



Neutral Citation Number: [2021] EWFC 19

Case Number: FD20P00580

In the Family Court

Sitting in the High Court Family Division

IN THE MATTER OF EM (date of birth [a date in] 2019)

AND IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

AND IN THE MATTER OF COUNCIL REGULATION (EC) NUMBER 2201/2003
REVISED BRUSSELS IIa

AND IN THE MATTER OF THE SENIOR COURT ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/02/2021

Between:

AAM

Applicant

And
LB

Respondent

Clare Renton represented the Applicant
Robin Powell represented the Respondent

APPROVED JUDGMENT

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

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MR NICHOLAS CUSWORTH QC (SITTING AS A DEPUTY HIGH COURT JUDGE)

Mr CUSWORTH QC:

1. This application concerns EM, a boy born on the [a date in] 2019 (aged nearly 19 months). His father is of Kurdish heritage but has Norwegian citizenship. The father is resident in Norway and has been living there for 20 years. He works as a catering manager in the offshore oil industry. His job requires him to spend every other month at sea. EM ' mother is the Respondent LB , who was born in , Morocco but has lived in the UK since 2010. She has an older daughter, Z aged 9 years, from another relationship and a second son born in the UK in [a date in] 2020, now aged 2 months. Although he is the father's child, he is not the subject of this application, given the country of his birth.
2. The parents began their relationship in 2013. Whilst they are not legally married, the mother says that they went through an Islamic marriage ceremony in November 2017. She moved to Norway to live with the father in February 2019 when pregnant with EMs. She brought Z with her. The parties cohabited in Norway from March 2019.
3. EM was born in Norway and had always lived in Norway until the mother brought him to the UK on 25 July 2020. His habitual residence is therefore acknowledged to have been Norway at the time of his removal to this country. The mother was pregnant, expecting the parties' second child, when she came to the UK. The mother alleges serious domestic abuse of her and the children by the father, and says that as a consequence of that she left Norway with EM and Z to return to the UK. She accepts that she initially told the father that she was visiting Oslo on 24 July, together with the children, but then recounts an incident at a bus stop as she was leaving when she says that she told him she would be going to the UK. The father does not accept that this happened. The following day, on 25 July, the father called her mobile phone and he reached an English language voicemail. He says that he has not been able to contact the mother or the children directly since.

4. The father commenced court proceedings in Norway in the S District Court, and the court's ruling dated 11 August 2020 grants sole parental responsibility on an interim basis to him. He says that this order was obtained at a time when he was not aware of the mother's address and so she could not be sent notice of the hearing. The order is expressed to lapse if no action is brought by 11 February 2021, so it may no longer still be in force. He also made this application pursuant to the 1980 Hague Convention which was issued on 17 September 2020, and which was heard by Mr Alex Verdan QC on 18 September without notice to the mother; location and disclosure orders were then made.
5. Meanwhile, the mother obtained a non-molestation order without notice in the East London Family Court. These proceedings have been stayed pending the outcome of these proceedings under the 1980 Hague Convention, although the injunctive orders there made against the father remain in force.
6. The mother opposes the return of EM to Norway. Further, she states that if a return order is made, she would not return with him, such is her state of fear for her own life if she is left at risk of assault from the father. She relies on Article 13(b) of the 1980 Hague Convention. In relation to the operation of that defence, the Supreme Court in *Re E (Children)* [2011] UKSC 27, provided the following overview:

29. Article 12 of the Hague Convention requires a requested state to return a child forthwith to her country of habitual residence if she has been wrongfully removed in breach of rights of custody. There is an exception for children who have been settled in the requested state for 12 months or more. Article 13 provides three further exceptions. We are concerned with the second:

" . . . the requested state is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that - (a) . . . ; or (b) *there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.* . . ." (emphasis supplied)

30. As was pointed out in a unanimous House of Lords decision in *Re D*, para 51, and quoted by Thorpe LJ in this case:

"It is obvious, ...that these limitations on the duty to return must be restrictively applied if the object of the Convention is not to be defeated: ...The authorities of the requested state are not to conduct

their own investigation and evaluation of what will be best for the child. There is a particular risk that an expansive application of article 13b, which focuses on the situation of the child, could lead to this result. Nevertheless, there must be circumstances in which a summary return would be so inimical to the interests of the particular child that it would also be contrary to the object of the Convention to require it. A restrictive application of article 13 does not mean that it should never be applied at all."

7. The father's application came before Mr Richard Harrison QC on 9 October 2020 when directions for this hearing were given. The mother also accepted that EM was habitually resident in Norway on 25 July 2020 and that his removal was wrongful under Article 3 of the 1980 Convention. She confirmed that she was relying on the Article 13(b) exception. Next, on 8 January 2021, the matter came before a Deputy High Court judge , when further directions were given including a refusal of the mother's application for the appointment of an expert psychologist under FPR 2010 Part 25, to report on whether EM would be likely to have suffered psychological harm from the behaviour shown by the father in a video taken on her phone, and on which she continues to rely. I am told that the Judge o indicated to the mother that she could renew her application if she thought it appropriate before me, as she has done.
8. The mother's case is that she has a right to a fair trial which includes the right to bring evidence to support her case. Mr Powell on her behalf further insists that, if the court has any doubt that the video supports the mother's case, then it is 'necessary to grant' her application to admit the expert evidence that she seeks, and that to do otherwise would 'deny her right to a fair trial'. She says that there are no measures which would protect this child in the case of his father.
9. I have heard this application over 2 days. I have heard submissions from experienced counsel for both parents, considered several statements from each of them, and also viewed, watched and listened to a series of videos and photographs submitted by each of them, along with 3 audio recordings lasting for over 50 minutes relied on by the mother. At the outset of the hearing, Mr Powell made 2 applications; the first was to renew his application for the appointment of a Part 25 expert as explained above, which in the event he then asked to adjourn for me to determine whether I considered such an appointment necessary as a part of my substantive consideration after the close

of submissions. Secondly, he sought to call oral evidence from his client, which he urged that I should hear in person.

10. As for the reception of oral evidence, this will happen only very exceptionally in summary hearings such as these. As the Supreme Court confirmed in *Re E* at [32]:

‘... it is clear that the burden of proof lies with the "person... [who] opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will of course be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13b and so neither those allegations nor their rebuttal are usually tested in cross-examination.’

11. In this case, the mother is making serious allegations of domestic abuse against the father, both upon herself and upon EM. She has set those out in a number of statements, and I have watched the video evidence and listened to the recorded conversations which she says bolster her case. Her allegations are in large part denied by the father, although he does admit in the recorded conversations to what appears at least to have been a measure of inappropriate restraint. I will deal with their content in more detail below.

12. However, for the purposes of this hearing I am clear that I am not required to hear live evidence from the parties in order to properly determine the applicability of the Art. 13 (b) defence in this case. This is in part because of the summary nature of this process, and in part because even if the allegations made by the mother are true, as they may be, the question of whether a return order should be made will be critically affected by the determination of whether sufficient protective measures can be put in place in the event of a return, to avoid for EM the intolerable situation contemplated by the Article. I have to determine on a summary basis whether a return order would create a grave risk of ‘*physical or psychological harm or otherwise place the child in an intolerable situation*’. Only in the event that I am unable to determine that appropriate protective measures are available if in fact the allegations prove to be true, should a more detailed evaluation of their truth be required.

13. As the Supreme Court in *Re E* explained:

35. ...article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home... if the risk is serious enough to fall within article 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.

36. There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true. [Counsel] submits that there is a sensible and pragmatic solution. Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country... Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues

14. So, on the basis of the evidence before me, how should the test be applied? Again in *Re E*, the Supreme Court confirmed at [31]

‘...that there is no need for the article to be "narrowly construed". By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or "gloss".’

15. The Court then went on to assess the import of those words as follows:

‘33. ... the risk to the child must be "grave". It is not enough, as it is in other contexts such as asylum, that the risk be "real". It must have reached such a level of seriousness as to be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm.

34. ...the words "physical or psychological harm" are not qualified. However, they do gain colour from the alternative "or otherwise" placed "in an intolerable situation" (emphasis supplied). As was said in *In re D* [2007] 1 AC 619, at para 52, "'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'". Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. [Counsel] accepts that, if there is such a risk, the source of it is irrelevant: e g, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child."

16. So, firstly, would the allegations which the mother makes, if true, be sufficient to create a grave risk of such harm? The mother details her allegations most specifically in her non-molestation application made in September 2020, and whilst she presages her account by stating it may not contain all of the incidents which have occurred, with one specific exception, she does not later provide significantly greater or different detail in her subsequent 3 statements. There are no allegations in the first 6 years of their relationship, prior to her joining the father in Norway. Then:

- a. Over 21 and 22 July 2019, just before EM's birth, she accuses the father of first slapping her and grabbing her neck, and then slapping her again hard across her ear. That these incidents are said to have taken place immediately before EM' birth on 23 July undoubtedly add an additional level of concern.
- b. She reports continuing unspecified abuse in September 2019, including a threat that her children would be taken away if she reported him; she then adds 'yet still I forgave him'.
- c. In January 2020, the mother first reports an incident of slapping, but a further serious alleged assault initially ascribed to March 2020 is also now said to have also happened later in that month. In this incident, she says that the father hit her with the blunt side of a knife, threatened to stab her, attempted to

strangle her, and head-butted her nose three times. He then continued to slap, pull and hit her through the night, such that the next morning she attempted to leave, but was eventually collected back by him from the airport.

- d. In April 2020, she reports an incident when he hit her on the belly whilst holding her neck.
- e. In July 2020, she sets out 3 incidents, the last of which she says prompted her departure:
 - i. First, a threat of assault while drunk
 - ii. Second, a slapping, followed by the mother being dragged outside, from where Z had to let her in
 - iii. Finally, an argument during which the father told her to leave and threatened her with the removal of EM by the Norwegian authorities.

17. Additionally, the mother makes a serious allegation of threats to kill the children, which I will deal with fully later. Clearly though, if this last allegation is true, or if the above incidents took place as the mother says and as a result there is evidence that she has suffered significant trauma, then a grave risk of harm to both mother and children would not be beyond contemplation, before any thought is given to appropriate protective steps. Even if the prospect of repetition were remote, then these allegations would fall within the '*relatively low risk of death or really serious injury*', which the Supreme Court in *Re E* at [33] found '*might properly be qualified as "grave"*'.

18. In her first statement in these proceedings, the mother does not provide significantly greater detail than set out above, but does now assert that the father 'has on numerous occasions threatened to kill me with a knife and has tried on a number of occasions to actually do so'. She accuses him of domestic abuse 'which comprised of physical, emotional and sexual abuse', and of his being controlling and coercive. She produces slightly different, but not more serious, accounts of some of the incidents set out in her first statement. She produces a series of short videos taken on her i-phone, which she says were restored to her by her sister after the father took her phone from her just before her departure from Norway. She says that in the videos the father 'makes very serious threats to kill' which she believes 'he is more than capable of'. She says that he

has also ‘threatened to kill’ her children, and says that incidents of violence perpetrated during the course of the videos ‘will be appalling for anyone to witness’ let alone the children. She also says that there are no protective measures which could be adequate for her protection.

19. I have watched the videos, and listened to the audio recordings. Those produced by the mother do involve her making reference to some of the incidents which she says took place in her first statement, which the father either denies or appears to give a different if still concerning account of. But there is nothing said or done in the videos which I can assess to equate to ‘very serious threats to kill’ the mother, or which comprise any acts of violence, let alone ones which could be described as ‘appalling for anyone to witness’. Further there is absolutely no corroboration of the mother’s allegation that he has ‘on numerous occasions threatened to kill’ her with a knife and has ‘tried on a number of occasions to actually do so’. The only incident involving a knife which she has particularised is that set out at [15(c)] above.

20. On one occasion the father is evidently drunk, and he and the mother have apparently had an argument. The conversations do exhibit a degree of give and take between the couple, with the mother answering back and cutting across the father. She has obviously chosen to make the recordings at these points. There is no obvious evidence on the tapes or in the conversations that any inappropriate behaviour by the father has had any serious tangible effect on the mother. That is not to say that it has not, nor indeed that all of the violent incidents that the mother alleges towards herself have not happened; but these recordings, shorn as they are of proper context and some very short in length, are not conclusive evidence that they have. The truth of these allegations is an issue to be determined on another day. I have to proceed on the basis that they may have happened.

21. I have mentioned the allegation that the father has threatened the lives of the children, which of course if true is extremely serious. I asked Mr Powell for the best evidence of this, given that an incident filmed in a video now relied on did not appear at all in the mother’s non-molestation statement, and only became part of her case after she introduced the videos. In that statement, the mother had said that the father told her that he would kill her before the police could reach her and that before that he would

‘kill her children in front of her’. He confirmed that the only evidence of a direct threat to the child relied on is contained in the video, which she says shows the father ‘being aggressive to EM both verbally and physically’. The video itself starts by showing EM sitting on the floor next to the father, and it then pans in on the child for the rest of its duration. The father can no longer be seen. He is speaking off camera in Kurdish. EM is only around 8 months old and looks somewhat bemused. There is no physical contact between the 2 for the duration of the video. The mother describes the father ‘talking sharply and loudly to him’ and ‘the sound of a slap’. There is no contact made with EM during the short excerpt, nor any overt physical threat. What is surprising, and of course concerning, is the translation of the Kurdish words spoken which apparently include ‘I will kill you, kill you’. But they do not appear spoken in anger or with intent, and there is no proper context provided for the situation.

22. Equally striking is the fact that the mother was throughout sitting close to the father whilst she was making the video recording, which carried on after the words were spoken. In her third statement she says that she made the video ‘so that she could have evidence’ of the father’s ‘negative behaviour’. She goes on to say that she made the videos ‘for her own protection’, and then accepts that whilst the videos do not show her intervening at any point, she says that she has done so ‘on numerous occasions’ to protect the children. But she has given no specific instances of any such intervention. Nor as I have indicated has she provided any evidence beyond her initial case to substantiate her allegation of the father’s ‘threatening to kill her with a knife on numerous occasions’.

23. I cannot find that without more the events recorded on this video have demonstrated to the required standard that the father was intending to make a serious threat of harm to EM when the video was made, nor that either EM or his mother perceived it as such. In the absence of further explanation or context, I equally do not accept that it would be a proportionate or necessary exercise to adjourn the determination of this application for expert evidence in relation to how this incident might have impacted upon EM. The mother herself does not report that he reacted negatively at the time, or indeed in any significant way not shown on the video immediately thereafter, nor did she herself think the incident sufficiently serious to mention it in September 2020 to the East London Family Court when applying for a domestic violence injunction. In

one later statement she goes only as far as to say that she ‘wonders’ whether EM’ being ‘sometimes aggressive’ might be because of violence he has witnessed and suffered. The mother offers no evidence other than as described above of any such threat having been made. I therefore do not grant her Part 25 application, as I cannot find that the evidence which she asks the court to direct is necessary for me to determine her defence under Article 13(b).

24. On the first day of the hearing the mother sought permission to produce what she describes as a ‘phone diary’ which appeared to be notes made into a mobile phone in March 2020. The mother said that she had only just gained access to the document, to explain its late arrival into evidence. I admitted the document. Again, whilst it portrayed her feelings of unhappiness in the marriage at that time, and repeated the complaints made about the incidents which are complained of in her non-molestation statements as having taken place before that date, as outlined above, other general allegations which she made there were not detailed, and have not been expanded on in any of the four later statements that she had filed. These included a threat to push her from a window, and to buy a gun.
25. On the other side, the father has produced a number of photographs and short videos of his own which show normal and apparently happy family occasions, including the couple dancing together, and visiting a prospective new property with Z. Of course, those images do not establish that the father has not behaved as the mother has alleged.
26. Overall, having considered all of the evidence in front of me, there remain serious allegations of violent conduct by the father toward the mother in the marriage. And in relation to EM there is an allegation by the mother which has not been made out on the evidence available, but cannot be completely dismissed on a summary basis, given the words apparently spoken. However, I cannot find that if the mother felt able to return to Norway with EM, and presumably therefore also with Z and her new baby, and if she were to return to live in the former family home with the children, in the absence of the father, with appropriate funding provided by the father and with comprehensive protective orders in place, then in those circumstances that the situation for EM would therefore become intolerable by any measure.

27. In that context, as far as the threats to the mother herself are concerned the comprehensive injunctive protection which the mother sought and was granted by the East London Family Court, on the basis of essentially the same allegations upon which she now relies, save in respect of the alleged threat to EM in relation to whom she sought no protection, would appear to offer adequate protection for her. Its terms are as follow, and should be extended to cover the children of the family – that the father should not himself, or instruct or encourage any other to:

- a. Use or threaten any violence towards the mother;
- b. Threaten, intimidate, harass or verbally abuse the mother in any way;
- c. Go within 100 yards of any property at which he is aware that she is living;
- d. Send any threatening letters, emails texts or voicemail messages;
- e. Make any threatening or abusive telephone calls;
- f. Communicate with the mother other than through solicitors; and
- g. Damage or attempt to damage any of the mother's property.

28. I will deal with the additional protective measures now proposed by Miss Renton for the father below. There is however, a significant residual problem which must be addressed, which is the mother's professed position that even if a return order is made, she would not in any circumstances return to Norway to care for her child. Such a situation would undoubtedly not be in the best interests of EM. The mother explains it by reference to her state of mind as a result of the father's conduct as she says it has been.

29. This complication was addressed by Moylan LJ last year in *Re B (A Child) (Abduction: Article 13(B))* [2020] EWCA Civ 1057, where he said:

77. In *In re S (A Child) (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257, the judgment of the court was given by Lord Wilson. The case dealt with the question of whether, in the context of the effect on a parent's mental health for the purpose of Article 13(b), there needed to be an objectively reasonable or realistic risk or whether the parent's subjective perception of the risk could be sufficient. Lord Wilson said:

"27 In *In re E* [2012] 1 AC 144 this court considered the situation in which the anxieties of a respondent mother about a return with the child to the state of habitual residence were not based upon objective risk to her but nevertheless were of such intensity as to be likely, in the event of a return, to destabilise her

parenting of the child to the point at which the child's situation would become intolerable. No doubt a court will look very critically at an assertion of intense anxieties not based upon objective risk; and will, among other things, ask itself whether they can be dispelled. But in *In re E* it was this court's clear view that such anxieties could in principle found the defence. Thus, at para 34, it recorded, with approval, a concession by [Counsel], that, if there was a grave risk that the child would be placed in an intolerable situation, "the source of it is irrelevant: eg, where a mother's subjective perception of events lead to a mental illness which could have intolerable consequences for the child". Furthermore, when, at para 49, the court turned its attention to the facts of that case, it said that it found

"no reason to doubt that the risk to the mother's mental health, whether it be the result of objective reality or of the mother's subjective perception of reality, or a combination of the two, is very real".

78. Later, in response to Thorpe LJ's suggestion that the "crucial question" had been whether "these asserted risk, insecurities and anxieties [were] realistically and reasonably held" by the mother and his dismissal of the mother's case founded on her "clearly subjective perception of risk", Lord Wilson said:

"34 In the light of these passages we must make clear the effect of what this court said in *In re E* [\[2012\] 1 AC 144](#). The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned."

...

103. ...With respect to the judge, it appears to me that, in considering this issue, she fell into the error addressed by Lord Wilson, at [27] and [34], in *In re S*. As Lord Wilson said, the "critical question is what will happen if, with the mother, the child is returned". Although the reasonableness or unreasonableness of the "mother's anxieties" and/or the fact that they are not based on an objective risk may lead "a court [to] look very critically" at the case advanced by the mother, neither of these elements prevent the court from determining that "the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child". It is clear that "subjective perception" can be sufficient.

...

105. ...As the Supreme Court made clear in *In re E*, Article 13(b) is "looking to the future" so that the critical issue in the present case was the potential effect on the mother's mental health of a return to Bosnia. Applying this approach, I do not consider that, the fact that "by the time of this hearing the mother's mental health was stable", supports the judge's conclusion..., that "her case as to a fundamental change of circumstances is [not] made out". The question was, not whether the

mother was stable at that time, but what would happen if she went with B to Bosnia.

30. So, I must first determine whether there is an objective risk to the mother in the event of a return being ordered. In the absence of any protective measures, then there may be such a risk as I have outlined above. However, with proper protective measures in place, then clearly that risk objectively recedes. If I determine that those measures would objectively be sufficient to provide suitable protection, then I must ‘look very critically’ at her ‘assertion of intense anxieties not based upon objective risk’ (per Lord Wilson in *Re S* at [27] [above]), and ask whether they can be dispelled. I quite accept that those anxieties, if they were to present in the mother upon her return to Norway, are capable of founding a defence under the article, whether or not objectively justified.
31. It must be said that such original evidence as there is contained in the videos and audio recordings produced by each party does not suggest that this mother is genuinely too afraid to engage with the father, or is frightened at all of standing up to him, even after she has made these allegations of significant domestic violence against him. The tone and inflection of her voice in her conversations with him which she has recorded give no intimation at all that she is in any way intimidated by him or in fear for her life. If anything she treats him with mild contempt.
32. Furthermore, her assertion that the videos demonstrate unequivocally the father’s threat both to her and to EM do not help her case, as whilst they demonstrate her putting some of the allegations which she relied on in September to the father before her departure to this jurisdiction, they do not show the father making threats to kill that are self-evidently serious, or perpetrating an act of violence that would be appalling for anyone to witness, as the mother suggested that they do. Indeed the fact that the alleged threat to EM is based solely upon the short video taken by her of the child sitting on the floor, and was not even remembered by her as an incident of threat until she later looked at the recording is telling. The fact that she did not mention the allegation in her initial statement, nor seek any protective orders in relation to EM in September, makes her vehement later reliance upon it far less persuasive.

33. Having found as I do that, with robust protective measures in place, any objective risk of harm to EM will be appropriately mitigated, my critical appraisal of the mother's case as it stands does not satisfy me that, if she were in fact to return to Norway with the children, her ability to care for them would be in any way compromised. Indeed, I am quite satisfied from what I have seen and heard in the evidence, and read in the statements, that if she were to return she would cope well, particularly given the protective measures which would by then be in place. Consequently it would not be appropriate for me to decline to make a return order on that ground.
34. I accept that the mother does not wish to return, and her case is that she will not do so even if a return order is made in respect of EM. I hope that the mother does choose to return with him, and her other children, whilst the longer term future of the children is resolved by the Norwegian courts. However, in the event that she elects not to, I have not seen any evidence which persuades me that the father has made a realistic threat to harm EM. The only specific evidence on which the mother relies for this is the video clip, and I do not accept that that provides credible evidence of a real threat. This is only confirmed by the fact that as I have indicated, the mother evidently did not consider it to be so at the time, as she sat filming; such a threat evidently formed no part of her reasons for leaving Norway. I have no evidence before me which leads me to believe that the father is not perfectly capable of caring for EM, if the mother does not return with him.
35. I have considered the fact that the father appears to be under the influence of alcohol on the occasion when a number of the mother's videos were filmed, although they all appear to have been filmed on the same night. Consequently, I cannot find that there is an established risk that this father's drinking poses a threat if the mother chooses not to return with EM and he is returned into the care of his father. In this regard I am fortified by the protective measures which Miss Renton has offered, especially that at [h] below, which to ensure appropriate protection given the untried allegations must be offered in addition to the terms of the September injunction.
36. I remind myself that when the mother made complaint to the authorities in Norway after the incident just before EM' birth, the police and social services were swiftly involved, the latter being notified by the former to follow up in relation to impact of the incident on Z. Z was spoken to and appropriate background checks into her

ongoing welfare made, within weeks of the incident. The discontinuation of that involvement happened only after assurances from the mother that no further investigation was merited, and a follow up interview offered was not taken up. I am therefore satisfied that the Norwegian authorities will if needed offer entirely appropriate support and protection for this family upon any return.

37. These are, subject to the adjustments which I indicated to Counsel during the hearing at [c] and [j]:

- a. That the father will use his best endeavours to arrange a hearing before the Norwegian Family Court at which the mother may be present as soon as possible after EM' return to Norway.
- b. To defray the cost of air tickets for the mother and EM, Zainab and the infant child of the parties born 3 December 2020 to Norway in the event that the mother returns with the children
- c. To pay £1,000 per month to the mother prior to and for such time after her return to Norway as may be required until her needs can be assessed by a court or otherwise determined or agreed, into a nominated account in her sole name.
- d. Not to institute or voluntarily support any proceedings, whether criminal or civil, for the mother's punishment arising out of EM' wrongful removal from Norway on 24th July 2020 and subsequent retention in England and Wales.
- e. Not to attend at the airport on the mother and EM' arrival in Norway.
- f. To assist the mother in obtaining state and child benefits in Norway.
- g. Not to seek to separate the mother and EM, or to enforce the order for sole custody granted to him on 11th August, before the matter shall come before the S district court in Norway on proper notice to the mother
- h. Not to imbibe alcohol within 24 hours of being in the presence of EM or thereafter in this presence.
- i. To pay if required for the quarantine accommodation for the mother and her three children for a period of two weeks upon arrival in Norway.
- j. To make the former matrimonial home, or at her request a suitable alternative property within 10 miles of the same, available to the mother and her three children prior to and upon their arrival; and to defray the cost of utilities until her needs can be assessed by a court or otherwise determined or agreed.

38. I am quite satisfied that if the above provisions were to remain in force until the matter is restored before the Norwegian Court, together with the continuation of the terms of the injunctive order made at the East London Family Court on 28 September 2020, as set out at [27] above, that EM will be suitably provided for and protected. In this regard I also have in mind that Norway is like the United Kingdom a signatory to the 1996 Hague Convention, and as such protective measures may be directed here as a matter of urgency (Art.5 (1)), which will be recognised by the Norwegian Court (Art.23), but lapse once Norway has ‘taken the measures required by the situation’ (Art.5 (2)). I am satisfied in these circumstances that it is appropriate to make an order in all of those terms, which will be effective for the mother’s and EM’ protection until the matter is restored to the court in Norway.

39. I do not require any undertakings of the mother, or expect that the non-molestation order will be reciprocal. There is no evidence before me to justify that, despite the father’s initial request that I so order. I can only express the hope that the mother will feel able to return to Norway with EM, in respect of whom I do make a return order, for all of the reasons and on all of the terms that I have set out in this judgment.

22nd February 2021