Neutral Citation Number: [2019] EWHC 1412 (Fam)

Case No: FD19P00015

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Preston Combined Court Centre
Openshaw Place, Ringway
Preston, PR1 2LL

Date: 06/06/2019

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

NG	**Applicant**
- and -	
GA	**Respondent**

- -
- -

Ms Sara Mann (instructed by **KHF Solicitors**) for the **Applicant**
The Respondent appeared in person

Hearing dates: 8 and 9 May 2019

- -

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.

.....

THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

BACKGROUND

1. In this matter I am concerned with the welfare of MA, born in 2009 and now aged 10. MA's mother, NG (hereafter 'the mother') applies for an order requiring the father, GA (hereafter 'the father'), to return MA to the jurisdiction of England and Wales from the jurisdiction of the Republic of Ghana. The mother is represented by Ms Sara Mann of counsel. The father appears in person. The father resists the application, essentially on two grounds, first that the mother agreed to MA going to Ghana for the purpose of improving his education and second, that in any event, it is in MA's best interests to remain in Ghana for approximately two years whilst he catches up educationally, the father contending that MA was behind in his education in England.

2. In determining this matter I have had the benefit of a bundle of documents which includes statements from the mother and the father, together with exhibits, medical records with respect to MA and reports from his schools in England and in Ghana. In addition, the father has produced at this hearing MA's exercise books from his English school dating from 2014 and school work completed by MA in Ghana, which the father submits demonstrates the progress MA has made has made since being enrolled in education in that jurisdiction. In addition to the documentary evidence, I have had the benefit of hearing oral evidence from the mother and from the father, and submissions from Ms Mann and the father.

BACKGROUND

3. This father is a Ghanaian national. The mother is a British national. The mother and the father were in a relationship between 2006 and 2012. MA is the parties' only child. He is a British Citizen and prior to his removal to the jurisdiction of Ghana had always resided in the United Kingdom.

4. MA, like his mother, suffers from Cornelia de Lange Syndrome (hereafter CdLS). CdLS is a genetic disorder that can impact an individual in a varied manner, including cognitive impairment. In 2009 a report from Helen Austin, Educational Psychologist concluded as follows:

> "MA has Cornelia de Lange syndrome. The scores that he achieved on the cognitive assessment were in the low or very low range with the exception of Verbal Comprehension which was in the below average range. MA has significant difficulties with speech and language skills and his performance on this scale is in contrast to how he presents functionally in that he experiences significant difficulties understanding language. It is likely that this is explained by the use of visual/concrete resources within the test which helped him understand instructions. MA's fine motor skills are delayed and he had particular difficulties with tasks which required these skills. MA's literacy and numeracy skills are delayed. During the assessment he experienced particular difficulties with phonological skills. He is reported to be more responsive to a whole word approach."

5. Within this context, I note that in 2009, when MA was five years old, the father was concerned about MA's literacy and numeracy skills and worried that MA did not yet

know the alphabet. The social services records from June 2018 that are before the court indicate that the father "at times finds it hard to accept MA's learning need". The father's preoccupation with MA's educational progress, and his view that it was not proceeding with sufficient expedition is a subject I shall return to again later in this judgment.

6. The court also has before it a report from MA's general practitioner dated 3 May 2019. That report, which is not challenged, indicates that following his birth MA displayed some features of CdLS. The general practitioner notes that CdLS will not prejudice MA's general health but that MA demonstrated early speech difficulties and was referred for speech and language therapy in 2012. By 2014 the general practitioner relates that MA was demonstrating clear speech and language difficulties, with learning difficulties suspected. He was also displaying behavioural issues, including unprovoked aggression towards other children. The general practitioner reports that MA "has largely been lost" to follow up from a paediatric clinic due to missed appointments. He considers that MA may continue to encounter speech and language difficulties and to exhibit learning difficulties. The social services records available to the court confirm that MA has a learning disability, as do the records provided by MA's school and specifically his Education and Health Care Plan (ECHP) for 2018.

7. Historically, children's services have been involved with the mother. The court has before it two statements from Wendy Smith, a social worker, detailing that involvement. The contents of those statements were not challenged by the father. The mother has had four other children removed from her care within the context of difficulties with her mental health and issues of domestic abuse in the family.

8. Given this history, upon his birth MA was referred to the local authority and care proceedings were issued. Within this context, on 25 January 2010 Her Honour Judge Kushner made a supervision order in favour of the local authority for a period of 12 months. The following recital appears on the face of that order:

> "The Father's role is pivotal in supporting the Mother to care for the child, MA, date of birth 2 March 2009, and should the second respondent Father not continue to live with the first respondent Mother then the Local Authority would need to consider urgently the continuing placement of the child with his Mother."

9. The parties were not able to recall any other proceedings concerning MA and the court has no record of any further orders being made. In particular, for reasons that will become apparent, it is important to note that at no point does there appear to have been in place an order either restricting or otherwise regulating the mother's contact with MA or an order restricting or removing her parental responsibility for MA. Whilst at one point in the social services records it is recorded that "previous court proceedings had stated that unsupervised contact was not allowed", such a restriction is not apparent on the face of the final supervision order made by HHJ Kushner dated 25 January 2010, and no other order to this effect has been located.

10. Within the foregoing context, following the conclusion of proceedings under Part IV of the Children Act 1989 in 2010, MA was living with his mother. Within this context, the statement of Wendy Smith relates that the local authority was again

involved with the family in 2012, which involvement comprised the instigation of a child in need plan. That involvement appears to have commenced following MA being seen to have a bruise to his face, it becoming apparent that the father had returned to Ghana and the mother was parenting MA alone. The documents before the court concerning this period suggest that at some point in 2012 a "decision" was taken that the mother should not have unsupervised contact with MA. In the absence of any court order to this effect, the legal basis for such a condition being imposed on the mother's contact at this point is not clear, nor is the identity of the decision maker. During this period, and as the mother confirms in her statement, the parents separated and the father took over primary care of MA.

11. The statement of Wendy Smith states that the following concerns regarding the mother led to the imposition in 2012 of a condition that the mother's contact with MA be supervised:

    i) The mother's experiences of poor parenting and the fact that she had had four previous children removed from her care in previous care proceedings due to issues of neglect;

    ii) An assessment of the mother that indicated she was not able, by reason of her learning disability, able to provide 'good enough' parenting to MA;

    iii) Certain unparticularised 'historical difficulties' with the mother's mental health.

12. The Child in Need Plan instigated in 2012 came to an end in 2013. In January 2015 the mother reported to social services that the father had smacked MA hard five times. An investigation revealed no evidence of physical abuse. In May 2017 a referral was made by the education department to children's services following what was said to be a sighting of MA unsupervised in his mother's care. Whilst the mother and father were said to have given inconsistent accounts, Children's Services considered that there was good evidence that MA had been having unsupervised contact with his mother.

13. I pause to note at this point that in their respective evidence both parents confirmed that MA would have extensive unsupervised contact with his mother, including overnight staying contact. The father made clear that MA would also have unsupervised contact with his mother when he, the father, was at work. It is plain from that evidence that this extensive contact was taking place up to the point at which the father took MA to Ghana on 24 July 2018.

14. The last involvement of Children's Services with MA occurred in March 2018 when an assessment was undertaken following the mother informing the school that the father had assaulted MA at her home on the evening of 14 March 2018. The police spoke to MA at school who told them that his father had smacked him with an open hand on the back of the head and on his arm after he had soiled himself. MA did not exhibit any injuries. The mother also conceded using smacking as a method of discipline. A Child in Need plan was put in place to provide advice and support on alternate punishments, structured routines and boundaries. Within this context, a social worker was allocated to MA between 26 March 2018 and 21 June 2018.

15. Over this period a further assessment was undertaken to "understand what, if any, are the risks to MA now and how these can be managed in the future". Wendy Smith states as follows regarding the outcome of the assessment:

> "The outcome of the assessment was that [the mother] would struggle to parent MA alone due to her CdLS which presents as developmental delay and learning difficulties. However, it appeared that the way in which father and mother were sharing parenting of MA had been successful in reducing the risk to MA since the end of the CP plan in 2013 and there were no significant concerns relating to mother. Following the assessment and supporting being provided around parenting, parents agreed to a plan in which the mother was allowed unsupervised contact no more than 2 nights per week and that [the father] would retain primary care of their son. This was still the understanding of care arrangements when MA closed to children' (*sic*) social care in June 2018."

Once again, the legal basis on which the local authority sought to regulate the mother's contact with MA absent any court order is entirely unclear, albeit the mother appears to have agreed to the conditions stipulated following the assessment. In any event, the evidence of the social worker is clear that the parents were sharing care of MA and that the mother was having extensive contact with MA. The social services records report that MA considered that his contact with both parents was positive. MA is recorded as telling social workers in June 2018 that he loved his mother and wanted to spend time with her.

16. Within this context, prior to the removal of MA from the jurisdiction on 24 July 2018 the mother asserts that she had care of MA on a regular basis, with MA coming to her house each evening after school before being collected by the father later in the evening upon the father finishing work. The mother asserts that MA would also spend time with her over the course of a weekend, staying from Friday to Sunday. The mother states that MA would spend additional time with her during the school holidays. During the course of cross examination the father conceded that the mother's description of the time she spent with MA prior to his being taken to Ghana was accurate, albeit that the father asserted that the mother at times struggled to cope with MA and would often telephone him and require him to leave work early to collect MA from her care.

17. With respect to MA's removal to the jurisdiction of Ghana on 24 July 2018, the mother contends that the father stated that he was intending to take MA on a holiday to Ghana and that, within this context, she believed that MA would be returned to United Kingdom in time of the start of the English school term in September 2018. The father contends that the mother agreed to the father taking MA to Ghana for a period of some two years in order to improve his education. The mother denies emphatically that she gave any such agreement.

18. It is clear from the social services records that as at June 2018 the father remained pre-occupied with MA's educational progress, the Children's Services Closure Record of 21 June 2018 recording that:

> "Parents have both had work completed with them around MA's learning need, however although this appears to have increased fathers (*sic*)

> understanding he would still like MA to read and write better and believes he has the ability to do so. School will need to continue to work with father around his understanding and expectations of MA."

19. It is also clear from the social services records before the court that, ahead of the decision to close the case on 21 June 2018, a meeting was held on that date at MA's school. The following extracts from the record of the meeting are relevant:

> "Summary of Child's Views – MA was visited by myself at mums (*sic*) property during half term. MA reported eh (*sic*) was excited to be going to Ghana with his father during the summer holidays and has been counting down the days."

And

> "School have completed some consequence work with the whole family and they continue to work with family in regards to understanding MA's learning needs...case will now be closed to CSC with school to monitor."

And

> "Both parents are happy for CIN plan to end. Parents feels (*sic*) that this intervention has been positive overall as it has given them a visual aide to help with MA's behaviour. Father still wants MA to read better and it is hopeful with time and support he will achieve a good level of success."

20. The court also has had the benefit of seeing the school's record of the meeting held on 21 June 2018. With respect to the recording regarding the father's intentions with respect to travel to Ghana, the records state as follows:

> "Dad is taking him (*MA*) on holiday on 24 July but would not say when he is back. MA will be going to school whilst he is on holiday. Dad talked about him learning to read and said the person on the Arabic learning centre said he could read and he needs more support. I deed that dad still does not accept MA's learning difficulties. Social worker is stepping down now and said even though dad may take MA to his home he can't be stopped from leaving him there as he has custody."

21. Within this context, I am satisfied that the records available to the court from the meeting held at the school on 21 June 2018 tend to suggest the following:

i) Whilst expressing his wish for MA to improve his reading and a hope that with support this could be achieved, the father did not expressly state an intention to remove MA from the jurisdiction for an extended period in order to achieve this and clearly described the trip as a "holiday". It is however, also clear that the father would not provide a return date and stated that MA would be attending school whilst on "holiday" in Ghana.

ii) The school and children's services were contemplating that the school would continue to work with the father regarding his understanding of MA's learning needs and to monitor MA's welfare rather than contemplating that MA would

be being removed from the jurisdiction for an extended period of time. This view is reinforced by the fact that the school reported MA as missing when he did not return prior to the start of term in September 2018. It is however, also clear (from these records and from a letter from the headteacher of the school dated 1 April 2019) that the professionals present at the meeting were concerned, from what the father had said, or had not said, that there was a possibility that the father may leave MA in Ghana.

iii) MA himself was contemplating being in Ghana "during the summer holidays" rather than outside the jurisdiction for a longer period of time;

22. In their written and oral evidence, both parents gave accounts of what they contended had transpired at the meeting on 21 June 2018. In his second statement, and in contrast to the records of the meeting before the court, the father states that he expressly indicated that MA would be educated in Ghana from September 2018:

> "At the meeting [the teacher] enquired of me in front of everyone, if MA was going to be educated in Ghana from September and I gave a positive answer, so all the appropriate parties were fully aware before MA left education in the UK, it is why I never received any letters from [the school]."

By contrast, in her statement, and consistent with the tenor of the notes of the meeting on 21 June 2018 provided by the local authority and by the school, the mother asserts that the father was asked during the meeting when he and MA were due to return to the jurisdiction of England and Wales and did not provide an answer to that question.

23. With respect to the question of whether the mother consented to the father removing MA from the jurisdiction of England and Wales for an extended period in order to improve his education, in her first statement the mother asserts, as I have noted, that the father informed her that MA was going on holiday to Ghana and would be returning prior to commencement of the school year in this jurisdiction. The mother states that, on this basis, she gave her agreement to MA being taken to Ghana for the summer holidays, fully expecting him to be returned in time for the commencement of the school term in this jurisdiction in September 2018. During her oral evidence the mother stated that she had not agreed to MA living in Ghana, emphatically asserting that there was "no chance" she had done so.

24. With respect to question of the extent to which the father discussed with the mother alternative schooling for MA in light of his concerns about MA's educational progress, the mother states as follows in her statement to this court:

> "The [father] had previously mentioned to me that he was not happy with the progress MA was making at school. I felt that he lacked understanding of MA's special needs and always wanted MA to make progress like that of [a] child of his age without his condition. I recall on one occasion the Respondent showed me pictures of another school saying he was considering the school for MA, I advised the Respondent that I felt that MA's current school were (*sic*) working out well with him and I felt it was bet (*sic*) for him to continue attending there. At no point did it ever cross my mind that the pictures he was showing me were of a school in Ghana."

25. Within the foregoing context, I note that in his letter to the mother's solicitors dated 23 December 2018, written in response to a request to clarify the position in respect to MA's return, at no point does the father suggest that the mother agreed to the removal of MA from the jurisdiction beyond the duration of the school summer holidays. Likewise, in his first statement to this court, the father made no mention of the mother having given her agreement to MA being removed from the jurisdiction beyond the summer holiday the mother contends the father discussed with her. The father likewise does not assert that the mother provided her agreement in his second statement, asserting only as follows:

> "[3] My former wife [the mother] was aware of me taking my son to Ghana due to my increasing concerns of the lack of support and progress academically and psychologically in his previous institutions of study.
>
> [4] I have always been completely transparent with [the mother] on both our son's exact location, and the plans of him moving there. I also provided [the mother] with the telephone number on which to communicate with him, and not at any point had ever prohibited or hindered communication between [the mother] and MA."

26. Within this context, during the course of his oral evidence the father initially sought to go further than his sworn statements by suggesting that the mother had provided her express agreement to MA being taken to Ghana for an extended period to improve his education. However, during cross examination by Ms Mann, the father's account evolved into one of the mother having appeared "happy" about the father's proposals. Ultimately, the father's account came to rest on the assertion that:

> "She was happy when I show her the school. She showed me a face that was happy. She never said she agreed but I thought she was happy. She said she wanted him to stay in [named English school], she did not give her agreement on that day."

Accordingly, the father conceded in cross-examination that at no point had the mother expressly agreed that MA could be taken to Ghana for a period extending beyond the summer holiday she understood was being proposed. It will also be noted that his evidence is consistent with that of the mother's assertion that she made clear she wished MA to stay in his school in England.

27. The father accepts that he travelled with MA from the jurisdiction of England and Wales to Ghana on 24 July 2018. The mother contends that when she spoke to MA at the airport before he left for Ghana it was on the basis that she would see him in "a few weeks time". The mother further contends that a week after MA left she managed to speak to him and was told by MA that his father had taken him out of his school in England. The mother states that MA appeared upset by this development and that the father refused to give her a date for their return.

28. The mother further contends that following MA's arrival in Ghana she had great difficulty in securing indirect contact with MA. Following her conversation with MA a week after he left, the mother asserts that whilst she was able to get through to Ghana in August 2018, she was told by the father that MA was not available and the call was terminated. The mother states that she was again able to get through to the

father on 1 September 2018 but was again told that MA was not available and the call was again terminated. She asserts that she continued to be stonewalled by the father regarding when MA would be returned to the jurisdiction of England and Wales.

29. Following MA's removal and her inability to obtain confirmation from the father as to when he would return MA, the mother initially sought assistance from social services and the police. She was informed by the local authority that it could take no action in circumstances where MA was not now in the jurisdiction. With respect to the police, the mother states that they recorded the father and MA as 'missing persons' but appeared to take no further action.

30. Within this context, I note that Police Public Protection Investigation Unit (PPIU) are recorded in the disclosure provided by the police as having advised that the mother "has had her parental rights removed" This is plainly incorrect and, if an accurate recording, represents a complete misunderstanding of the law on the part of the PPIU. No order has ever been made by the court divesting the mother of her parental responsibility for MA, which outcome ordinarily could only obtain in the event an adoption order had been made. This complete lack of understanding of the correct legal status of the mother also seems to have pervaded the position taken by the school. In her letter of 1 April 2019, the headteacher of the school states, wholly incorrectly, as follows:

> "School staff had some concerns around the possibility that MA may not be returned to the [jurisdiction/home/school] following his planned visit abroad during the summer. School's concerns were in response to a previous visit abroad (resulting in the loss of place at a mainstream school prior to coming to [his present school]). However, as his father has parental responsibility and his mother does not, we were advised that we could not prevent this."

31. On 30 November 2018 the father returned to the United Kingdom without MA, who remained in Ghana. Both of MA's parents now remain living in this jurisdiction and, accordingly, there is no one with parental responsibility having care of MA in Ghana. The mother contends that the father advised her that he had enrolled MA in a private school and considered this was in his best interests as he was improving academically. The mother states that the father again made no mention of a return date.

32. At this point the mother instructed solicitors, who wrote to the father with a view to ascertaining his intentions. The father replied that MA would be returning to the United Kingdom for the Summer holidays in 2019 but would thereafter go back to Ghana to resume his schooling. I pause to note that whilst he repeated in evidence the assurance that MA would be returned to this jurisdiction for the Summer holidays, in an effort to demonstrate that MA's continued absence in Ghana would not interfere with his relationship with his mother, in response to being asked whether he would obey any court order requiring the return of MA the father then claimed he did not have the funds to bring MA back to the United Kingdom.

33. In the letter dated 23 December 2018 to the mother's solicitors to which I have referred above, the father confirmed his rationale for removing MA to the jurisdiction of Ghana, which rationale again evidences his pre-occupation with MA's educational

progress and which, as I have noted, suggests a unilateral decision to remove MA from the jurisdiction:

> "As a parent, it was hard to know after sending my son to school including a special needs school, my 9 year old son couldn't even write his name. I don't remember my child bringing homework home. I raised concern with the school and they decided he'll need a one to one intervention in school but even that didn't help. Reciting the alphabet was even becoming a problem. I noticed there was no improvement in my child's education. I had to do something about it as I felt my child's future was at risk. I made the decision of sending him to a private school in Ghana which can say for a fact is the best decision I made".

34. In his second statement, the father asserts that MA now lives with his Aunt and Paternal Grandmother in Ghana and socialises regularly with his extended paternal family, with whom he has developed a close relationship. The father contrasts this with an alleged lack of relationship between MA and his extended maternal family in this jurisdiction. That contention is disputed by the mother, who asserts that MA has a close relationship with his half-brother, his maternal aunt and his maternal cousins and his maternal grandmother. The father was initially highly evasive in evidence regarding the precise whereabouts of MA in Ghana, even claiming that it was not possible to provide an address. However, when pressed by the court the father eventually provided one. The father states that he sends money each month (stated as £300 per month at points in the documentation before the court) for school fees and upkeep. Again, I pause to note that in response to being asked whether he would obey any court order requiring the return of MA the father claimed he did not have the funds to bring MA back to the United Kingdom

35. The father further contends that MA is doing a lot better educationally in Ghana than he was when at school in this jurisdiction. To that end, the father exhibits to his second statement a report for December 2018 from the school that MA now attends in Ghana. The report records that MA is performing well across all subjects save for creative arts and ICT (in the sense that it provides the basic grades which it is said that MA is achieving in his various subjects). In the narrative sections of the report, MA is described as easily distracted and as requiring a lot of prompting to complete exercises. The report of the head of school notes that whilst he is doing well, "he easily loses concentration when working and that makes it difficult for him to finish his assignments on time". It is striking in my judgment how closely these latter comments mirror those set out in the documents provided from MA's school in this jurisdiction.

36. Of particular note within this context with respect to the information provided by the school in Ghana is the fact that there is no mention *at all* in any of the material provided by the Ghanaian school of the fact of MA's CdLS, the nature of its impact on his learning or of any steps that are being taken by his current school to address MA's medical condition and its consequences. This is *not* to criticise the educational provision in Ghana as it would not appear that the school in Ghana has been provided by the father with *any* of the voluminous information regarding MA's educational needs that has been produced in this jurisdiction.

37. Within this context, it would appear that the school in Ghana has placed MA on the standard curriculum for that system. There is no suggestion that he is receiving special educational support or other additional input with respect to the established consequences of his CdLS. By contrast, the evidence before the court regarding MA's education in this jurisdiction indicates that prior to his removal from the jurisdiction in July 2018:

    i) MA was placed at a special school setting with £10,000 funding and £8,500 top up funding to ensure that he received the special educational provision he required.

    ii) MA was provided with special school transport to ensure his attendance, which for 2016-17 was 99.5% and for 2017-18 was 99.2%.

    iii) MA was provided with positive intervention and support from trained staff in a special school setting, including a high staff to pupil ratio.

    iv) MA was made the subject of an Education Health and Care Plan (EHCP) setting out in detail his needs and how those needs were to be met within a special school setting.

    v) MA was the subject of regular review with respect to his special educational needs in the areas of approaches to learning, communication, social and emotional development and physical, sensory and medical needs.

    vi) MA had provision for speech and language therapy.

    vii) MA's parents were invited to and attended reviews of his SEN statement and, later, his ECHP.

38. Within the context of this package of special educational provision, the most recent report provided to the court by MA's school in this jurisdiction states as follows regarding his progress:

> "MA made good progress at school, this being in line with his level of special needs and learning difficulties – school progress records attached. MA was not struggling to make progress, but the progress made was significantly less than that of typically developing children in mainstream settings and was in line with his special educational needs. MA presented occasionally as mischievous but did not exhibit uncontrollable behaviour. Again, his responses were developmentally appropriate and he responded to positive intervention and support from trained staff in the special school setting. MA's level of special needs is detailed in his ECHP, attached."

39. On 11 January 2019 the mother made an application under the inherent jurisdiction without notice to the father for MA to be made a ward of court and for an order requiring the father to return him to his jurisdiction. On that date, HHJ Richards sitting as a judge of the High Court made MA a ward of court and made a passport order, resulting in the seizure by the Tipstaff of the father's passport. Notwithstanding that the application was made without notice, HHJ Richards went on summarily to order that that father return MA to the jurisdiction of England and

Wales forthwith and attached a penal notice to that order. The father did not comply with the same.

40. At a further directions hearing on 25 January 2019 the father indicated that he intended to contest the mother's application and Roberts J listed the matter for hearing on the first open date after 20 February 2019. The matter came before me on 5 March 2019 and I gave case management directions towards this final hearing. On that date made an order requiring the father to make MA available for indirect contact with the mother every weekend on Saturday between 12.30 and 1.30pm and on Sunday between 12.30 and 1.30pm. A recital to the order, which recital I explained to the father, read as follows:

> "AND UPON the court indicating that in the event that contact does not take place as ordered by the court will consider that matter in due course as one of the factors relevant to the best interests decision as to whether the child should be returned to the jurisdiction of England and Wales."

41. The mother contends in her statement that notwithstanding the order of this court, she has continued to experience great difficulty in maintaining contact with MA in Ghana. Whilst the mother was provided with a telephone number with which to contact MA, she asserts that she has not been able to secure regular contact with him. The mother states that she is repeatedly told that MA is sleeping or has not yet returned from Arabic school and that, when contact does occur, the connection is of poor quality and takes place in the presence of other family members, causing MA to become distracted. During contact on MA's birthday the mother asserts that the call disconnected after only a few minutes and the mother was unable to reconnect. The mother contends that there have been a number of occasions when it has not been possible to make contact. Indirect contact has also been rendered difficult by the mother's own limitations, which render the use of smart phone technology difficult for her.

42. In addition to the difficulties in securing contact, the mother asserts in her statement that the father has being giving MA information that is not appropriate for a child of his age, the mother alleging that during a recent telephone contact, "MA asked me why I am taking his father to Court". During cross-examination the father admitted that he had told MA about the proceedings in England and stated that he believed that this was the appropriate thing to do.

43. On 17 April 2019 the matter came before the court for pre-hearing review. The court *again* reiterated to the father that the difficulties with contact were not acceptable for MA and reiterated that the effectiveness or otherwise of indirect contact would be a factor that the court would have to take into account when deciding whether it was in MA's best interests to order his return to this jurisdiction. Within this context, in her oral evidence the mother again alleged that difficulties with contact continue and that her emotional and psychological relationship with MA is now being seriously prejudiced by his continued retention in Ghana. With respect to this latter point, I note the following observation by Wendy Smith in her statement of 8 April 2019:

> "It was the previous social worker's view that it is important for MA to retain a good relationship with his mum and that [the mother] is able to offer some elements of parenting which [GA] does not such as emotional

> warmth. [The mother] is also key in MA's identity and his understanding of living with CdLS. Whilst [the mother] may not be able to help him understand the intricacies of his condition, she does shar the same characteristics both behaviourally and in terms of special facial features which is positive for MA to see. However, she does seem to require some support in terms of her boundaries which will need to be more robust to offer MA that consistency between school and home."

44. I am now required to decide whether to order the return of MA to the jurisdiction of England and Wales as urged in the mother's application. The father continues to oppose that application. It is clear he does so primarily on the basis that MA's education must in his view be prioritised at this time. In his first statement to the court the father states that:

> "I intend to bring my son back to the United Kingdom in two years time when he has completed Primary School. My son is receiving a better form of education in Ghana and it would be detrimental if he is returned to the UK as whilst he was in the UK he was not making any improvements with his education".

LAW

45. Where, as in this case, a child was habitually resident in England and Wales immediately before an alleged wrongful removal or retention, Art 10 of BIIa provides as follows with respect to the question of jurisdiction based on habitual residence in such cases:

> "**Article 10**
>
> **Jurisdiction in cases of child abduction**
>
> In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:
>
> (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
>
> (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
>
> (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
>
> (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);

> (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
>
> (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."

46. In *A v A and another (Children: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2014] AC 1 Lord Hughes of Ombersley observed as follows within the context of the provisions of Art 10 of BIIa:

> "[76] The trans-national movement of children in the course of disputes about their upbringing, and the associated forum-shopping by parents and others, is a major international problem. Its incidence has only grown since the 1980 Hague Convention, with the increase in cross-border personal relationships and the ever-greater ease of international travel. The 1980 Convention may on occasion operate as a relatively blunt instrument, and no one would claim that its necessarily summary procedure is incapable of ever resulting in injustice, but its contribution to controlling this international problem has been immense. As between the large number of party States, it proceeds upon the basis that in the event of wrongful removal or retention of a child there should normally be a summary return to the State of his or her habitual residence and that the necessary, and often finely balanced, merits decisions which fall to be made are to be made in the courts of that country. In turn, wrongful removal or retention is to be ascertained by reference to the rights of the parties under the law of the State in which the child was habitually resident immediately before the event. This has spawned, in England at least, a proposition closer than those above to a rule of law, namely that where two parents have parental responsibility for a child, one of them cannot by unilateral action alter the habitual residence of the child: see Lord Donaldson of Lymington MR in the Court of Appeal in *Re J (A Minor) (Abduction: Custody Rights)* supra at 572 and Wall J in *In re S (Minors) (Abduction: Wrongful Retention)* [1994] Fam 70. The occasion for propounding this 'rule' was not so much the case of wrongful removal but that of wrongful retention. In most cases of wrongful removal, the habitual residence of the child immediately before removal will not be put in doubt by the unilateral actions of one parent. But in the case of wrongful retention, it may. If for example the child, hitherto living with parent A in State A, is visiting parent B in State B under an agreement for contact, and whilst there parent B unilaterally makes arrangements for the child to stay permanently, such as by obtaining immigration rights, enrolling at school and taking similar associated steps, it may be contended that such steps cause the child thereafter to be habitually resident in State B. If, additionally, the view is taken that retention does not occur until the time arrives at which the child is due to return to State A, the argument can be advanced that by then the child is habitually resident in State B, where it follows that retention cannot be wrongful. To hold that parent B's unilateral actions cannot bring about a change of habitual residence is one route to ensuring that the 1980 Convention is not made ineffective in such a case.

> [77] It seems to me important to note this situation, which is not rare. As Lady Hale explains at paras 40 - 41, Brussels II revised contains provisions designed for such a case. Article 10 preserves the jurisdiction of State A not only until habitual residence has been established in State B but also until either all relevant persons have acquiesced in the removal/retention or (broadly) a year has passed, the child is settled and there has been unjustified failure to object, or the courts of State A have reached a determination inconsistent with the continued exercise of jurisdiction. But neither under Article 10 nor the 1980 Hague Convention can this continuing jurisdiction in State A operate if by the time of retention (or even removal) habitual residence has already changed. What matters most is that State A can make an effective order for return. This may be either under the 1980 Hague Convention (as chiefly it will be) or outside it, as may well be possible if the person ordered to make the return is present in State A or has property there (as here). So what matters is where the child's habitual residence was immediately before the removal or retention."

47. Within this context, in *Re H (Jurisdiction)* [2015] 1 FLR 1132 the Court of Appeal considered the proper interpretation of Art 10 of BIIa, which provides a scheme for retention of jurisdiction in the Member State from which the child has been allegedly abducted, but also includes provision for the retained jurisdiction to come to an end where the child has acquired a new habitual residence in another Member State and certain other conditions are satisfied. In *Re H* the Court of Appeal concluded that that part of Art 10 which governs the circumstances in which jurisdiction is lost by the Member State from which the child has been abducted must be read as applying *only* to another EU Member State.

48. In the circumstances, the retained jurisdiction under Art 10 is not brought to an end where an allegedly abducted child's new habitual residence is in a *non*-Member State, even though the jurisdictional scheme in BIIa is not geographically limited to the EU (see *Re I (A Child)(Contact Application: Jurisdiction)* [2009] UKSC 10). As such, Art 10 will operate not only in respect of a child wrongfully removed to, or retained in a Member State, but will also operation in respect of a child wrongfully removed, or retained in a non-Member State. In such circumstances, and subject to the qualifications set out in Art 10, the courts of England and Wales will retain jurisdiction even if the child thereafter becomes habitually resident in the non-Member State. In such circumstances, the Court of Appeal has suggested that it will not be necessary to invoke the inherent jurisdiction where the court retains jurisdiction based on habitual residence under Art 10, although that latter point was not fully argued (see *Re H (Jurisdiction)* at [54]).

49. Where the court is satisfied that it has jurisdiction under Art 10 of BIIa to make orders, in determining whether such orders should be made, in cases of alleged wrongful retention in a non-Convention country the child's welfare is the court's paramount consideration (see *Re H (Jurisdiction)* at [63]).

50. Within this context, in *Re J (A Child)(Custody Rights: Jurisdiction)* the Supreme Court set out a number of factors that will be relevant when the court is deciding in a non-Convention case whether it is in the child's best interests to make a return order. Whilst in *Re J* the court was concerned with an order returning a child from England and Wales to a foreign jurisdiction, the following principles in my judgment also

assist in informing the decision of the court where an order for the summary return of the child to this jurisdiction from a non-Convention country is sought (see *Lowe, N., and Nichols, N.* International Movement of Children 2nd Edtn. at 31.11):

i) The court has power, in accordance with the welfare principle, to order the immediate return of a child without conducting a full investigation of the merits. The task is to perform a swift and unsentimental decision to return the child.

ii) Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child. On the other hand, summary return may very well be in the best interests of the individual child.

iii) The focus has to be on the individual child in the particular circumstances of the case.

iv) The judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case.

v) One important variable is the degree of connection of the child with each country. Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this.

vi) The length of time he has spent in each country. In this respect, Baroness Hale observed that "Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests. A child may be deeply unhappy about being recruited to one side in a parental battle. But if he is already familiar with this country, has been here for some time without objection, it may be less disruptive for him to remain a little while longer while his medium and longer time future is decided than it would be to return."

vii) In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case.

viii) The effect of the decision upon the child's primary carer must also be relevant, although again not decisive.

DISCUSSION

51. Having considered the evidence and submissions of the parties, and having had the benefit of reading the documentary evidence contained in the court bundle, I am satisfied that it is in MA's best interests to order the father to return him from the

jurisdiction of Ghana to the jurisdiction of England and Wales. I am also satisfied that it is in her best interests to make him a ward of court. My reasons for so deciding are as follows.

52. The mother was, within the context of her obvious intellectual limitations, a straightforward and guileless witness. By contrast, the father presented in the witness box as evasive and dissembled on repeated occasions. Within this context, I am satisfied on the evidence before the court that the father has kept MA outside the jurisdiction without the agreement of the mother, who has parental responsibility for him. Having regard to the documentary evidence provided by the school and the notes provided by the local authority, I am satisfied that the mother is telling the truth when she states that the father very much represented the trip, to her and to the school and social services, as a summer holiday. In so far as some of the father's actions or statements suggested a longer absence (for example by refusing to give a return date at the meeting on 21 June 2018 or by showing the mother pictures of an alternate school), I accept the mother's evidence that she did not agree to the same. On father's own case, the mother at no point expressly indicated her agreement to the retention of MA in the jurisdiction to Ghana beyond the conclusion of the school summer holiday. Further, when shown photographs of an alternate school, I accept the evidence of the mother that she told the father that she wished MA to stay at his current school, as the father himself conceded in his oral evidence.

53. My conclusion that the mother did not agree to MA being kept in Ghana for any period longer than the summer holidays is reinforced by the mother's evidence, which I accept, that her conversation with MA at the airport was predicated that she would be seeing him in "a few weeks time" and that MA was upset during her phone call to her in July 2018 following his learning he had been removed from his school in England. I am satisfied that the mother's evidence that she did not agree to MA being kept in Ghana is supported by the fact that as soon as the mother became aware MA was not returning for the commencement of the school term in England she contacted Police and social services for assistance. All of this is, I am satisfied, consistent with the actions of a mother who prior to MA's departure was enjoying regular, unsupervised contact with MA (who in turn indicated to social workers that he enjoyed having contact with his mother and loved her very much) and fully expected that situation to continue at the conclusion of the school summer holidays in 2018.

54. Finally, in addition to these matters, in evaluating the competing positions of the mother and the father on the question of agreement, it is in my judgment significant also that in his letter to the mother's solicitors dated 23 December 2018 the father at no point asserted that the mother agreed to MA being retained outside the jurisdiction and placed in school in Ghana for an extended period, that letter instead characterising the decision in this regard as one taken by the father unilaterally based on his concerns over MA's education. Likewise, the father's first statement to this court at no point asserts that the mother gave her agreement. His second statement is equivocal on this point as I have set out above. In my judgment, each of these matters lends further credibility to the mother's assertion that she did not agree to MA's being kept outside the jurisdiction of England and Wales beyond the end of the 2018 school summer holiday. In all the circumstances, I am satisfied that MA was wrongfully retained in Ghana by his father from September 2018.

55. With respect to jurisdiction of this court now to order the return of MA to this jurisdiction following what I am satisfied is his wrongful retention in Ghana, Ms Mann submits that MA "is and has been habitually resident in this jurisdiction" although that argument was not further particularised. I am also conscious that, as a litigant in person, the father made no submissions regarding the question of habitual residence. In circumstances where the mother did not issue her application until some six months after MA's removal from the jurisdiction of England and Wales, it would have been open to the father to argue that MA, who has resided with his extended paternal family and gone to school in Ghana now for a significant period, has become habitually resident in that jurisdiction. Bearing these points carefully in mind however, I am satisfied that the court retains jurisdiction in respect of MA.

56. On the evidence before the court, it is beyond argument that prior to his being taken to Ghana, MA was habitually resident in England and Wales and, accordingly, that this court's jurisdiction was grounded in Art 8 of BIIa based on that habitual residence. Within this context, and on the evidence currently before the court, I am satisfied that this court retains jurisdiction to make orders in relation to MA having regard to the interpretation placed on Art 10 by the Court of Appeal in *Re H (Jurisdiction).*

57. I am not satisfied on the evidence before the court that MA acquired habitual residence in Ghana during the period for which the mother gave her agreement to MA being in that jurisdiction. The father adduces no evidence before the court to suggest, within this context, that in the little over five weeks between his arrival in Ghana with the agreement of the mother and the date on which the mother expected his return to England and Wales in time for the commencement of the school term in September 2018 that MA became integrated in his social and family environment in Ghana to the extent he became habitually resident there. Indeed, for the reasons I have set out, it is plain that the father represented the trip to Ghana as a holiday and that this was MA's understanding at the airport on departure and prior to his being informed in early August 2019, and once in Ghana, that he would not be returning to his school in England. In the circumstances, I am satisfied that as at the date the father wrongfully retained MA in the jurisdiction of Ghana, that he remained habitually resident in England and Wales.

58. Within the foregoing context, and satisfied as I am that MA's retention by the father was wrongful, pursuant to Art 10 of BIIa I am further satisfied that this court retains jurisdiction in respect of MA. In circumstances where MA remains in Ghana, which is not a 'Member State' for the purposes of Art 10 of BIIa, whatever the current factual position with respect to MA's residence in Ghana (about which I make no further observations), that position cannot bring to an end the retained jurisdiction of this court, the Court of Appeal having made clear that a new habitual residence in a *non*-Member State does not have that effect even though the jurisdictional scheme of BIIa is not geographically limited to the European Union (see *Re H (Jurisdiction)*). The various qualifications to Art 10 are not met in this case in that I am satisfied that the mother has not acquiesced to MA's retention, MA has not been residing in Ghana for at least one year, the mother has not failed to lodge a request for MA's return within one year, no case in this jurisdiction has been closed pursuant to Art 11(7) of BIIa and there has been no judgment on custody in this jurisdiction that does not entail a return.

59. Within this context, I am satisfied that, as a matter of law, this court retains jurisdiction under Art 10 of BIIa make substantive orders in respect of MA.

60. Having dealt with the nature of the retention of MA in Ghana and what I am satisfied is the court's consequent jurisdiction, finally I must consider whether it is in MA's best interests to order his return to this jurisdiction. In doing so, I have had regard to MA's best interests as my paramount consideration. I am conscious that the court does not have before it a formal welfare assessment in the form of a report from CAFCASS or a report from an independent social worker based on MA's current position in Ghana, in which country he has now been for a relatively extended period. Ms Mann submits however, that the court can perform the required swift and unsentimental evaluation of the question of whether return the MA based on the evidence that is available to the court. Within that context, Ms Mann relies on the following factors which she contends demonstrate, on the evidence before the court, that it is in MA's best interests to return to this jurisdiction:

    i) The father's retention of MA in Ghana was a unilateral act that was not the subject of any informed welfare assessment and which failed to take account of MA's very particular medical and educational needs and of his need to maintain and develop a full and rewarding relationship with his mother.

    ii) At present MA is residing in a foreign country in which no one has parental responsibility for him, both his parents now residing in this jurisdiction. Within this context, MA has a diagnosed medical condition in the form of CdLS which requires decisions to be taken with respect to appropriate educational provision and medical care.

    iii) MA's continued retention in Ghana is fundamentally undermining his relationship with his mother, particularly in circumstances where the father has failed to ensure consistent, good quality indirect contact between MA and the mother. These difficulties are exacerbated by the respective needs of the mother and MA which render indirect contact even more ineffective as a means of maintaining their relationship.

    iv) Within this context, MA's continued retention in Ghana is also affecting his identity in circumstances where he is deprived of a full relationship with his mother, who shares his own medical condition.

    v) The father has conceded giving inappropriate information to MA which further undermines his relationship with mother, which conduct cannot be controlled whilst MA remains in Ghana.

    vi) There is ample evidence before the court that MA's special needs arising out of his CdLS were recognised and addressed in this jurisdiction by his general practitioner and, in particular, by the education authorities and his school. There is no evidence that this is the case whilst MA resides in Ghana.

61. Having regard to the evidence before the court, I accept the submission of Ms Mann that the court has sufficient information to determine the mother's application at this point. I am further satisfied that, having established the jurisdiction of this court, the

evidence before the court demonstrates that it is in MA's best interests for an order to be made requiring his return to this jurisdiction.

62. MA's is a child with very specific educational and medical needs arising from his CdLS. Those needs require to be met by careful assessment and planning on the part of educational and medical professionals with the co-operation of his parents. Within this context, MA's needs to have available to him parents who can exercise their parental responsibility on a considered basis to ensure that his educational and medical needs are met. More widely, MA also has a cardinal need to maintain and develop a full and rewarding relationship with each of his parents during the course of his minority. I am satisfied that the father's unilateral decision to retain MA in Ghana did not sufficiently take account of these matters.

63. Within this context, in reaching my decision I have also given weight to the fact that MA, with his specific needs, now has no one with parental responsibility for him in the jurisdiction he is in currently. Within this context, it is unclear who would take decisions in Ghana regarding any medical needs that may arise out of MA's CdLS or in situations of emergency. More widely, it is plain on the evidence that MA has greater connections with this jurisdiction than he does with Ghana. In addition to this jurisdiction being where both his parents reside, it is this jurisdiction in which MA has been educated for the majority of his minority and this jurisdiction in which his particular needs have been diagnosed and for which special provision has been made. MA is a British Citizen. Whilst I accept that MA's Ghanaian heritage is a key aspect of his identity, and that, axiomatically, Ghana is central to that aspect of his identity, MA's father continues to provide that link for him in this jurisdiction.

64. This court has made clear to the father on two occasions prior to the final hearing that the court would have to take into account in deciding whether to order the return of MA any difficulties with indirect contact between the mother and her son. Further, the court made orders designed to facilitate such contact. Notwithstanding this, I am satisfied that MA's continued retention in Ghana is acting as an ongoing impediment to maintaining and developing a relationship with his mother, contrary to his welfare need in this regard. Indeed, I am satisfied on the evidence before the court that MA's retention in Ghana is now seriously undermining his vital relationship with his mother.

65. Prior to his departure for Ghana, there is no dispute that MA was having extensive contact with his mother, including staying contact, which contact MA enjoyed and benefited from. Since his arrival in Ghana I am satisfied that indirect contact has not been properly facilitated by the father and the paternal family and has, in the circumstances, been sporadic and of poor quality insufficient to foster and develop MA's relationship with his mother. I have also borne in mind that indirect contact is rendered particularly difficult in this case by MA's and the mother's own limitations, which make the use of the requisite technology difficult for them.

66. Within this context, I am satisfied that MA's continued retention outside the jurisdiction of England and Wales is having a detrimental effect on his welfare in circumstances where his relationship with his mother is being significantly prejudiced. I am reinforced in this conclusion by the evidence of the social worker regarding the importance for MA's identity of continued contact with his mother, the importance for MA's identity and his understanding of living with CdLS that he

understands his mother shares the same medical condition as he does and the fact that the of Mother is able to offer some elements of parenting which the father does not, such as emotional warmth. I also bear in mind in this context that the adverse position I have outlined is further exacerbated by the father's concession that he has discussed this case with MA and confirmed that MA would have questioned his mother about why the mother was "taking his father to court". In answer to questions asked by the court, the father appeared to lack *any* understanding of why this is inappropriate for a child of MA's age and needs. As Baroness Hale noted in *Re J* at [41] this jurisdiction "gives great weight to the child's need for a meaningful relationship with both his parents."

67. It is plain from the evidence before the court, and from hearing him give oral evidence, that the father's primary motivation for seeking to have MA stay in Ghana is his stated wish to improve MA's educational performance. Within this context, I have borne very carefully in mind the father's submission that it is in MA's best interests to remain in Ghana in circumstances where, on the father's case, his educational attainment has improved and will continue to do so. With respect to that asserted improvement however, the evidence is in my judgment less than compelling.

68. There is no indication on the face of the material provided by the father regarding the standards against which MA's educational achievement is being measured in the context of his CdLS. More importantly, as I have noted above, it is striking that the narrative comments regarding MA's educational progress in the Ghanaian material match closely those made available by the school in this jurisdiction. Further, and of most concern to this court, the material provided from the school in Ghana makes no mention at all of MA's CdLS, the nature of its impact on his learning or of any steps being taken to address that condition and its consequences. As noted above, there is no indication that the father has made the school in Ghana aware of MA's specific educational needs or that his current school provision is equipped to meet those needs. By contrast, the evidence before the court indicates that MA's educational needs have been assessed in this jurisdiction and are the subject of a specific, funded package addressing those needs. Whilst the father has concerns about this provision, I note the consistent evidence before the court that the father has struggled to come to terms with, and understand MA's educational needs and the limitations imposed by his CdLS on his educational performance.

69. Within the foregoing context, and where specific educational provision is available in this jurisdiction to meet MA's needs, I am not satisfied that the advantages for MA's educational development of continuing schooling in Ghana are demonstrated to be such that they justify prioritising that education in Ghana over the other clear benefits with respect to his welfare should he return to this jurisdiction, including the resumption of direct contact with his mother. Indeed, I am satisfied that, in circumstances where there is assessed, planned and funded educational provision for him in this jurisdiction, to maintain MA in a school that does not appear to have been informed of his very specific educational needs, and in respect of which there is no evidence of how his specific needs have been and are being assessed and accounted for on an ongoing basis, is not in his best interests. Once again, this is not to critique the education available in Ghana but to recognise that the school does not appear to have been given a full picture of MA's specific and extensive educational needs.

Within this context, it is perhaps unsurprising that the report from the Ghanaian school at one point rather plaintively states that "we are doing our best to help him".

70. I do not accept the father's evidence that he is now unable to afford to return MA from Ghana to this jurisdiction. When challenged about the extent to which the current situation is interfering with MA's relationship with his mother, the father was keen at first to emphasise his intention to bring MA to this jurisdiction for the summer holidays and, later, also suggested he would pay for the mother to travel to Ghana. As I have noted, the father also confirms in his statement that he sends money to Ghana to pay for MA's education and upkeep. Only when challenged about whether he would obey any order made by this court to return MA to England and Wales did the father start to plead poverty.

71. Finally, I have also borne carefully in mind that an order returning MA to this jurisdiction will result in a degree of disruption in circumstances where he has now been in Ghana for nearly a year. However, having regard to the matters set out above, I am satisfied that the benefits to MA's welfare of ordering that he be returned to this jurisdiction outweigh the impact of the temporary disruption that will cause to him. The reality is that MA has spent the majority of his life in England and only a relatively short period in Ghana by comparison.

CONCLUSION

72. For all the reasons set out above, I am satisfied that it is in MA's best interests for this court to order his return from Ghana to the jurisdiction of England and Wales. Within the context of this case being one involving a non-Convention country, I consider it is also in MA's best interests, and beneficial in seeking his return also to make him a ward of this court. In the circumstances, I so order and will invite the parties to agree and draw an order accordingly for approval by the court.

73. That is my judgment.