

Neutral Citation Number: [2009] EWHC 2280 (Fam)

Case No: FD07P00295

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Date: 11/09/2009

Before :  
MR JUSTICE RYDER

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Between:

	<b>H</b>	<b>Applicant</b>
	<b>- and -</b>	
	<b>[1] M</b> <b>- and -</b> <b>[2] H (a child)</b> <b>(by her Guardian ad litem, Sarah Vivian)</b>	<b>Respondents</b>

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Mr Edward Devereux (instructed by Messrs. Dawson Cornwell) for the Applicant  
Mr Teertha Gupta (instructed by Cafcass Legal) for the 2nd Respondent  
Hearing date: 11 September 2009  
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Judgment

## Mr Justice Ryder:

### Introduction:

1. This is the final hearing of proceedings under Brussels II Revised initiated by the Applicant father, ('F'), by application dated 11th September 2008 seeking orders relating to the only child of the parties, H, who was born on the 3rd October 2005 and is now 3 years and 11 months old. The F relies on the provisions of Articles 11 and 40 of Brussels II Revised and (principally though not exclusively) the judgment of Singer J. in *Re A; HA v MB (Brussels II Revised: Article 11 (7) Application)* [2007] EWHC 2016 (Fam), [2008] 1 FLR 289. The matter was last before the court on 27th April 2009 when a detailed directions order was made by Singer J.
2. The F has provided a number of statements and affidavits from himself and his legal representatives upon which the court has relied: his first is dated 9th August 2007; a first statement from Miss Anne-Marie Hutchinson is dated 28th August 2007; a second statement from Miss Anne-Marie Hutchinson is dated 11th September 2008; the F's second statement is dated 11th February 2009; a third affidavit of Miss Anne-Marie Hutchinson (entitled "second affidavit") dealing with service is dated December 2008; a fourth affidavit of Miss Anne-Marie Hutchinson is dated 23rd February 2009, also dealing with service; and the F's third statement is undated. The summary of the facts which follows is taken from those materials in the circumstance that the mother has yet to respond to this court by the filing of evidence or otherwise.
3. The mother ('M') has not participated in these proceedings. Her last known address (and that of the child) is in Seville, Spain.
4. Acutely aware of the considerable delay that has taken place in determining this application, along with the attendant costs, the F realistically seeks today an order for reasonable direct contact with H along with various orders in respect of parental responsibility and recitals to assist in the implementation of that contact, notwithstanding that the mother has plainly intentionally and successfully sought to avoid any participation in these proceedings, has repeatedly avoided service initiated by all manner of different mechanisms, and has effectively frustrated contact since her wrongful retention of H in Spain in August 2006. The last time the F saw H was for one hour in June 2007. Further delay in granting the orders which F seeks is likely to be regarded as inimical to H's best interests.
5. To maximise the F's ability to successfully participate in contact with H in Spain in the near future, this court has decided to give a detailed judgment which sets out what it intends to do but does not finalise matters for the purposes of Article 10 (b) (iv) so that further use can be made of international judicial cooperation before jurisdiction is ceded to Spain. Given the response of the Spanish Liaison Judge, there may well be advantages at this stage in this approach. The judgment is to be translated and communicated without delay to the Spanish Central Authority and the Spanish Liaison Judge and also to the last known address and e-mail address of the M and her Spanish lawyers.

## **Factual background**

6. The F is an Algerian/British national and the M is a Spanish national. The F was born on 14th November 1971 in Algeria and is now 37. He spent much of his early life in Algeria, where his close family remain. He studied aeronautical engineering in Algeria before moving to Spain. He came to the United Kingdom in 2001. He has in the past worked as a postman and in the restaurant trade. He currently lives with his partner, S N, and their daughter, B, in London. He works for Royal Mail in a delivery office.
7. The M was born on 12th March 1975 and is now 34. The M's close family remain in Spain. The M came to this country and studied and graduated with a degree in International Business and Tourism Studies at the London Metropolitan University in March 2005. It appears that after a time the M did not work as she was in receipt of Disability Living Allowance, perhaps due to her suffering from rheumatoid arthritis.
8. The parties met and formed a relationship in 2001 and thereafter married in the UK on 5th September 2002. They have one child, H, who was born on 3rd October 2005, who is now aged 3 years and 11 months old and who is a Spanish and Algerian national. The parties were in Spain for H's birth and returned to the UK on or around 13th October 2005. The principal matrimonial home was in London, although in 2004 the parties purchased an "off plan" flat in Spain. The parties renewed their vows at a ceremony in the Register Office in W, London on 24th March 2005.
9. During the course of the marriage there were frequent trips abroad to Spain and Algeria and frequent discussions, in particular during 2006, about the parties moving to Spain.
10. On 27th August 2006, the M travelled to Spain with H for the purposes of a short holiday planned to be for about one week. At the end of that month she informed the F by telephone that she was not intending to return to the UK. The F did not provide his consent to this retention and immediately sought advice and assistance as to what to do: after searching on the internet he found details for the international child abduction charity, Reunite.
11. On 7th October 2006, the F initiated Hague Convention 1980 proceedings in Spain through the Central Authority in London. The Court of First Instance apparently received this application on 24th November 2006.
12. In November 2006, the F travelled to Spain and had contact with H there. On 15th November 2006, the Seville Family Court of First Instance appointed an attorney, Mr Eugenio Carmona Delgado, to act for the M.
13. On 15th December 2006, the M issued a divorce petition in the Seville Family Court of First Instance.

14. There were preliminary hearings in the Hague Convention 1980 proceedings in Spain on 18th December 2006 and in January 2007.
15. On 5th February 2007, a hearing took place in the divorce proceedings initiated by the M in the Seville Court of First Instance, whereby the M's divorce petition was admitted for hearing. The matter was then listed for examination at an oral hearing which the F was ordered to attend.
16. By an application issued in the UK on 9th February 2007, the F applied, acting in person, for various section 8 of the Children Act 1989 orders: a shared residence order, a prohibited steps order and a defined contact order. It appears that the F served the M with this application by recorded delivery. The first hearing in respect of those applications was on the 20th March 2007. On that date, and in the absence of attendance by the M, Deputy District Judge Sheldrake sitting at the Principal Registry of the Family Division in London adjourned the matter to the 8th June 2007 so that directions could be made.
17. On 7th May 2007 as indicated by a ruling dated 14th May 2007, there was a further hearing relating to the M's divorce petition before the Seville Court of First Instance. On application by the F that the courts in the UK were in fact competent (and not those of Spain), the Seville court decided to "abstain from hearing" the divorce proceedings brought by the M "due to lack of international competence". It is believed that the M did not seek to appeal that order.
18. In May 2007, an attempt was made to serve the M with the order of DDJ Sheldrake. That was unsuccessful.
19. By application issued on 6th June 2007, the F applied to adjourn the hearing on 8th June 2007 on the basis that the M had not been served with the order of DDJ Sheldrake and therefore did not have notice of the hearing.
20. On 6th June 2007, various orders, without attendance from either party but upon the court reading a letter from the F's solicitors, were made by District Judge Roberts. The matter was adjourned until 14th August 2007 and it was directed that the court was to serve a copy of the order and the application dated 8th February 2007 on the M. Those orders of District Judge Roberts were served on the M through her legal representatives in Spain in June or July 2007. The F then travelled to Spain and had further contact with H in June 2007.
21. On 13th August 2007, the F's solicitor, Miss Anne-Marie Hutchinson of Messrs. Dawson Cornwell was telephoned by the M. The M said that she would "not [be] coming to court" on 14th August 2008 and that her lawyers in Spain had advised her to ignore the hearing.
22. On 14th August 2007, District Judge Green made a number of orders, in the absence of the M attending, (though being satisfied that she knew of the hearing). They included listing the matter for consideration of the F's applications for declarations as to parental responsibility and habitual

residence on 13th September 2007, and ordering the M to attend that hearing (supported by a penal notice).

23. On 3rd September 2007, the F's Spanish lawyers made an application for "the immediate resumption without further delay of these proceedings for the return of a child".
24. On 13th September 2007, Coleridge J. made declarations that the F had parental responsibility for H and that she was habitually resident in the UK and directed that the F could disclose papers filed in the proceedings to the Home Office to assist in his application to vary his leave to remain in the country.
25. The Hague Convention 1980 proceedings made slow progress in Spain. In part this appears to have been caused by the M making an allegation against the F that he was a fundamentalist: an allegation which was investigated by the criminal authorities in Spain resulting in the complaint being dropped by the Criminal Investigation Court in Seville as not constituting any offence. The F's Spanish lawyer describes the M's complaint as a malicious delaying tactic.
26. Eventually, the final hearing of the Hague Convention 1980 proceedings in Spain came before the Court of First Instance in Seville on, it appears, 23rd and 24th April 2008. On 24th April 2008, the court decided that, pursuant to Article 13 (b) of the Convention, it would not order the return of H to the UK.
27. The material reasoning of the Spanish court was as follows:

"From the documentation in the dossier...there is inference of the excellent situation of the minor and her settling in and adaptation to the new environment in Spain, along with the positive and gratifying relationship which she has with her mother, a relationship necessary for her appropriate and proper development in all aspects, especially at this time, given her age and the stage of formation of her personality; due to all of the aforesaid, given the current situation of the little girl and her parents, living in different countries, who do not have plans to live together and who have plans to continue the lifestyle and place of residence (Seville and London) that they currently have, along with the support of the extended maternal family, it can be understood that the return to the father, depriving the girl of her relationship with her mother, a reference attachment figure, and a normalised and stable family situation, entails a physical risk for H and consequently, the hypothesis upheld in the aforementioned articles of the quoted Convention being met, it is appropriate to refuse [a return]".
28. The papers in the Spanish Hague Convention 1980 proceedings were received by the Central Authority in this country on or around 18th June 2008, with a covering letter dated 6th June 2008. They were then forwarded to the F. This court is entitled to comment with the greatest respect to its international colleagues that:

a) the reasoning for the establishment of an Article 13(b) defence formulated by the Spanish Court is very shortly argued and is accordingly difficult to discern but on its plain meaning it falls far short of that which would be permitted to establish the same ground in this jurisdiction and appears to confuse settlement with an article 13(b) defence;

b) the delay of more than 18 months is inexplicable having regard to the clear timetable set out in Article 11 (3) of Brussels II Revised for compliance by national courts and having regard to recent authorities in the European Court of Human Rights appears to constitute a prima facie breach of the child's and the F's Article 8 ECHR rights:

In *Iosub Caras v Romania* (Application No 7198/04) [2007] 1 FLR 661 there was a delay of 18 months from the date of the application under the Hague Convention 1980 to the date of determination. That was found by the European Court of Human Rights to constitute a breach of the positive obligation on a state by Article 8 of the European Convention. As stated at paras [38] – [40]:

“[38] In matters pertaining to the reunification of children with their parents, the adequacy of a measure is also to be judged by the swiftness of its implementation, such cases requiring urgent handling, as the passage of time can have irremediable consequences for the relations between the children and the parent who does not live with them (see *Ignaccolo-Zenide*, at para 102, and *Nuutinen*, at para 110). Indeed, Art 11 of the Hague Convention imposes a 6 week time limited for the required decision, failing which the decision body may be requested to give reasons for the delay. Despite this recognised urgency, in the instance case a period of more than 18 months elapsed from the date on which the first applicant lodged his request for the return of the child to the date of the final decision. No satisfactory explanation was put forward by the Government for this delay.

[39] It follows that the time it took for the courts to adopt the final decision in the present case failed to meet the urgency of the situation.

[40] Based on its conclusions reached at paras [36] and [39], above, and notwithstanding the respondent States' margin of appreciation in the matter, the court concludes that the Romanian authorities failed to fulfil their positive obligations under Art 8 of the European Convention. There has accordingly been a violation of that Article on this account.”

In *Carlson v Switzerland*, 11th August 2008, a judgment of the European Court of Human Rights, the ECHR found that the Swiss authorities had breached the father's right to family life under Article 8 of the European Convention on the basis of delay and other procedural errors in the determination of the father's application under the Hague Convention 1980. The court (inter alia) noted that speed was essential in return proceedings, in order to restore the status quo ante to prevent any legal consolidation

of wrongful acts and to ensure that substantive questions of custody were left to the authorities of the child's State of habitual residence.

### **The history of the Brussels II Revised proceedings**

29. By an application dated 12th September 2008, the F sought an order pursuant to Article 11 (7) of Brussels II Revised for the return of H to the UK from Spain, supported by an affidavit of Miss Anne-Marie Hutchinson dated 11th September 2008.
30. This matter first came before the court on 16th September 2008 (on a without notice basis) before Mrs Judith Rowe QC sitting as a Deputy High Court Judge. Directions were made on that occasion (inter alia) ordering (a) the M to attend at a directions hearing listed on 10th October 2008; and (b) the M to file a serve an affidavit by 3rd October 2008 directed at certain defined issues.
31. On 10th October 2008 the matter came before Her Honour Judge Cahill sitting as a Deputy High Court Judge who recorded that the M was appropriately served with the order of 16th September 2008 "on or about 23rd September 2008 in the Kingdom of Spain". Further directions were thereafter given (inter alia) extending time for the M to comply with the direction relating to filing for an affidavit and listing the matter for a further directions hearing on 6th November 2008.
32. On 6th November 2008, the matter came before Charles J. who (inter alia) gave further detailed case management directions in particular as to service on the M.
33. Thereafter the matter came before Hogg J. on 26th February 2009 who joined H as a party, listed the matter for a further directions hearing and final hearing on 27th April 2009 and requested that "the Spanish courts urgently...renew their efforts to serve the mother with the documents in these proceedings (including this Order)."
34. On 27th March 2009, the matter came before Roderic Wood J. who gave various directions including determining that service by email on the M would be appropriate and giving permission for contact to be made with the office of Lord Justice Thorpe, the Head of International Family Law and the International Liaison Judge.
35. The matter was last before the court by Singer J. on 27th April 2009.

### **Service of the documents on the mother**

36. There have been a considerable number of attempts to serve the M with various documents in these proceedings. It appears quite clear that the M does not wish to engage with these proceedings and has been refusing to be served and/or has evaded service. The following is a non exhaustive summary of the recent attempts to serve the M.

37. The Court of First Instance in Seville recorded on 14th April 2009 that:

“...having had contact via telephone with the household where [the M is], her sister has informed of the fact that [the M] is currently at work, but that she will contact her and tell her to come to this Court in order to collect the documents sent from the United Kingdom.”

38. On 27th April 2009, the same court recorded that “Not having been able to comply with the rogatory letter as the person to be summoned has not collected the bureaufax. Be the legal aid actions sent back to the Court by recorded delivery, it serving as letter of transmittal.”

39. On 9th April 2009, the Guardian e-mailed the M introducing herself and setting out her role.

40. On 22nd April 2009, the then solicitor for H telephoned the M’s solicitor with the assistance of a Spanish speaking worker and spoke to the M’s solicitor and thereafter wrote to the M’s solicitor on 23rd April 2009.

41. By letter dated 16th June 2009, the solicitors for the F wrote enclosing a large number of documents to the M, the M’s mother, and the M’s Spanish solicitor.

42. The solicitor for H further wrote to the M’s Spanish solicitor in Spanish by letter dated 14th July 2009 setting out in detail the background to the proceedings and the Guardian’s role. The letter’s content was approved by a judge of this court but there was no response.

43. On 23rd July 2009, the solicitors for the F wrote again (in Spanish) to the M’s Spanish solicitor and the M, couriering the documents to them.

### **International Judicial Cooperation**

44. Lord Justice Thorpe’s office have now established communication about the case with Spain’s Senior Judicial Representative The Honourable Judge Francisco Javier Forcada Miranda and there has been an indication that further assistance may be available.

### **Legal principles**

45. By recitals 17 and 18 of Brussels II Revised it is provided that:

“(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or

retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.”  
(emphasis added)

46. Within the main text of the Regulation, Article 8 of Brussels II Revised, (which of course has direct effect), and now displaces in toto the previous position as to jurisdiction, sets out the general jurisdictional rules as to matters relating to parental responsibility. That rule is subject to Articles 9, 10 and 12: see Article 8 (2). Article 10 of Brussels II Revised sets out the jurisdictional basis in respect of child abduction matters. For the purposes of this case, Article 10 is critical, it providing in short that jurisdiction does not pass for the purposes of these proceedings (and in this case to the Spanish courts) until (by virtue of Article 10 (b) (iv)) “a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention”.

47. By Article 11 (6), (7), and (8) of Brussels II Revised it is provided that:

“ 6 If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non return order.

7 Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties the court or the central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8 Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with section 4 of Chapter III below in order to secure the return of the child.”

(emphasis added)

48. As to the question of when a court can be said to be seised, the relevant part of Article 16 of Brussels II Revised provides that:

“1 A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

...”

49. Article 55 of Brussels II Revised is also material to this case. That provides:

“The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to

(a) collect and exchange information:

(i) on the situation of the child;

(ii) on any procedures under way; or

(iii) on decisions taken concerning the child;

(b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;

(c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;

(d) provide such information and assistance as is needed by courts to apply Article 56; and

(e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross border cooperation to this end.”

50. The application of these somewhat difficult and relatively novel provisions has seemingly been considered in this country in only five reported cases: *Re A (Custody Decision after Maltese Non-Return Order)* [2006] EWHC 3397 (Fam), [2007] 1 FLR 1923; *Re ML and AL (children) (contact order: Brussels II Regulation)* [2006] EWHC 3631 (Fam), [2007] 1 FCR 496, a decision of Mr Nicholas Mostyn QC sitting as a Deputy High Court Judge; *Re A; HA v MB (Brussels II Revised: Article 11 (7) Application)* [2007] EWHC 2016 (Fam), [2008] 1 FLR 289; *Re RC and BC (Child Abduction) (Brussels II Revised: Article 11(7))* [2009] 1 FLR 574; and *Re RD (Child Abduction) (Brussels II Revised: Arts 11 (7) and 19)*, [2009] 1 FLR 586.

51. *Re A (Custody Decision after Maltese Non-Return Order)* [2006] EWHC 3397 (Fam), [2007] 1 FLR 1923, concerned a child who was 12 years old and who had been retained by his father in Gozo after what was supposed to be about a two week holiday. The left behind mother instituted proceedings promptly after the retention but, after a hearing at which oral evidence was given, a return order was refused on the basis of Article 13(b) of the Convention. Shortly after that refusal, the mother applied in this country pursuant to Article 11 of Brussels II Revised for the court to consider the question of the custody of the child and for consideration of whether the court should order the return of the child forthwith. Having considered the matter on a broader welfare basis and the welfare checklist set out at section 1 (3) of the Children Act 1989 (see paras [95] – [96]), and having heard oral evidence from the mother, her new husband, the mother’s younger sister, the maternal grandmother, Singer J. ordered that the child should live with his mother, that he should be returned to this country to achieve that end, that the child be made a ward of court, and that the “judgment” was to be enforceable forthwith in accordance with Article 42 (1) of Brussels II Revised.

52. *Re A; HA v MB (Brussels II Revised: Article 11(7) Application)* [2007] EWHC 2016 (Fam), [2008] 1 FLR 292, concerned a 2 year boy whose father was a Palestinian national and whose mother was a French national. The parties married in London. When the child was 2 months old, the mother and the child went to France to visit her family. When she returned from France in August 2005, without, it seems, the child, she told the father that she wished to end the marriage. She proposed that the father should see the child for fortnightly supervised contact in France. In September 2005, the M initiated divorce proceedings in the Tribunal de Grande Instance at Vannes in France. In October 2005, the father initiated Hague Convention 1980 proceedings. The final hearing of those proceedings was heard in July 2006 when the French court refused the child’s return on the basis of Article 13 (b). On 18th October 2006, the F initiated proceedings in the Principal Registry seeking an Article 11 (7) examination of the child’s custody, and seeking a residence order and a

specific issue order. On 14, 15 and 28th June 2007, Singer J heard evidence from the mother, the father and the children's Guardian and heard submissions and he handed down judgment on 24th August 2007. It is plain that there was accordingly considerable delay between the F first seeking a return to the UK by virtue of the Hague Convention and Singer J's final determination of the Article 11 (7) point. That said, on the facts of that case, Singer J found that he could indeed make orders as to contact on the basis that even if he were not to order the child's return to England, the court's jurisdiction remained validly seized: see, importantly, paras [87] – [94].

53. *Re ML and AL (children) (contact order: Brussels II Regulation)* [2006] EWHC 3631 (Fam), [2007] 1 FCR 496 concerned a cross border dispute between a father in this jurisdiction and a mother in Austria. The mother's failed to engage with the English proceedings with the consequence that the court lacked evidence from her. Mr Nicholas Mostyn QC sitting as a Deputy High Court Judge made a final order affording contact to the father that was "reasonable [and] unsupervised in England, Greece or Austria", and left the mechanics and the implementation of that order (which was directly enforceable under the terms of Brussels II Revised) to the Austrian courts which thereafter were properly seized in accordance with the Regulation: see in particular paras [7] – [22].
54. *Re RD (Child Abduction) (Brussels II Revised: Arts 11 (7) and 19)* concerned the wrongful removal of a child by his mother to Portugal from this jurisdiction. The father initiated Hague Convention 1980 proceedings but there was some considerable delay in determining the application. The Portuguese court refused to order a return on the basis of Article 12 (2) of the Convention. The father thereafter applied under Article 11 (7) of Brussels II Revised. Singer J. dismissed his application on the principal basis that because the non return order was made under Article 12(2) there was no jurisdiction under Article 11(7) to order a return to this jurisdiction as such a mechanism only applied to non return orders under Article 13.
55. *Re RC and BL* [2009] 1 FLR 574 is another case where Singer J. struck out the application made by the mother under Article 11(7) of Brussels II Revised finding that this trumping provision could only be applied to non return orders under Article 13 and could not, as was the case there, be invoked in respect of a non return pursuant to Article 3 of the Convention.
56. As between the F and the child's representatives there is no dispute as to the law. This court retains jurisdiction to make the welfare order requested of it by the F. Until such time as that application is determined jurisdiction is not ceded to the Spanish courts. The fact of delay which is not the fault of the F or the child does not render this court's jurisdiction of only technical effect. Far from it, there is a need for a welfare decision as soon as possible and the present impasse simply avoids answering the key question which arises: is it in the best interests of H for contact with her F to be resumed?

## **Formulation**

57. The considerable delay since the F last had contact would ordinarily be detrimental to the child's welfare and her relationship with her F. The refusal of the Spanish courts to order a return to the jurisdiction of habitual residence is difficult to comprehend by reference to Hague Convention principles. The F is entitled to invoke Articles 11 (6) and (7) of Brussels II Revised in this jurisdiction. He has used every known method to serve M and to try and engage her in these proceedings. The delay is not acceptable.
58. There is no welfare determination of a Spanish or UK court concerning H. Having regard to general principles regarding the exercise of parental responsibility and the upbringing of children by separated parents, absent any adverse welfare information, the courts in this jurisdiction would seek to facilitate shared residence arrangements or direct and meaningful contact for the absent parent and the child.
59. There is no adverse information about the F. It follows that this court is likely to make an order as asked for direct contact unless M engages in the process and provides information about the welfare of the child. I shall adjourn the proceedings of this court, strictly reserved to me, to enable the M to engage with the court and provide the usual welfare information to the court and the Guardian. If she chooses not to do so she cannot complain if this court makes an order in her absence. I shall request the International Liaison judges and Central Authorities to assist in whatever way they can to effect service upon M and to facilitate an effective hearing before these courts on the next and final adjourned date.