as to intervene on the merits in an area of concern entrusted by Parliament to another public authority.
20. Mostyn J addressed this principle from paragraph 5 of his judgment:

    5. The 1951 Convention was framed in the aftermath of the Second World War when floods of refugees swept across Europe. Initially, it was limited to protecting European refugees from before 1 January 1951. However, since then it has been expanded to cover all refugees and has been subscribed to by virtually every country in the world. A key, almost sacred, principle contained within the 1951 Convention is that of non-refoulement as expressed in article 33(1) which reads:

    "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be

threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

6. A person who arrives on these shores seeking protection is not confined to claiming relief within the four corners of the 1951 Convention. He or she may also seek protection against threatened violations of articles 2 and 3 of the 1950 European Convention on Human Rights as incorporated in the Human Rights Act 1998. Plainly, the principle of non-refoulement applies equally to a claim mounted under the 1998 Act.

7. It is hardly necessary to spell out the policy reasons that underpin the principle of non-refoulement. If a claimant for protection were returned to the place of persecution while his claim was pending, and, a fortiori, after it were determined in his favour, then there would be a high risk of persecution being re-inflicted on him or her, with possibly irreversible consequences.

8. The non-refoulement principle finds expression in article 21 of the Qualifications Directive. Equivalently, section 77 of the 2002 Act prohibits the removal under the Immigration Acts from this country of a person whose asylum claim is pending.

9. The Procedures Directive in article 4 requires member states to designate an authority with the responsibility for determining asylum claims. That has been given effect in this country by the nomination of the Home Secretary. Article 39(1)(a) requires that member states must ensure that asylum applicants have the right to an effective remedy before a court or tribunal against a decision taken on their application for asylum. In this country that has been given effect by granting the right of appeal to the First-tier Tribunal, with the further rights of appeal which I have mentioned above. Article 39(3)(a) provides that member states must provide rules for dealing with the question of whether the right to an effective remedy shall have the effect of allowing applicants to remain in that country pending its outcome. That has been given effect by allowing an in-country appeal to the First-tier Tribunal. There is a procedure under section 94

of the 2002 Act whereby the Home Secretary may certify certain claims as being clearly unfounded, with the consequence that the right of appeal is only exercisable when out of the jurisdiction.

10. The relief that is granted under the 1951 Convention or under the 1998 Act in favour of a persecuted claimant is of a substantive nature. Essentially, it allows the claimant to live here indefinitely with a guarantee that he will not be returned to the place of persecution. A grant of refugee status usually leads to a grant of five years' leave to remain; thereafter a grantee becomes eligible to apply for indefinite leave to remain."

21. Mr Harrison submits that E v E was wrongly decided as the return of a child under the terms of the Hague Convention is not a refoulement by the state but the determination of rights as between individuals, specifically parents. I do not accept that submission. Parliament has decided that it is the Home Secretary that is to determine whether the territory where the child might be returned is a country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". It is not a decision for the court. However, as described by Mostyn J in paragraph 19 of his judgment, if an application for a return order is heard, the determinations made on the abducting parent's defences in the judgment can be communicated to the Home Secretary to be taken into account when the asylum application is decided.
22. As demonstrated in this case, a child can make his or her own application for asylum. Their entitlement to protection from persecution does not depend on the consent of a parent to that protection being provided. In my judgment, the 'rights' of a parent to decide where their children reside do not override the right of the child to be protected from persecution under the Geneva Convention. It would, in my judgment, be perverse for the Home Secretary to decide that a child would suffer persecution in a particular country but for the Court to then require a child to be returned to that state by reason of a parental right to determine where a child should reside. This is particularly so where the procedure under the Hague Convention is a summary process that routinely makes decisions on

the basis of limited evidence. Mostyn J described the determinations made in a Hague Convention application as follows [paragraph 15 of E v E]:

"It is for this reason that the procedure for a claim under the 1980 Convention is summary. Oral evidence is very much the exception rather than the rule. The available defences must be judged strictly in the context of the objective of the limited relief that is sought. Controversial issues of fact need not be decided. If the court is satisfied that there are sufficient safeguards in place in the home country, then issues of risk of harm fall away. All this is trite law."

23. I am not persuaded by the submissions of Mr Harrison that I should interpret the law differently to the 3 decisions of the High Court to which I have referred. Indeed, I accept that I should follow the determinations made unless there is "a powerful reason for not doing so" [see Williers v Joyce]. In my judgment there is no powerful reason to disagree. I also have firmly in mind that both Hayden J in F v M and Mostyn J in E v E heard full argument on behalf of the Secretary of State who intervened in both cases and I have not heard any submissions on behalf of the Home Secretary.
24. In my judgment, the commencement of an asylum application by, or on behalf of, a child prohibits the enforcement of a return order made under the Hague Convention 1980.

B. <u>If a prohibition on return does arise by reason of (a) above, is that prohibition removed if this court concludes that the asylum application is a 'sham', made solely for the purpose of defeating the return order?</u>

25. I have described the steps taken by the father after the delivery of Cobb J's July judgment to highlight the very many opportunities the father had to raise with the court the 'new' information he now relies upon as the trigger for K's application for asylum. Mr Harrison, rightly in my judgment, submits that if there were matters concerning harm to which K would be exposed in Russia, that could found an application for asylum, those same facts should have been raised as an article 13(b) defence in the Hague proceedings before Cobb J. These new allegations were not raised before Cobb J or as new evidence before the Court of Appeal, under the Ladd v Marshall principles. Had these matters been raised at that time, the mother would have had an opportunity to reply to whatever it is

that is being alleged. At the current time, neither the mother nor the court knows the basis upon which it is being asserted that K is at risk if returned to Russia.

26. Mr Harrison, again rightly in my judgment, highlights that K has a right under the Immigration rules to remain in the United Kingdom by virtue of the class 1 investor visa granted to the father. K does not need, submits Mr Harrison, the grant of refugee status to remain in the United Kingdom. He only needs the grant of refugee status to avoid the consequences of the return order.
27. Mr Turner accepts that the asylum application is made to avoid K being returned to Russia. He accepts that the timing might lead an uninformed observer to conclude that the application is simply as a device to defeat the return order and first appearances might be that there is no legitimate basis for refugee status being granted. In his written submissions filed for the hearing on 6 August 2020, Mr Turner said the "The application now for a further stay of execution is made to the trial court in relation to an entirely new matter that has come to light since the judgment of Cobb J on 16 July 2020 and which has resulted in the launching, on 4 August 2020 of an application to the Home Office for asylum on behalf of the subject child, through lawyers other than the lawyers who represent the father in the present proceedings."
28. As is clear from the transcript of that hearing, Moor J was not given a description of the 'entirely new matter'. On the basis of the submissions heard, Moor J expressed his view that the asylum application was 'a device' being used by the father to avoid the consequences of the return order. At that hearing Mr Turner submitted that he was content for the court to assume that the asylum application was a sham as, in Mr Turner's submission, that conclusion did not alter the legal position that the existence of an undetermined asylum claim was a bar to the enforcement of a return order.
29. When making his submissions before me, Mr Turner again gave no detail as to the factual basis for the asylum application, save to hint that 'whistle-blower' protections were a relevant consideration. In the absence of any evidence whatsoever concerning the facts relied on in the claim for asylum, I am unable to make any determination whether, or not, the asylum claim is legitimate. When the court is told through counsel that the claim concerns new matters not known at the time of the decision of Cobb J, I accept what counsel tells me. I agree with

the submissions made by Mr Harrison that the failure by the father to raise these matters before, and then to launch an asylum application as soon as permission to appeal is refused, has all the hallmarks of a father seeking to ambush the mother with a last-hope application at the end of a legal process that has not, thus far, given him the result that he wanted. However, in the absence of knowing the basis for the asylum claim, I am prepared to go no further than acknowledge the appearance of a sham but I do not have the evidence necessary to make a finding one way or the other.

30. Even if I were able to make such a finding, as explained above, whether an asylum claim is legitimate is a matter to be decided by the Home Secretary. In the analysis of the law provided by Hayden J and Mostyn J, an analysis that I adopt, there is no exception provided to what I will describe as the general rule that a claimant for refugee status cannot be returned until the claim itself has been refused and subsequent appeals have been exhausted. It seems to me that in any decision of the High Court when hearing an application for a return order, be it an application under the Hague Convention 1980, the Hague Convention 1996, Brussels 2R or the inherent jurisdiction, if the evidence considered calls into question the legitimacy of any risk alleged to be present in the country of the child's habitual residence the court can, and indeed should, communicate its judgment to the Secretary of State. In fact, Moor J made an order on 6 August 2020 that the judgment of Cobb J be served on the Home Secretary for her consideration within K's claim for refugee status.

31. In answering the question posed at (B) above, I conclude that there is no exception available even if the court concludes the asylum application is simply a vehicle to avoid the return order. I accept this conclusion provides an abducting parent with an opportunity to delay the return of a child until a determination is made by the Secretary of State on any asylum claim issued. That may take very many months and is, without doubt, a delay that is inconsistent with a desired swift return of an abducted child to the country of its habitual residence. Until the law is stated differently to the interpretation given by Hayden J and Mostyn J, I agree with Mr Harrison that the issue of a dishonest and illegitimate asylum claim 'drives a coach and horses' through the intentions of the Hague Convention.

32. It follows from my conclusions on issues (A) and (B) above that I grant the further stay of the return order that is sought by the father. That stay will operate until 15 days after the promulgation of a decision by the tribunal determining the asylum claim on behalf of the Secretary of State. Liberty is granted to the mother to apply on 48 hours notice to the father in the event that the Court of Appeal delivers a judgment that states the law differently to my interpretation in this judgment or if there is any other significant change of circumstances that would require the stay being reconsidered.

(C) <u>If the court is persuaded that a prohibition by reason of (a) above does arise and a stay of the return order is granted, (a) does this court have jurisdiction to require the father to file a statement detailing the grounds relied on by K in his asylum application, and (b) if the court does have jurisdiction to require the father to provide this information in a statement, should the court exercise that jurisdiction and make the order sought?</u>

33. On behalf of the mother, Mr Harrison makes complaint that it is unsatisfactory for the order to be stayed without the mother having any understanding of the reasons behind the application for asylum. He invites the court to direct the father to serve a statement addressing: (i) a full explanation of the circumstances by which K came to instruct immigration solicitors to make an asylum claim on his behalf; and (ii) full particulars of the respondent's knowledge of the basis on which K is said to allege (or, if alleged on his behalf, then by whom) that he faces a risk of persecution in Russia.
34. Mr Harrison also seeks an order that the Secretary of State be invited to intervene in the proceedings and that a further hearing be listed before Cobb J. It is proposed that the mother's application for disclosure of documentation from the asylum be considered at that further hearing.
35. Mr Turner submits that there is, at the current time, no detail concerning the basis for the asylum claim in any documentation provided to the Home Office, as the claim has not yet reached the stage when that information is taken and recorded. Therefore, submits Mr Turner, there is no merit in making an order for that disclosure now. However, he does not oppose the listing of a further hearing to consider the application, with the Secretary of State being invited to intervene.

36. In response to the application for the father to file a statement, Mr Turner submits that a direction for the father to file a statement should not circumvent the protections provided to an asylum seeker by the decision of MacDonald J in R v G and the Secretary of State for the Home Department (Intervenor) [2019] EWHC 3147 (Fam), a decision that was upheld on appeal and reported as Secretary of State for the Home Department, G v R, H (by his children's guardian) [2020] EWCA Civ 1001.
37. The Procedures Directive [Council Directive 2005/85/EC] provides:

    Article 22:

    "For the purposes of examining individual cases, Member States shall not:

    (a) directly disclose information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum;

    (b) obtain any information from the alleged actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependents, or the liberty and security of his/her family members still living in the country of origin."

    Article 41 of the Procedures Directive obliges Member States to:

    "ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law in relation to any information they obtain in the course of their work."
38. Those principles are expressed at paragraph 3991A of the Refugee or Persons in Need of International Protection (Qualification) Regulations 2006. Concerning information gathered at a personal interview, rule 339NB(ii) states "The personal interview shall take place under conditions which ensure appropriate confidentiality".
39. The need for confidentiality in asylum applications was addressed by Hayden J in F V M, where at paragraph 52 he described as 'compelling' the submission made on behalf of the Secretary of State for the Home Department [SSHD] that:

    "confidentiality is a vital element for the working of the asylum system …. The need for those seeking asylum to have confidence that the information they

provide will not be made public means that there is a compelling public interest in ensuring that this confidentiality is protected. This applies a fortiori to those granted refugee status."

40. Then, at paragraph 60, Hayden J said:

"60. Whilst it is undoubtedly correct that both F and A's Article 8 rights are engaged here and that procedural fairness is an indivisible facet of these rights, it is equally important to recognise that the duty of confidence to the claimant, in common law, also falls within the embrace of Article 8 (see Campbell v MNG Ltd [2004] UKHL 22, [2004] 2 AC 457). More widely, this reasonable expectation of privacy is intrinsic to the operation both of the asylum system generally and the proper discharge by the UK of its obligations under the Refugee Convention, QD and ECHR . Mr Norton and Mr Payne [counsel for the Home Secretary] address this necessary analysis of the competing rights and interests in play in these terms:

"Accordingly, when considering whether to order disclosure the Court will need to consider whether disclosure would be compatible with the refugee's ECHR rights, and in particular their Article 3 and 8 rights. In addition, in considering proportionality under Article 8 the Court will need to attach particular weight to the wider powerful public interest in protecting the confidentiality of the asylum process. This is particularly so where the applicant for disclosure is the alleged persecutor. Against these considerations the Court will need to weigh, in the case of an application made by a family member, any adverse Article 6 and/or 8 impact of disclosure not being provided to the person making the application. The SSHD's position is that only where an exceptional case is established by an applicant will disclosure be necessary."

61. Whilst I accept and endorse much of this, I am not prepared to agree with the submission that 'only where an exceptional case is established by an applicant, will disclosure be necessary'. It may be that the balancing of the competing rights may lead to disclosure in only a very limited number of cases but effectively to create a presumption that disclosure should be 'exceptional' is corrosive of the integrity of the balancing exercise itself."

41. In his judgment in R v G at paragraph 71, MacDonald J concluded that "the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight in the balancing exercise. However, whilst Mr Payne sought to resurrect the argument he ran before Hayden J in F v M that, within the context of the cardinal importance of confidentiality to an effective asylum process, a presumption of exceptional circumstances applies to questions of the disclosure of documents from the asylum process, I too reject that submission. There is no presumption of exceptionality when it comes to considering the disclosure of asylum documents into proceedings under the Children Act 1989 . I agree with Hayden J that to introduce such a presumption would be corrosive of the efficacy of the balancing exercise the court is required to undertake."

42. At paragraph 52 of his judgment on the appeal in G v R, Baker LJ endorsed the exposition of the law as given by MacDonald and went on, at paragraph 55 to conclude:

"I am not persuaded that the confidentiality of information relied on by an asylum applicant should be treated any differently from other categories of confidential information. The fact that the information was provided to the asylum authority on a confidential basis, and the public interest in maintaining the confidentiality of the asylum process, are both factors which the judge must take into account. The fact that, if disclosed, the information would be seen by the person accused of persecuting the applicant is manifestly a factor which carries weight in the balancing exercise. It is not, however, determinative. It is true that both Article 22 of the Procedures Directive and paragraph 339IA of the Immigration Rules impose a prohibition on the disclosure of information to the alleged persecutor but the preliminary words of both the Directive and the paragraph qualify that prohibition. In both instruments, the prohibition is expressed as applying "for the purposes of examining individual applications for asylum". As my Lord Phillips LJ pointed out during the hearing, these words indicate that the provisions of the Article in the Directive and the paragraph in the Rules are intended to give instructions as to how to deal with the information

when considering applications for asylum. They do not prevent a court from ordering disclosure."

43. The exercise that I would undertake if determining an application for disclosure of evidence collected for an asylum application is set out in detail in the judgment of MacDonald J in R v G (No 1) and it is not necessary for me to repeat those principles herein. What I have to consider is whether those same principles, or similar considerations, apply to the mother's application for the father to be required to file a statement in the current application.
44. In my judgment, the first matter to address is what is the application before me into which disclosure of this information is required?
45. The application before me is that of the father for the grant of a further stay to the July return order. I have in the paragraphs above granted that application. Paragraph 6 of the order of Moor J dated 6 August 2020 provided for the hearing before me of any application issued by the mother for enforcement of the return order. No such application was issued, although given my decision concerning the application for a stay, any enforcement application would have been unsuccessful.
46. The order of 10 August 2020 adjourned the mother's application to lift the stay of the return order to be heard before me. That application is refused by reason of my granting of the stay sought by the father.
47. There are, therefore, no outstanding issued applications before the court, save the Hague convention proceedings that continue until the return order made by Cobb J is implemented or discharged. The submissions made on behalf of the mother as to why a statement is required focused on 2 main arguments:
    (a) As a general rule, a parent with parental responsibility would be entitled to information about any risk of harm to which their child is said to be exposed, and
    (b) to enable the mother to assess the reasons given by the father as the basis for the asylum claim and, as described by Mr Harrison at paragraph 44 of his skeleton argument, "for a further urgent hearing to consider whether the stay of the return order should continue in the light of the information".
48. At paragraph 72 of his judgment, MacDonald J decided, having regard to paragraph 339IA of the Immigration Rules, "that it is difficult to see how a court

could order disclosure of material in a pending asylum application into proceedings under the Children Act 1989 where the parent seeking disclosure is an or the alleged persecutor. However, having regard to the principles set out above, I am satisfied that the position is different where the application for asylum has been determined, either successfully or unsuccessfully."

49. Where a parent is a potential persecutor, there is no right to information concerning their child's asylum application. The holding of parental responsibility does not trump the requirement of the Immigration Rules and, following MacDonald J's conclusions described above, disclosure of information in those circumstances would be very unlikely. I entirely accept that, ordinarily, a parent with parental responsibility would be entitled to important information about their child, such as about a risk of harm so serious that it supports a claim for asylum, but that general principle does not automatically apply where the child has made a claim for asylum.

50. In the absence of any information from the father addressing the factual basis for K's claim for asylum, and whether the mother is in any way connected or culpable for the persecution K is alleged to be at risk of suffering if returned to Russia, it is in my judgment not today possible to assess whether the release of information, in the form of a statement ordered within these proceedings, would offend the principles set out in article 22 of the directive. Mr Harrison submitted that it has not been suggested that the mother is an alleged persecutor but Mr Turner was silent in his own submissions as to whether this was accepted. He did not oppose the father providing a statement but it was his submission that such a statement would not contain any of the detail sought by the mother.

51. I accept Mr Turner's submission that, on the information currently before the court, my general case management powers should not be used *today* to direct the father to file evidence in these proceedings detailing the factual basis for the asylum application. I reach that conclusion for the following reasons:

    (i) the information being sought by the mother is the very same information that will, in due course, be given to the SSHD as evidence to support the asylum claim that would, if already recorded for that application, receive the protections of the process described in G v R.

(ii) The court needs to hear argument from the SSHD concerning whether the information that has not yet reached her is, or is not, excluded from the protections of the Immigration Regulations and also on the issue of whether the protections of the Immigration Rules can be avoided by the court requiring a statement to be filed as an alternative to seeking disclosure of documents from the asylum application.

52. Having granted the father's application for a stay of the return order, I turn to the question of the potential relevance of the information requested by the mother to the issues before the court. I have decided, at paragraph 31 above, that even if I were able to make findings adverse to the legitimacy of K's claim for asylum, it would not result in the stay being lifted for the reasons I have given. I then ask myself rhetorically, what would be the purpose of fixing a hearing to determine whether the father should file a statement in these Hague Convention proceedings as is requested by the mother?

53. Whatever that statement might say and however inaccurate the information contained within it, it is the responsibility of the SSHD to determine the asylum application and consider the facts relied on by K as justifying the grant of refugee status. The return proceedings before this court can, on my assessment of the law, go no further until the asylum application process has been completed. There are, in my judgment, no further matters for this court to consider in the mother's application for the stay of the order to be removed, the reason given by the mother as the need for the statement for the father.

54. However, the mother has also requested that this court makes an order pursuant to section 5 of the Child Abduction and Custody Act 1985. That section provides as follows:

"Where an application has been made to a court in the United Kingdom under the Convention, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application."

55. The jurisdiction of the court under section 5 is routinely used to make orders prescribing the arrangements for a child between the time the child is located

and the time of the final determination of the application. In his response to Mr Harrison's submissions concerning contact, Mr Turner did not seek to argue that the jurisdiction provided by section 5 had been lost by reason of the application having been determined. Had he done so, I would have rejected that submission. The purpose of the provision would be undermined if it is interpreted as preventing the court from prescribing arrangements for contact, or from making any other welfare directions, during the period of any stay of a return order brought about by other applications made by the abducting parent, as has happened in this case. In my judgment, a purposeful interpretation of section 5 is required and the court retains the broad jurisdiction that section provides until such time as a return order is implemented and the child leaves this jurisdiction. Until that time the proceedings remain alive by reason of the 'liberty to apply' provision granted.

56. In my judgment, the reasons given in support of the asylum application may well be relevant to the application for contact made by the mother. I am aware of the history as set out in the reports provided in the proceedings before District Judge Gibson and Mr Justice Cobb, and of K's reluctance to have an ongoing relationship with his mother. However, a stark and unwelcomed consequence of K's asylum application and my decision to continue the stay of the return order is that K may remain in this jurisdiction for many more months and the mother seeks to re-establish a relationship with K, including by way of direct contact. It is necessary, in my judgment, when determining that application for this court to receive information from the father, and in due course from the SSHD, identifying whether the information relied upon in the asylum application is relevant to the mother's application for contact.

57. The application for contact must, for reasons set out below, be adjourned for determination at a later hearing. While the enquiries I direct below take place, I will list a hearing to receive further submissions on the issue of disclosure, once the SSHD has been invited to intervene in the proceedings.

(D) <u>If a stay is granted and an order for contact made, should any order require contact between K and his mother during the period when she is required to self-isolate by reason of The Health Protection (Coronavirus, International</u>

Travel)(England) Regulations 2020 or does the requirement on the mother to isolate herself prohibit her having contact with K?

58. It is the mother's intention, should an order for direct contact be made, to travel to this jurisdiction to re-establish her relationship with K. It was Mr Harrison's submission that direct contact should take place during the 14-day period that the mother is required to self-isolate due to the provisions of Regulation 4 of The Health Protection (Coronavirus, International Travel)(England) Regulations 2020 [the quarantine regulations]. These regulations will require the mother to remain at an address, provided to the Border Force in her passenger locator form, for a period of 14 days following her arrival into England.

59. Sub paragraphs 8 and 9 provide exceptions to the requirement to self-isolate:

> (8) Paragraph (2) does not require P to remain in isolation—
>
> (a) from any person with whom they were travelling when they arrived in England and who is also self-isolating in the place where P is self-isolating,
>
> (b) where P is self-isolating in their home, from any member of their household,
>
> (c) where P is self-isolating in the home of a friend or family member, from any member of the household of that friend or family member.
>
> (9) During the period of their self-isolation, P may not leave, or be outside of, the place where P is self-isolating except—
>
> (a) to travel in order to leave England, provided that they do so directly,
>
> (b) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2 to the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020(**2**),
>
> (c) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings,
>
> (d) to avoid injury or illness or to escape a risk of harm,
>
> (e) on compassionate grounds, including to attend a funeral of—
>
> (i) a member of P's household,
>
> (ii) a close family member, or
>
> (iii) if no-one within paragraph (i) or (ii) are attending, a friend,

(f) to move to a different place for self-isolation specified in the Passenger Locator Form or a form equivalent to a Passenger Locator Form pursuant to an enactment in Scotland, Wales or Northern Ireland, or

(g) in exceptional circumstances such as—

(i) to obtain basic necessities such as food and medical supplies for those in the same household (including any pets or animals in the household) where it is not possible to obtain these provisions in any other manner,

(ii) to access critical public services, including—

(aa) social services,

(bb) services provided to victims (such as victims of crime),

(iii) to move to a different place for self-isolation where it becomes impracticable to remain at the address at which they are self-isolating.

60. Schedule 2 of the quarantine regulations provides a list of persons exempt from the requirement to self-isolate, none of which address a child spending time with a parent required to isolate.
61. Children can, by operation of a consensual routine or by order of the court be part of 2 households. A frequent provision of a child arrangements order is to prescribe that a child will 'live with' both parents and sets out the time the child will be in the home of each parent. Alternatively, there may be an agreement between the parents as to a division of the child's time between each home. Regulation 4(8)(b) does not require a parent who is required to self-isolate to do so from a member of their household. However, the guidance 'Coronavirus (Covoid-19): how to self-isolate when you travel to the UK, last updated on 26 August 2020, advises the following:

    You should self-isolate in one place for the full 14 days, where you can have food and other necessities delivered, and should stay away from others unless you travelled to the UK with them. You must self-isolate at the address you provided on the public health passenger locator form.

    This can include:

    - your own home

- staying with friends or family
- a hotel or other temporary accommodation

You should not have visitors, including friends and family, unless they are providing:

- emergency assistance
- care or assistance, including personal care
- medical assistance
- veterinary services
- certain critical public services

You cannot go out to work or school or visit public areas. You should not go shopping. If you require help buying groceries, other shopping or picking up medication, you should ask friends or relatives or order a delivery.

In England, you must only exercise within your home or garden. You cannot leave your home to walk your dog. You will need to ask friends or relatives to help you with this.

62. Later in the document, the following guidance is given:

You are not allowed to change the place where you are self-isolating except in very limited circumstances, including where:

- a legal obligation requires you to change address, such as where you are a child whose parents live separately, and you need to move between homes as part of a shared custody agreement
- it is necessary for you to stay overnight at accommodation before travelling to the place where you will be self-isolating for the remainder of the 14 days
- there are exceptional circumstances in which it becomes impracticable to remain at the original address

If this happens, you should provide full details of each address where you will self-isolate on the public health passenger locator form. If, in exceptional

circumstances, you cannot remain where you are staying, you must complete a new form as soon as possible.

63. Under the sub-heading 'Within your Accommodation', the guidance advises " It is important to avoid as much contact with other people as possible in your home in order to reduce the risk of transmitting coronavirus. You should stay in a well-ventilated room with a window to the outside that can be opened, separate from other people in your home."

64. K is not, in my judgment, a member of the mother's household. Section 2 of the quarantine regulations does not define the term 'household' but I interpret the world to refer to persons living together in the same accommodation or a child who is subject to a 'shared custody agreement', to use the words of the guidance or a shared 'live with' order. K currently lives with his father. His mother lives in Russia and he currently has no direct contact with her. K having contact with his mother during her period quarantine does not fall with the 'same household' exceptions.
65. The 'Staying at Home and away from others (Social Distancing) Guidance issued on 23 March 2020 provide an exemption from the restrictions imposed to enable children to move from the home of 1 parent to the home of the other. The guidance provided "Where parents or someone with parental responsibility do not live in the same household, children under 18 can be moved between their parents' homes to continue existing arrangements for access and contact". Mr Harrison submitted that this guidance would apply to any contact that K would have with his mother during her period of quarantine.
66. However, the exemption provided to enable child contact visits during that national lock down is not repeated in the same terms in the quarantine regulations or guidance. As set out above, a child who is required to quarantine can, if subject to a 'shared custody agreement' leave the place where they are required to self-isolate to spend time with the other parent. In my judgment, there is no explicit exemption in the regulations and no government guidance that permits a child to visit a parent who is self-isolating if the child is not a part of that parent's household.

67. In my judgment, it is notable that the guidance provides for a child who is required to self-isolate to move to the home of a parent who is not, the parent then being exposed to a risk of infection. The Guidance does not address a child visiting a parent who is required to self-isolate, the risk of contacting the infection then being on the child.
68. The only exemption that could possibly apply is that found at 4(9)(c) "to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings". It can perhaps be argued that K attending for a contact visit with his mother, a visit that was ordered by the court, would fall within this exemption as it is a legal obligation for the child to spend time with his mother. That interpretation might depend on the wording of the order itself as the template order places the obligation on one parent to ensure the child has contact with the other. The mother would be breaking her quarantine by receiving the child into her accommodation rather than the child breaking his quarantine, which is all that is addressed in the guidance.
69. It is the requirement on every Judge who is considering making an order for a child to visit a parent to consider the welfare checklist in section 1(3) Children Act 1989. Included in that list is the need for the court to consider the child's physical needs and any risk of harm to which the child may be exposed. The purposes of the Quarantine regulations are to protect the citizens of England from Covid-19 infection that is unwittingly brought into the country by infected travellers. It is in K's interest for him to be protected from infection and, in my judgment, the court should give effect to the purpose of the regulations and be extremely reluctant to make an order that exposes a child to the risk of contracting Covid-19 when a parent has arrived from a country that does not have the benefit of a travel corridor exemption.
70. With the purpose of the quarantine regulations being to protect from infection, in my judgment, a parent who has a child in their care would have reasonable excuse for not complying with a pre-existing order requiring the child to spend time with the other parent if that other parent is required to quarantine following a trip abroad.
71. Whether an order for contact should be made cannot be considered today for the reasons given below and the judge hearing any future application for direct

contact will make a decision on the circumstances, and the regulations, as they may appear at the time. Therefore, it is not necessary for me to reach any final conclusions, although my provisional view is that there is no automatic exemption from the self-isolation requirements of The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 that permits contact between a child and a parent who is not part of the same household. In my judgment, the usual approach should be that the child is protected from a risk of contracting the virus by visits not taking place during the quarantine period, but I accept there may be special cases where an exemption should apply.

<u>If a stay is granted, what should be the arrangements for K spending time with his mother during the period of that stay? Should an order for direct contact be made without K's wishes and feelings being established by way of the appointment of CAFCASS or an independent social worker to provide a 'wishes and feelings' report?</u>

72. At paragraph 46 of his skeleton argument, Mr Harrison submits that K has been alienated from his mother by the actions of his father, using the word alienated as this was the conclusion reached by Cobb J in his judgment dated 16 July 2020. Mr Harrison accepts that indirect contact by way of Skype has not worked and submits that efforts must be made to enforce direct contact to seek to reverse the alienation from his mother that K has suffered.
73. It is not disputed that K expresses a resistance to direct contact with his mother. I accept that the expressed wishes of a child cannot be taken at face-value if the child has been manipulated by one parent to reject the other parent. I also accept Mr Harrison's submission that, once a court has reached the conclusion that a child has been alienated, robust action is often required to force a reintroduction of a direct relationship. How this relationship can best be repaired will, in my judgment, require expert advice from a skilled practitioner used to working with children who have suffered alienation. I am using that description as it is a description used by Cobb J in his judgment but I remind myself that the assessment of welfare made was limited to that necessary for the purpose of determining the Hague Convention application.

74. If there is now to be a significant delay, in my judgment it is essential that the relationship between K and his mother is addressed as, if the asylum application is unsuccessful, it is to the mother's care that K will return, as I understand it is not the father's intention to return with K to Russia. I recognise that it is unusual for the court to be taking such active steps by way of assessment of the child for the purposes of establishing direct contact within Hague Convention proceedings but this is a very unusual case and a lengthy delay is inevitable as a result of my decision today. While there may be a significant degree of impotence to the steps the court can take to avoid the delay created by K's application for asylum, the court does have the jurisdiction to address the relationship between mother and child in the interim.
75. For the reasons given, I will not make an order for direct contact today. My order shall record that I deem the mother to have made an application for contact and welfare directions pursuant to section 5 Child Custody and Abduction Act 1985. The parties should liaise and seek to agree the identity of a suitable expert to make an assessment of K and provide recommendations on how his relationship with his mother can best be repaired. A short form part 25 application can be provided. I will then hear further submissions from both counsel on outstanding matters of case management.
76. That is my judgment.