Neutral Citation Number: [2025] **EWHC 2381 (Fam)**

Case No: FD25P00262

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/09/2025

Before :

MR JUSTICE PEEL

- -

Between :

S	**Applicant**
- and -	
Q	**Respondent**

- -
- -

Ralph Marnham (instructed by **Russell Cooke**) for the **Applicant**
Mani Singh Basi (instructed by **Osbornes Law**) for the **Respondent**

Hearing dates: 17-18 September 2025

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Approved Judgment

This version of the judgment was handed down on 18 September 2025 by circulation to the parties and by release to the National Archives.

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MR JUSTICE PEEL

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

Mr Justice Peel :

1. I shall refer the parties as Mother and Father.

2. The Father seeks return of the two children, aged 4 and 1, to Mauritius pursuant to the 1980 Hague Convention. He says they were removed to this country on 12 December 2024 for what was intended to be no more than a temporary holiday until the end of December 2024.

3. The Mother originally resisted the application on two grounds:

    a) Habitual residence.

    b) Article 13(b).

4. By the time of the hearing before me, she had abandoned her case on habitual residence, rightly in my judgment, and relied solely on Article 13(b).

5. I did not hear any oral evidence. I am satisfied that the bundle, position statements and oral submissions have enabled me to consider the application comprehensively.

6. Both parents, and the children, are of Mauritian nationality. The parties married in Mauritius in September 2020. Both children were born in Mauritius. The family lived in Mauritius and were fully integrated there. The Mother has another child, aged 15, by a different partner who lived with the family.

7. Since 2023, the Mother and children, but not the Father, have also held British nationality as a result of legislation in the United Kingdom passed in 2022 which allowed Chagossians to apply for British citizenship. This enabled the Mother (whose grandfather was Chagossian) and the children to apply, but not the Father who has no Chagossian heritage.

8. On the Mother's case, set out at some length in a statement dated 22 July 2025, the parents formed a plan for the Mother and children to move to the UK for better opportunities, to be followed by the Father once he had secured immigration status. The arrangements for a permanent move were discussed and agreed. She said: "…it was mutually understood that the children and I were going to the UK to find better opportunities and he would come thereafter upon settling his immigration status…..He was happy for the children to live a life in the UK…..At no point did we discuss a return at the end of 2024, because this was not the plan and the Applicant was aware of this. The children and I were not coming to the UK for a holiday, but we were in pursuit to find greener pasture". In short, she was asserting that the Father had consented to her and the children embarking on a permanent move.

9. The Father in his statement dated 7 August 2025 disputes this. He rejects any suggestion that he consented to the children (and the Mother) relocating.

10. In a further statement dated 3 September 2025, the Mother directly contradicts her previous presentation, saying that the plan was to travel to the UK for a holiday during the Christmas period. It was, she says, only after arrival in this country on 12 December 2024 that she decided not to return to Mauritius, because of her experience of domestic abuse perpetrated by the Father. According to her, she told the Father on

13 December 2024 (the day after arrival) that she would not return to Mauritius. The Father was aggressive on the phone, demanding her return to Mauritius at the end of December, and thereafter she blocked him. Thus, she was not asserting that the Father had consented to a permanent relocation. No good explanation is given for this incongruity on a matter of considerable importance, namely the circumstances behind the departure to England. She expresses dissatisfaction with previous solicitors who helped her draft the first statement, but at paragraph 2 of her second statement expressly relies upon the first statement, saying it is "highly relevant" and "forms an integral part of the factual matrix of this case".

11. It seems to me that both statements cannot be right on this point as they are diametrically opposite on why the Mother and children left Mauritius.

12. Although I have not heard oral evidence, it seems likely to me that when the Mother left Mauritius, she fully intended not to return. She did not change her mind after arrival; it was pre-planned. It is relevant, in my judgment, that she did not buy return tickets, which she surely would have done had she intended to return with the children within three weeks. Further, I consider it implausible that she definitely and categorically changed her mind only one day after arrival. And I take the view that the reason for applying for British citizenship was likely to have been to effect a permanent move at some time. As for why she decided to make a permanent move, in my judgment there are likely to have been two main reasons: (i) as she repeatedly says in her written evidence, the prospects of a better life in England with greater financial resources, better education and healthcare and (ii) many of her family members are in England including her mother who moved here in 2011. I find it unlikely that the reason for the move was to escape an abusive relationship. That may have played a part, but other factors were, in my judgment, more influential. I am satisfied that the Father did not consent; it is hard to see why he would have done given that he could not move to live in the UK, and is a man of modest means with little ability to travel back and forth to see his family.

13. Having arrived in this country, the Mother and children (including her 15 year old son) stayed initially with her aunt and cousin, then with her mother and then in accommodation of their own. She and the children currently live in Sussex where there is a significant Chagossian community. They are near many family members including her mother and have a support network. The 4 year old has started at school. The Mother says that the family is thriving, and they are settled and integrated.

14. The children and Mother did not return at the end of December as the Father had expected. On 10 January 2025 he contacted the Mauritian Ministry of Foreign Affairs to complain of the children's wrongful retention in England, which is corroborative of the Father's account that he did not agree to a permanent move.

15. At the end of February 2025, according to the Father (but denied by the Mother), the Mother phoned the Father and told him that she and the children were no longer staying with the aunt and cousin, that they were in temporary accommodation, that her mother (the children's maternal grandmother) had confiscated their passports and asking for help to return to Mauritius. She did not provide him with an address. By contrast, the Mother says the Father was aggressive. What is not in dispute is that thereafter, the Father again was blocked from calling. Thereafter she made no further contact with him and blocked his phone.

16. On 21 March 2025, the Father again contacted the Mauritian Ministry of Foreign Affairs, and his email refers to the content of the telephone call between him and the Mother in February. On 29 April 2025, he applied to the Mauritian Central Authority, and on 14 May 2025, he applied in this country by Form C67 for a return order.

17. I am confident (it is not really disputed by the Mother) that the Father did not know where they were living in this period and the Mother had largely blocked him from contacting her.

18. After issue of the Father's application, Tipstaff orders were made at a hearing on 6 June 2025. The Mother and children were located on 10 June 2025.

19. At a directions hearing on 25 June 2025, the Mother attended unrepresented. The judge made directions leading to an intended final hearing on 5 August 2025, including for the filing of an Answer and witness statements.

20. Thereafter the Mother obtained legal advice and representation and, as I have indicated, filed a statement, although not an Answer.

21. At the final hearing on 8 August 2025, the Mother again attended unrepresented, having dispensed with her lawyers. She sought an adjournment. The judge acceded to the application, albeit, as his order records, "reluctantly" and relisted the matter before me on 17 September 2025.

22. On 3 September 2025 the Mother, having instructed new solicitors, filed (for the first time) a formal Answer relying on Habitual Residence and Article 13(b) as defences. The document does not specifically plead consent, but does say "The Respondent believes the children became habitually resident in England and Wales following the parents agreeing they should live in England" which, with respect, makes no sense given that the updated statement of the same day (3 September 2025) does not assert that the Father consented; indeed, quite the opposite.

Consent

23. Although not expressly pleaded in the Answer, consent is referred to under the heading of "habitual residence" and in the Mother's first statement dated 22 July 2025. However, it is rightly not relied upon as a defence. I am quite satisfied from everything I have read that the Father did not give consent to a permanent removal and I propose to say no more about this topic.

Habitual Residence

24. This is no longer relied upon by the Mother. It is inextricably bound up with the question of whether the Father gave consent to a permanent removal. Given that he did not do so, it follows, in my judgment, that the children were wrongfully retained at the end of December 2024 when they were supposed to return to Mauritius, and it would not be tenable to argue that by that time (only two and a half weeks after arrival) the children had acquired habitual residence in England.

Article 13(b)

25. The burden lies on the Mother to open the Article 13(b) gateway.

26. For a general distillation of the applicable principles, I have in mind the dicta of the Court of Appeal in **Re IG [2021] EWCA Civ 1123:**

> "47. The relevant principles are, in summary, as follows.
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> (1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".
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> (2) The focus is on the child. The issue is the risk to the child in the event of his or her return.
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> (3) The separation of the child from the abducting parent can establish the required grave risk.
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> (4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish 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 establish how the child can be protected from the risk.
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> (5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.
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> (6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.
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> (7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.
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> (8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.

> (9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance.
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> (10) As has been made clear by the Practice Guidance on "Case Management and Mediation of International Child Abduction Proceedings" issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks."

27. To the above, I would add a particular aspect of Article 13(b) as expressed by Lord Wilson in **Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10** at para 34:

> "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".

28. Similar dicta were made by Hale LJ in **TB v JB [2000] EWCA Civ 337** at para 44.

29. In **Re C (Children) (Abduction: Article 13b) [2018] EWCA Civ 2834** at para 39 Moylan LJ made clear that it is not the case that the court has to accept allegations made without conducting an assessment of the credibility or substance of the allegations:

> "In my view, in adopting this proposed solution, it was not being suggested that no evaluative assessment of the allegations could or should be undertaken by the court. Of course a judge has to be careful when conducting a paper evaluation but this does not mean that there should be no assessment at all about the credibility or substance of the allegations…"

30. In **Re C (Article 13(b)) [2021] EWCA Civ 1354**, Moylan LJ emphasised that the risk to the child must be a future risk (paras 49-50). He cited from the Good Practice Guide to emphasise that:

> "… forward-looking does not mean that past behaviours and incidents cannot be relevant to the assessment of a grave risk upon the return of the child to the State of habitual residence. For example, past incidents of domestic or family violence may, depending on the particular circumstances, be probative on the issue of

whether such a grave risk exists. That said, past behaviours and incidents are not per se determinative of the fact that effective protective measures are not available to protect the child from the grave risk".

31. In **Re D (A Child) (Abduction: Rights of Custody) [2007] 1 AC 619** at para 52 Baroness Hale described intolerability in this way:

> "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". It is, as article 13(b) makes clear, the return to the requesting state, rather than the enforced removal from the requested state, which must have this effect. Thus the English courts have sought to avoid placing the child in an intolerable situation by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there. In many cases this will be sufficient. But once again, the fact that this will usually be sufficient to avoid the risk does not mean that it will invariably be so. In Hague Convention cases within the European Union, article 11.4 of the Brussels II Revised Regulation (Council Regulation (EC) No 2201/2003) expressly provides that a court cannot refuse to return a child on the basis of Article 13(b) "if it is established that adequate arrangements have been made to secure the protection of the child after his or her return". Thus it has to be shown that those arrangements will be effective to secure the protection of the child. With the best will in the world, this will not always be the case. No-one intended that an instrument designed to secure the protection of children from the harmful effects of international child abduction should itself be turned into an instrument of harm.

32. An analysis of the approach to protective measures is set out by Cobb J in (**Re T (Abduction: Protective Measures: Agreement to Return) [2023] EWCA Civ 1415** where he drew attention (per para 45) to the following which seem to me to be of particular relevance to this case:

> "iii) The need for the court to be satisfied, when necessary for the purposes of determining whether to make a summary return order, that the proposed protective measures are going to be sufficiently effective in the requesting state to address the article 13(b) risks;
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> iv) The status of undertakings containing protective measures, and their recognition in foreign states;"

33. I bear in mind also what MacDonald J said in **G v D [2020] EWHC 1476 (Fam)** at para 39:

> "Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State

(see for example Re H (Abduction: Grave Risk) [2003] EWCA Civ 355, [2003] 2 FLR 141, Re M (Abduction: Intolerable Situation) [2000] 1 FLR 930 and Re L (Abduction: Pending Criminal Proceedings) [1999] 1 FLR 433). In this context I note that Lowe and others observe in International Movement of Children: Law, Practice and Procedure 2nd Edt. at paragraph 24.55 that: "Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or, even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases."

34. When considering the domestic abuse allegations made by the Mother, I have taken into account the definition of domestic abuse at s1(3) of the Domestic Abuse Act 2021, PD12J and the jurisprudence as to the impact on child welfare of domestic abuse, including **Re H-N [2021] EWCA Civ 448**.

35. The Mother says that she experienced "hardship and trauma" during her childhood. She was brought up in poverty. Before meeting the Father, she was in an abusive relationship with her former partner. That is the context within which she places her case.

36. She makes serious allegations against the Father:

i) That between June 2020 and their marriage in September 2020 he was verbally and emotionally abusive and on one occasion, physically assaulted her.

ii) After the marriage, the abuse continued. He controlled the finances which meant that she had to borrow funds from her own family. In 2021, while she was pregnant, he hit her with a mop handle, a curtain rod and a hunting tool. He was verbally and physically aggressive. In 2023 he stuck her with a piece of wood, as a result of which she went briefly to a women's refuge and made a complaint to the police which she then retracted (on her case, at the Father's insistence). She produces photographs of the injuries.

iii) During the relationship, she was terrified of the Father. She felt isolated.

iv) The Father has continued to behave aggressively since her move to the UK. In a phone call in December 2024 when the Mother says she told the Father that she would not return, he became aggressive, telling the Mother to come to the airport and that she would be "swimming in her own blood". He told her that she should tie a rope around herself, throw it over a tree, stand on a chair and get the oldest child to kick the chair away.

v) She has produced a number of WhatsApp voice messages from the Father, all left by him on her phone in September 2025, in the run-up to this hearing. They are thoroughly distasteful, unpleasant and abusive. It was remarkably foolish of him to do this, and indicative in my judgment of a propensity to abuse verbally the Mother. The Father accepts he left the messages, and that he should not have done so. It seems to be common ground that he was prompted to do so by the Mother's elder son sending him a photoshopped

picture of the Mother with another man, from which the Father incorrectly inferred that she was in a new relationship and the children would be living with the Mother and her partner. That cannot excuse the content of these messages which include threatening to remove the children from her and make sure she does not see them again, saying "I pray to God that a lorry or car hits you", she should end her own life and "You have to abide by what I tell you".

vi) So, says the Mother, she is in a state of psychological and emotional distress, and could not feel safe in Mauritius. She and the children are much happier in England.

37. The Father disputes the allegations. He says the Mother has never approached the police or authorities save for the one complaint which she withdrew, saying it was fabricated under pressure from her family.

38. He points to relevant Mauritian law which protects victims of domestic abuse:

i) The Protection from Domestic Violence Act 1997 entitles the Mother to seek protection and occupation orders, which carry criminal sanctions if breached;

ii) The Children Act 2020 which makes abuse against children a criminal offence.

39. He also points to organisations set up to assist victims of domestic violence in Mauritius, including the Family Welfare and Protection Unit, the Child Development Unit and La Brigade Pour La Protection de la Famille.

40. He offers a number of protective measures:

i) Not to begin criminal proceedings in Mauritius

ii) Not to have any contact with the Mother or children prior to the first hearing in Mauritius

iii) To agree to the equivalent of a non molestation order.

iv) To arrange separate accommodation for her and the children or to move out of the family home for up to three months to enable her and the children to live there.

v) To provide her with £175pm maintenance out of his total salary of £400 per month., This would give her some security pending future hearings.

vi) M would be separated from her family here which she says is gravely

vii) To pay for the children's education.

41. In response the Mother, while making it clear that she opposes a return order to Mauritius, says that she would accompany the children if one is made, and seeks a wider range of protective measures than those offered by the Father.

42. It seems to me appropriate in this case to take the Mother's allegations of domestic abuse against her at their highest. There is some photographic evidence, of injuries albeit a bit blurred and not by itself probative of causation and identification of the Father as a perpetrator. I accept that the Mother's inconsistent presentations about whether the Father consented to the removal or not casts some doubt on her overall veracity. As against that, she did make a complaint to the police (notwithstanding the dispute about her motives for doing so) and the recent transcripts are evidential of the Father being prone to, at the very least, angry outbursts and threats.

43. I remind myself that the issue is the effect on the children of a return. There is minimal evidence of direct abuse towards the children. There is nothing to suggest that the children did not have a good relationship with their Father before leaving Mauritius. Clearly to return to Mauritius would represent some upheaval, but it would be a return to a country which they know well and I am confident that they would adjust reasonably quickly. I have no reason to doubt that the Mother feels anxious at the prospect of a return to Mauritius but there is no psychological evidence, whether clinical or expert, as to the current state of her mental health, the impact on her of a return to Mauritius and whether her ability to care for the children would be significantly impaired such as to make a return intolerable for them (the **Re S** dicta). I am not satisfied that the impact on her would be such as to directly compromise her care of the children, nor that it would have a consequential effect on the children which would represent a grave risk to their wellbeing. The Mother through counsel informed me that if she and the children return to Mauritius, her 15 year old son (who is not a subject of these proceedings) will stay in England with a family member. That is apparently his wish, supported by the Mother who could require him to accompany them back to Mauritius but would choose not to. Counsel for the Mother did not put this forward as a major factor in the Article 13(b) evaluation.

44. I am not persuaded, contrary to her case, that she left Mauritius wholly or mainly because of the Father's abusive conduct towards her. I accept that domestic abuse is a relevant factor in these proceedings, but as I have indicated above it is in my judgment more likely that she was motivated by a desire to embark upon a better life with greater financial and social prospects. That said, the court needs to be satisfied that the risk to her (and thereby to the children) of a return is properly mitigated.

45. I also take into account the evidence I have seen about the recognition under Mauritius law of the effect of domestic abuse, the available legal protection, and the support networks for victims. There is no material evidence to displace the proposition that Mauritius has established procedures (legal and social) to protect vulnerable people from domestic abuse and its consequences.

46. Overall, in my judgment the potential risks to the children which, taking the Mother's case at its highest, potentially bring Article 13(b) into play are: (i) witnessing domestic abuse and/or being exposed to its pernicious effects in the event of a return to Mauritius, (ii) being separated from their mother who has been their sole carer since December 2024 without proper inquiry by the Mauritian courts (the reference in recent voice messages to removing the children form her care are particularly concerning) and (iii) being otherwise subjected to unilateral actions by the Father.

47. It seems to me that in principle these can adequately and safely be addressed by the protective measures sought by the Mother, although I propose to amend aspects of her proposals. In my judgment the following protective measures are required:

    i) Undertaking or court order that the Father shall not commence or support criminal proceedings in Mauritius against the Mother for child abduction.

    ii) Undertaking or court order that he shall not contact the Mother directly or indirectly, save for agreeing contact arrangements or in an emergency, or through solicitors

    iii) Undertaking or court order that he will not use or threaten violence against, or harass, the Mother and children nor encourage any other person to do so.

    iv) Undertaking or court order to vacate the family home for not less than 6 months to enable the Mother and children to live there. If she elects not to do so, and instead to go to a rented property, he must pay for 6 months accommodation (and a deposit, if required) up to £200 per month. I did not have direct evidence about the cost of renting a property, but the Mother's solicitors have made inquiries and suggest that £200-£400pm is appropriate, and the Father thinks about £160pm would suffice. If the Mother needs or wants more, she will need to provide some additional funding of her own.

    v) Undertaking or court order to pay for the return flights of the children limited to £400 per child (the Mother to pay for her own flight).

    vi) Undertaking or court order not to attend the airport in Mauritius on their return.

    vii) Undertaking or court order that he will not remove the children from the care of the Mother (whether permanently or for periods of contact) without agreement in writing or a court order.

    viii) Undertaking or court order to pay £200 per month child maintenance unless and until varied by the court. This only applies if the Mother returns to the family home or other accommodation where she does not have to pay rent. If she goes into a rented property, the Father shall pay £100 per month child maintenance.

    ix) Undertaking or court order to meet the children's education costs (if required).

48. However, there is no formal evidence before me as to whether and how these protective measures can be enforced. Mauritius is not a signatory to the 1996 Hague Convention which provides a framework for recognition of certain orders in reciprocal signatory jurisdictions. I do not know if the Mauritian court would make a mirror order to reflect an order of the English court in these proceedings, or if a fresh order can be made incorporating the proposed protective measures. I do not know if undertakings can be given in Mauritius, or if undertakings given in this country would be recognised in Mauritius. I do not know if orders or undertakings made either here or in Mauritius are enforceable. The need to be confident that such orders/undertakings can be made

and enforced is particularly important given the Father's threats to remove the children from the Mother, albeit made in the heat of the moment in recent messages.

49. The Father's Mauritian lawyer attended this hearing remotely with the Father. The Mauritian lawyer, through the Father's counsel, says that an English order and undertakings are recognisable and enforceable in Mauritius, and I have been referred to **C v M [2023] EWHC 208 (Fam)** where Theis J had evidence on Mauritian law whereby recognition is effected by exequatur process.

50. I therefore reach the conclusion that a return order within 14 days should be made on condition that the Father ensures that all the protective measures are incorporated in orders and/or undertakings which are enforceable. These must be in place before the return. The Father must take the lead in obtaining the necessary exequatur (or such other process in Mauritius as achieves the outcome provided for in this order). He must pay for it, and the Mother must cooperate in the process, including participating in a joint application if that is the most practical and efficient way of obtaining recognition or other appropriate orders to give effect to this judgment. The return order shall be stayed pending implementation of the protective measures in this way.

51. Finally, I remind the parents that the effect of this decision is not to make any determination about child arrangements i.e. who the children should live with, whether a relocation order should be made, how much time they shall spend with the other parent and contact with their half sibling. That is for the Mauritian courts to decide. I sincerely hope that the parents will reach a sensible agreement on these matters once the dust has settled.