**COURT OF APPEAL (CIVIL DIVISION)**

**Royal Courts of Justice**

**21 December 1993**

**Butler-Sloss, Staughton, Hoffmann LJJ**

**In the Matter of M.**

**B Singleton QC and K Cox for the minor**

**J Reilly and P Roche for the mother**

**A Levy QC as amicus curiae**

**The father appeared in person**

**BUTLER-SLOSS LJ: This is an appeal from Cazalet J by a minor in most unusual circumstances in a Hague Convention case. The minor, N, is 13, born on 31 October 1980 in England. His parents married in 1982 and moved in 1983 to Eire, where the mother still lives. In 1986 the parents separated and the child alternated between parents until 1987 when thereafter he lived entirely with his mother and did not see his father other than rarely. His father moved to England.**

**In 1988 the mother made allegations, supported by statements from the child, that the father had seriously sexually abused N. On 11 December 1990 Mackenzie J dismissed the allegations of sexual abuse against the father, gave custody of N to his mother and directed that there should be no access to the father for 9 months in order to provide a period of peace for the boy.**

**In May 1992 the child was removed from his school by his mother to give him, as she put it, her concentrated attention. In June 1992 the boy ran away and was taken to hospital by neighbours. Injuries were seen on him which were thought to be, by the doctors concerned, non-accidental. He refused to go home and was placed by the Southern Health Board in a children's home. On 1 June 1992 they obtained a place of safety order. There are hospital reports in respect of the non-accidental injury and the emotional state of the child by Professor Kierney and Mr Gaffney. Mr Gaffney went to the A&E Department (report of 23 June 1992) and found the child looking shocked, frightened and pale, that he had said he had been beaten up by the boyfriend of his mother and the neighbour said that the boy was very upset and frightened. The next day he was still frightened and looked unwell and she had brought him to the A&E Department. On examination the surgeon found a number of bruises. The distribution of the bruises on his shoulders, right upper arm and left buttock indicated they were non-accidental injuries. While he was being examined his mother came into the cubicle. She said to the doctor that he had been sexually abused by his father as a young child. The doctor indicated that he had not mentioned**

**this but he had told him that he had been beaten and locked up. The mother approached N and asked him to go home with her. He put his hands up over his face and refused to go, saying that if he went home he would be beaten up by him. His mother then screamed at him that he was lying, that he was always lying, but she refused to answer as to whether 'him' had been beating the boy - the 'him' being the mother's cohabitant, D.**

**The consultant kept the boy in hospital because he was unwell and needed medical treatment. The mother said she would get a court order to free him. Mr Gaffney commented:**

**'At no time did [the mother] show the normal affection that a mother would to her child who had been missing for 24 hours.'**

**There was a medical report also from Professor Kierney, a consultant paediatrician, who then saw the boy after Mr Gaffney had seen him. The boy gave to Professor Kierney a history of repeated beatings and mental cruelty over 7 years. He then set out in detail what it was that he said D did to him; belting the boy about the place and when his mother came in she said, 'and you call that a beating?' He had been locked up in the bathroom and prior to that he ran away for the first time about a month ago. The marks on his thighs were caused by a small plank which D used to beat him with. He said that this had happened for about 5 to 6 years, and started when he was going to Dublin aged 6 years old. He also said that D had used bamboo sticks, hurleys and dog leads for the beatings, and then the report sets out the bruises and so on.**

**There was also a report from a child psychiatrist, Dr Sandra Corbett. The boy gave a very similar account to her as he had given to both the other doctors:**

**'N presented as a thin, pale, red-haired, young boy. He was anxious at interview. . . He was worried about what was going to happen to him... I felt N was a very unhappy child . . . and that he would benefit from ongoing psychotherapy.'**

**He said he didn't want to go home to his mother; he never wanted to see D again and he never wanted to see his own father again. He said he had been kept away from school after running away and locked away at home. He often felt so bad he wished he was dead. He said at times he had considered suicide. He said he used to blame himself for the beatings and felt he was bad but does not now.**

**There were attempts by the mother to set aside the place of safety order, which were unsuccessful. She was refused leave to seek judicial review against the place of safety order but leave was granted subsequently. The mother obtained an ex parte order denying contact to the father, although he had not at that stage even made the application. There was litigation by the mother to set aside the place of safety order and various appeals. The father then made an application again for access. That application was stayed by the judge pending an application by the mother for judicial review to compel the Southern Health Board to have the child psychiatrically examined by a person of her choice and other issues raised by the mother. In July/August 1992 there were several hearings by Barron J in Ireland including an order at first that the child remain in the children's home pending psychiatric logical assessment and a month later that the child should return to mother pending assessment. No assessment of this child, psychiatric, psychological or otherwise has yet taken place.**

**In November 1992 N saw his father in Cork. His father gave him a contact number. That was the first time N had seen his father since 1987. In 1992 N ran away from home on a total of three occasions. In January 1993 there was an application by the Southern Health Board for interim custody of N. The order was that the boy remain with his mother.**

**Also in January 1993 a committal order was made against the father and an order that he should not remove N from Ireland. It is not clear how the committal order came about. The only thing that is clear is that father was not there, nor represented and had no opportunity to say anything in respect of this committal order.**

**There were further applications by the Southern Health Board for interim care but the order remained that the mother should have control and custody of the child but on condition that a Dr McQuaid should examine the child. He never did examine the child.**

**There were numerous other proceedings by the mother. On 25 May 1993 there was still no assessment of the boy. The mother was found by the judge to be in contempt. The case was not pursued by the Southern Health Board in the absence of assessment. By this stage it appears they were not pressing to have the boy back. The judge found that there was no reason for the child not to be with the mother. 25 May 1993 appears to be the last occasion that this child's welfare was before the court, other than an appeal hearing on 6 December 1993.**

**Between September and October 1993 N ran away from home on eight separate occasions. He lived rough. He told the police and neighbours of beatings and a fear of his mother and D. The mother said she could not control him; she wanted him confined in a secure unit for the purpose of what she called 'a mental assessment'. There were concerns of the neighbours and of the police. There were attempts by the mother to find a secure unit. The constitutional issue as to what were the rights of the parent, whether or not she could obtain a secure unit for the child to be incarcerated, came before the court, not an issue on the welfare of the child. At this stage the mother rejected the involvement of the Southern Health Board.**

**On 19 October 1993 the father took N to London in breach of the mother's rights of custody and consequently in breach of the Hague Convention. On his arrival in England, instead of hiding the child somewhere he went immediately to the police child protection unit. He did not detain the child, who was placed with the Westminster City Council in a children's home.**

**There were orders in Ireland for the return of the child to Ireland. In this country the mother issued the Hague Convention proceedings. On 3 November 1993 Barron J refused the mother's application to place N in a secure unit for the purpose of psychiatric assessment. There is an appeal pending. On 4 and 5 November 1993 Cazalet J heard the Convention application and ordered the return of N to Ireland on 10 November 1992, on the basis that he would not return to the mother until the court in Ireland had considered the case. On 10 November 1993 N instructed his own solicitors. There was an application by the father to the Court of Appeal for a stay which was refused. In the afternoon there was an application by N's new solicitors and counsel that N should be joined as a party, which was refused by the Court of Appeal on the basis that there was no jurisdiction to hear that application at that stage. The mother instructed a private detective to make certain that the boy remained in the children's home and did not run away. The private detective went into the children's home, the boy found out what was going on, and ran away.**

**On 17 November 1993 the boy was still missing. Cazalet J ordered a stay of his order to return to Ireland in order to encourage the return of N. N returned to the children's home on 24 November 1993 and has been there ever since.**

**The hearing was fixed for 29 November 1993 by Cazalet J to reconsider the situation in the light of the later information available to him. The mother was in the process of changing her solicitors and was also involved in proceedings in Ireland. She applied for an adjournment which was refused. On 29 November 1993 N was joined as a party by Cazalet J as the second defendant, and he was given leave to appeal to this court. Cazalet J allowed a considerable amount of additional evidence to be adduced which he read and then had provided for this court.**

**On 6 December 1993 there was a hearing in the Supreme Court of Ireland where no substantive decision was made in respect of the welfare of the child at that stage, but a recommendation was made that the child should have his own representation and an arrangement that the Garda would meet him when he arrived at Dublin and would place him in a children's home pending a hearing before Barron J.**

**The case comes to us on appeal from the first and the fourth decisions of Cazalet J of 5 and 29 November 1993. The appellant minor, N, appeals the order of 5 November 1993, requiring his**

**immediate return to Ireland, and he invokes Art 13 of the Hague Convention, his objections to return. The mother, by an application for leave to appeal, seeks to appeal the order of 29 November 1993 adding N as a party and asks for the appeal against the order for his return of 5 November 1993 to be dismissed. The father is acting in person and supports the appellant minor, his son. Mr Levy QC has acted as amicus curiae and has assisted this court in a most difficult case where voluminous documents have been provided to us.**

**We heard argument yesterday and gave our decision in which we refused the mother leave to appeal; allowed the appeal by the child; dismissed the mother's application under the Hague Convention; made the child a ward of court subject to the issue of wardship proceedings today, and gave various consequential directions. We now give our reasons.**

**We considered first the application of the mother for leave to appeal, since if successful it would remove the main argument under Art 13, the objections of the child, from the consideration of this court. Mr Reilly, for the mother, argued that it was exceptional to make a child a party in a Hague Convention application and prayed in aid a decision of this court in Re M (A Minor) (Child Abduction) [1994] 1 FLR 390. He argued that the views of the child were adequately expressed by the court welfare officer from the Royal Courts of Justice and sufficiently taken into account by the judge. If this case had remained at the stage of 5 November 1993 I would have agreed with counsel, although we were provided neither with a transcript of the court welfare officer's oral evidence to the judge on 5 November 1993, nor a written report. But we are now considering a situation which has moved on. As soon as the boy learned that he was to go back to Ireland he ran away in a strange city in a strange country, since he had lived almost all his life in Ireland. He did not go to family who lived in England and was at risk, wandering the streets of London. He very clearly voted with his feet, as he had done earlier this year many times in Cork.**

**On 29 November 1993 Cazalet J gave leave for more information from Ireland to be presented to the court and evidence of social workers at the children's home in London. That evidence was not only additional to that before the judge on 5 November 1993, it also illuminated and clarified the evidence previously available. In this case, the father, who might be expected to express the opposite point of view to the mother, is not represented and the dispute is between the boy and his mother and not between mother and father, whatever may be the underlying causes.**

**N is 13 years old. He appears to have been seriously in dispute with his mother over 2 years in most unusual circumstances. The judge found that he objected to being returned and that he was of sufficient maturity for his views to be listened to. Those views must be communicated in some form before the court which is charged with considering Art 13 and the objections of the child. Cazalet J already made the decision to return him and, as we said in Re M (A Minor) (Child Abduction), it is for this court to consider the matter by way of appeal rather than that the trial judge should rehear it. Consequently the additional evidence and the further grounds under Art 13 can only be heard, initially at least, by this court. In this case, unlike Re M (above), the only effective way for the validity of his objections to return to Eire to be considered by this court is by his own legal representation. We understand from Mr Levy that there is an American decision - Removales v Rosa (27 September 1991) - before Kaplan J in the Superior Court of Connecticut, where the child was separately represented, in addition to the Australian decision (Turner v Turner, 27 June 1988, Family Court of Australia) cited in Re M (above). It is, and ought to be, rare for a child to be separately represented in an Art 13 dispute in a Hague Convention application but this is such a rare case and we refused the mother leave to appeal.**

**Mr Singleton QC, for the minor, has set out in a most helpful skeleton argument a formidable case for reconsidering the order of 5 November 1993. The judge himself on 29 November 1993 found the additional evidence very persuasive. He said, on the final page of that judgment:**

**'I pay regard to the fact that the evidence, in my view, now points to N's objection to returning to Ireland as being so strong that unless some form of compulsion were to be used he will not go back.'**

**Mr Singleton asked us to consider the case on two grounds: the objections of the child; and Art 13 (b), the grave risk. The issue under Art 13(b) only arises if the court is not satisfied on the first ground of the objections of the child and in the event it has not been necessary to consider it. Mr Singleton has also sought to argue both that the additional evidence transforms the case and also that the judge was in any event wrong in the exercise of his discretion. For my part, it is not necessary to consider the latter point in the light of the additional evidence. On the cases presented to the judge on 5 November 1993 there would have been difficulties for this court in interfering with the exercise of his discretion. That issue does not arise.**

**There is now, however, a plethora of evidence before this court, both from Ireland and from the English social workers, to raise genuine concern as to the well-being of this child and, equally important, the strongly held perceptions of the boy as to his future if he is sent back to Eire. He has given an account in England of an appalling life over 6 years with his mother and the man, D, he has said cohabits with her, with consistent and sometimes serious non-accidental injury, consistent unkindness and emotional abuse, being locked up, deprived and removed from school. He has given an explanation of pressure from his mother as his reason for telling the judge he was content to go back to her in August 1992. He has contemplated suicide and has recently threatened to do so. He says he is frightened of his mother and of D. His mother has threatened him with being locked up in a secure unit until he was 21 after a psychiatric assessment with his mother remaining in control. He was very fearful she would achieve this end and he would either return to a very unhappy life with her or he would be incarcerated. In his perception his mother was always successful in the courts and from his point of view that might appear broadly to be the case. He saw no other alternative if he returned to Ireland. His father appears to have had very little influence upon the boy's desire to be in England or upon his perception of what awaits him if he is sent back to Eire.**

**Mr Reilly, on behalf of the mother, argued strongly that the judge's first decision was the correct one and that the child should be returned immediately to Dublin. Although the mother did not undertake in her second affidavit not to withdraw her consent to the arrangements set out by the Irish court in the decision of 6 December 1993, she was prepared to give that undertaking to us yesterday. Under those arrangements the boy would be met off the plane by the Garda and placed in the children's home pending the court hearing, and the court recommended he should have his own representation. In the mother's view the Irish court was seized of the matter and it was in breach of the Convention not to send him back to Ireland.**

**On the issue raised by Art 13 as to the objections of the child, in her view the child's perception was coloured by the private detective exceeding his instructions and speaking out of turn to N. It is significant in the history of this case that it was in breach of the spirit of the order of Cazalet J that she was arranging to return with N to Ireland on the same plane. She was prepared to undertake not to interfere with the psychological assessment of the boy, although she had previously successfully made it impossible for such an assessment to be carried out. She has outstanding an appeal against Barron J's order of 3 November 1993 and two outstanding applications for judicial review. There have been some 80 applications so far to the Irish courts. She wants the boy to be assessed, believes that he needs treatment and that it is a definite possibility that this treatment would be in-patient treatment. Her daughter - N's half-sister - who has had psychological training, has already made an assessment of her brother which supports the mother's gloomy prognosis. In two affidavits the mother has expressed extremely serious allegations about her son which form a comprehensive indictment on him and make chilly reading.**

**The first Statement Grounding Application for Judicial Review against the Attorney-General, the Minister for Justice, the Minister for Health and the Minister for Education, ex parte the Southern Health Board, seeking an Order of Mandamus, sworn on 5 November 1993, says:**

**'23. I say that over the years N's behaviour has been characterised at home, at school and outside the home as being untrustworthy, deceitful and generally problem-generating, where lying, cheating, bullying, agression, stealing, arrogance, anger and frustration are the norm from him.**

**24. I say that N can appear, to people who do not know him well, well adjusted. . .**

**25. I say that to a trained eye, such as an educationalist trained to spot such deviant behaviour, N's general demeanour, when unaware that he is being observed, gives rise to suspicion and concern that there is "something wrong with him" and increasingly, this also is the observation of most people sharing any time in his proximity.'**

**She says that he is not generally remorseful, not concerned to make amends or change his behaviour; he does not confess the truth and the sacrament of confession to the priest; that he is manipulative, has little or no self-control, constantly displaying outbursts of uncontrollable and violent anger at his peers for slights real or imagined, but usually arising from lack of socialisation skills, and on other occasions has inflicted deliberate, cold, calculated assaults on his peers by hitting or throttling or with a weapon. There are pages of the serious allegations made against her son.**

**'66. I say that it is with great reluctance that I, as N's mother, have come to accept my daughter's assessment of N, and my GP's who agrees with her, that N is displaying all the symptoms of a psychopathic personality.**

**71. I say that as a mother I have gone to extraordinary lengths to provide for the educational and other special needs my son requires and the State has an obligation to provide me with the means of helping N, without first rendering him a criminal and rendering society, and especially young children, unsafe and at risk by leaving N at large, uncontrollable and a menace to himself and others.**

**72. I therefore beg this Honourable Court . . . to grant the injunctive relief sought and in so doing save both this child from himself and society from him, and provide the instruments and means to deal with other young victims in similar situations, arising from a social problem that is only now coming into the public arena.'**

**Such views have not been supported by any other evidence provided to us. The mother wants what is best for this boy and has a strong and stern moral commitment to his well-being. There is no weakening of her approach to her duty towards this boy to include emotion, such as expressing either to this court or in front of the various doctors concerned with this case, either love for N or any demonstration of affection. Although she has denied to this court any desire for N to be placed long term in a closed institution and has reiterated that such confinement is only for the possibility of assessment, she has undoubtedly told N in the past that he would be locked up and for a long period.**

**When we gave our decision that the appeal was allowed and that the child should remain in England, the mother then argued that N should be placed in this country in secure accommodation, a rare order made in respect of juvenile offenders. The place to which N would be sent in Ireland is also a secure unit for juvenile offenders rarely taking in other children. The mother has also argued that this court should not make a decision today since she has changed her solicitors and has not had time for her case to be properly prepared.**

**The father is unrepresented before this court but has addressed us. He has played little part in N's life since he came to England in 1987. He was responsible for wrongly removing N to England, but then went immediately to the police child protection unit. The child has not been living with him and since N's arrival he has seen him from time to time but is not himself looking after him. He has pointed out to us that he has been unable to get his point of view heard in the Irish courts since he was restrained from making an application for access, and his application to set that order aside was stayed pending a dispute in judicial review between the mother and the**

**Southern Health Board. He has made no input into any of the decisions of the past 2 years. He is, of course, in contempt of court in Ireland for removing the child.**

**He told us that the allegations of sexual abuse, not found proved by Mackenzie J in 1990, did not surface until 1988, after he had left for England and was seeking an access order. He urged us not to send N back to Ireland but to have his future decided by the English courts. He reminded us that the mother has several times removed the child from school and impeded his education and that N needs a period to be a child and to go to school.**

**He wishes to play a central part in N's life and have N to live with him, which is N's first choice. The father, however, is prepared to be assessed as to his suitability to care for his son.**

**This is a sad, even tragic case, where on the face of the documents presently before us a mother is accused by her 13-year-old son as treating him as wicked, a danger to society and to himself, a psychopathic personality, a willing participant in the most serious sexual abuse with a father against whom all the allegations were dismissed. According to N, assisted by D, the mother has perpetrated a course of conduct which the child saw as cruel and inhuman, threatened him with a form of imprisonment for many years ahead, gave him no love and affection but, on the contrary, made him feel he was responsible for his own miserable way of life. There is evidence from a number of doctors, paediatricians, surgeon and child psychiatrist, to support aspects of the boy's case, together with the concern of the police, other professionals and neighbours. That includes a social worker from the Southern Health Board, who had provided a report of 17 June 1992, setting out in considerable detail what the boy has told him. It does also include the passage, when, on a supervised visit by the mother to the child at the Southern Health Board's children's home, the mother is recorded as saying: 'Didn't I warn you it was going to come to this? Do you want to be locked up in a home for the rest of your life?' N: 'You don't get hit or locked in'. Later the mother said: 'It is easy to get into these places but wait until you want to get out'. The second visit was terminated by N who left the room crying.**

**His mother has been, and remains, engaged in relentless litigation in Ireland and is now involved in these constitutional issues. The boy believes that his point of view and his welfare may not have been the primary issues before the court.**

**He has made it plain, by running away on numerous occasions, which ought to cause much concern, that something is seriously wrong. Significantly, he did not feel threatened in the local authority children's home in London until he was told of the decision to return him to Dublin. He then again ran away. He said to the social worker on 25 November 1993:**

**'Even if I did not have to go to my mother's house I would be frightened to go to Ireland because I think in the end it would mean that I would just go back to my mother's house because that is what has happened in the past. I am very worried about going to her house. I am worried about being put in a secure unit for crimes that they, my mother and her boyfriend, have committed. I think that I would be punished for things that they have done to me. My mother has told me that she wants me to be locked up. I don't want to go to my mother's. I don't want to go to a secure unit. I don't want to go back to Ireland at all. I feel very strongly. I do want to see my aunt and dad and I am very upset that my mother has said I cannot see my aunt or talk to her. My mother has proved not to be a fit mother. She does not deserve custody, and why is she telling people here what to do and what not to do? The way I see it, I was not abducted in Ireland. I was on the run for a long time before someone helped me to get in touch with my father and ask him to come and get me. It took him about 2 days to come and fetch me and I had been on the run some time.'**

**The issue for this court is whether these strongly held views, clearly expressed by a boy of sufficient maturity to be listened to, should in the light of the additional evidence not before the judge require us to reconsider the validity of those objections. In my view, in this exceptional case, it is our plain duty to hear a boy of 13, whose viewpoint has not yet been heard and who has**

**demonstrated by his behaviour and by his perceptions of his future in Ireland, that his welfare requires his objections to be taken into account.**

**The relevant part of Art 13 states:**

**'The judicial or administrative authority may also refuse to order the return of the child if it finds the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.'**

**That requires us to consider whether on the present facts he should be sent back. The Convention has specifically included a provision which may, in the exercise of the court's discretion, override the requirement under Art 12 to return the child, even where wrongful removal or retention has been found. It is not a question as to the competence of the courts of habitual residence to deal appropriately with the case. For my part I make no criticism of the Irish courts, nor of the arrangements set in place on 6 December 1993. We are dealing with the requirement for this court to consider whether to refuse to return the child in the light of his objections. In the special circumstances of this case I am satisfied that an English court must investigate further.**

**I have considered whether this ought to be by remitting to a High Court judge to reconsider whether Art 13 applies to this case. Convention proceedings are, however, intended to be summary proceedings on written evidence and I cannot see the need to provide a High Court judge with any further evidence than is provided already. The mother has asked that this court should not decide the case now. However, although she has changed solicitors, she has always been represented other than at the hearing of 29 November 1993, and the allegations made by the boy are not new, just provided now with more cogency. I am satisfied that it was right for this court to retain the matter ourselves and to exercise our own discretion under Art 13 whether to refuse to return N. In this sad case, it seems clear to me that he has valid objections to returning, either to his mother or to any other arrangement proposed for him in Eire. This court should give effect to those objections by taking them into account and finding them decisive on this appeal.**

**Having dismissed the mother's application under the Convention, and having made N a ward of court, we gave directions including inviting the Official Solicitor to act on his behalf in co-operation with those already acting for him, subject to his deciding whether he wishes to be separately represented in the wardship proceedings. We directed that the Official Solicitor should arrange a psychiatric assessment and any other assessment the Official Solicitor considers necessary and indicated that the decision was that of the Official Solicitor and was not a decision to be influenced by the mother. We granted injunctions restraining each parent from removing N from this jurisdiction.**

**The question arises as to where he should live pending the hearing of the wardship proceedings. His present children's home will not be available other than very temporarily. Everyone, except the mother, is agreed that he would be well cared for by his aunt and uncle, the mother's younger sister. Providentially, they live in London, have sufficient accommodation and they are welcoming him into their home. He would like to go to them. The mother has criticised the previous lifestyle of the aunt but has no criticism of the uncle. She has also raised concerns about the behaviour of N towards his small cousin, based upon her assessment of his character and the corruption of him by his father which was found not to be true. I can myself see no reason whatever why the aunt and uncle should not have N to stay pending the hearing before a High Court judge and I would send him there immediately; that is to say, today.**

**We grant injunctions restraining each parent, by themselves, their servants or agents, from removing the child from the interim care and control of the aunt and uncle save for the purposes of agreed contact within the jurisdiction of this court; that is to say, he would not go back to Ireland or to any other country outside England and Wales for the time being until a judge hears the case. It is fortunate, perhaps, that the aunt and uncle are going to Durham and not further north.**

**The mother has opposed contact to the father based on her unjustified view of him as a paedophile. I can see no reason why the father should not have unsupervised visiting contact by arrangement with the aunt and uncle; for the time being he should not have the boy to stay with him in his own home. He should be able to see the boy as and when it suits the aunt and uncle and they will make the arrangements, as most convenient to them as a family, as to when they would like the boy's father to take him out, or to come to their home. It is entirely as they think it, pending the hearing before the judge.**

**The mother should have such contact as N would like to enjoy with her, bearing in mind the contact is for the benefit of the child and not for the benefit of the mother. There should be no contact with the mother between now and the New Year. That is partly for the convenience of the aunt and uncle going to Durham, and partly to have a small period of peace and space. Therefore, contact may be arranged with the mother. If N expresses a wish to the representative of the Official Solicitor, Mr Nicholls, that he wishes to see his mother and/or have telephone calls and letters, the Official Solicitor shall make those arrangements to take effect until the next hearing or further order at the request of N.**

**STAUGHTON LJ: The first application which we considered was by the mother for leave to appeal against an order of the judge that the child should be separately represented. Initially the judge had not thought separate representation necessary, and that the child's views could be put before him by the court welfare officer. Later the judge changed his mind. It seems to me that both decisions which the judge made were right. As long as the father had legal aid and was represented by solicitors and counsel there was no obvious need for the child to be represented as well. Only last week in the House of Lords it was said that sometimes there are far too many counsel arguing the same point in these child cases. But now the father does not have legal aid and is not represented, although he is here in person. What is more, the father has not appealed against the principal judgment of Cazalet J. Only the child has done that. To revoke the order that the child be a party to the dispute would mean that his appeal would lapse. That would be wholly wrong.**

**I turn to consider the child's appeal against the order that he should be returned to Ireland. On 10 November 1993 that order was under review by this court, then consisting of the President, Steyn LJ and Kennedy LJ. In giving judgment the President said this:**

**'For my part I can see no error on the part of the judge in exercising his discretion in the context of the difficult facts of this case.'**

**A little later:**

**'I can see no ground of appeal which could possibly succeed.' No doubt the hearing on that occasion was of a summary nature because the application was for a stay of execution pending an appeal by the father. It is difficult for us to disagree with what the President said on that occasion, with which the other Lord Justices agreed, even if we are technically entitled to do so. But there is a substantial amount of fresh evidence.**

**When the judge was considering whether the child objected to being returned to Ireland, he said this:**

**'I appreciate what N has said to the court welfare officer. However, it is my view that the main thrust of what N was saying to Mrs Werner-Jones was his very deep concern and anxiety if he were to return to his mother's home in Ireland. It is clear that N has some concern about returning to Ireland but if he goes the Irish court would have open to it, no doubt, a number of alternative courses.'**

**The judge concluded that N's real objection was going to live with his mother in Ireland and that if that was not going to happen and he was merely going to be returned to the Irish court, this would not be a matter for objection.**

**Since then we have the further evidence; and what weighs with me most of all is the record of the interview on 25 November 1993 between the child and Katherine Gieve, the child's solicitor and guardian for the law suit. Butler-Sloss LJ has already read the relevant passage from that interview. It makes clear to my mind that this child's objection is not merely to being returned to Ireland to his mother, but to being returned to Ireland at all. He also makes clear his reasons for that objection.**

**I make no criticism whatever of the Irish courts in this case. Even if there were grounds for criticism, that would not be a reason for refusing to return the child under the Hague Convention on the Civil Aspects of International Child Abduction 1980. What is significant in my mind is that the child has lost confidence in the Irish courts, as appears from that passage in the interview which my Lady has read. The result is that the child is genuinely, seriously and sincerely concerned about any return to Ireland, whether to his mother or to the Irish court, or to the institution for the assessment of young offenders mentioned in the latest order of the Irish court. I say that the child is genuinely and sincerely concerned because that is what, on the evidence, I believe to be the truth. It is consistent with the child running away from the Westminster City Council's home as soon as he was told that he was returning to Ireland.**

**So I turn to Art 13 of the Convention, and to that part of it which Butler-Sloss LJ has read concerning the power of the court to refuse to order return if the child objects and has attained an age and degree of maturity at which it is appropriate to take his views into account. I find that this child does object. I find that the child has attained an age and degree of maturity where it is appropriate to take his views into account. The court, therefore, has a discretion; the court may refuse to order the child's return if it thinks it appropriate to refuse to order that, notwithstanding having every confidence in the Irish courts. In the light of the fresh evidence, in my judgment the only right exercise of that discretion is to refuse an order for return. Accordingly, I would allow this appeal. I agree with the other orders proposed by Butler-Sloss LJ**

**HOFFMANN LJ: I agree with both judgments of my Lords. I add only a few words on the Hague Convention. Article 13 contains the relevant exception to what would otherwise be this country's duty under international law to return a wrongfully abducted child to his country of habitual residence. The exception to which my Lords have referred, namely that the judicial authority may refuse to order the return of the child if it finds the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his views, is discussed in an authoritative commentary on the Convention by Professor Elisa Teresvera. There she says that:**

**'Such a provision is absolutely necessary given the fact that the Convention applies. . . to all children under the age of 16, the fact must be acknowledged that it would be very difficult to accept that a child of for example 15 years of age should be returned against its will.'**

**In my judgment, this case, for the reasons given by my Lords, falls squarely within the exception. Accordingly this country has no duty under international law to return the child to Ireland. The court is free to exercise its own discretion, taking into account the interests of the child, but also the underlying policy reflected in the Convention which prevents either parent from gaining a jurisdictional advantage by wrongfully removing a child from its country of habitual residence.**

**In this case, most unusually, that policy would not be infringed by allowing the child to remain in England. The substantial dispute in this case is not between mother and father but between mother and child. The initiative to leave Ireland came from the child, who has run away from the mother on a number of previous occasions. The father merely responded to the child's request for help. He would like to have the child to live with him, but he is willing to abide by what the court considers to be in his best interests. There is no infringement of the policy of the Hague Convention and one can concentrate on what is in the interests of the child. He sees his prospects on return to Ireland as bleak. This involves, as my Lords have said, no reflection on the Irish courts which have been flooded with litigation initiated by the mother and have therefore been in**

**a position of consistently having to respond, rather than to act. The effect is that N perceives his mother as a ferocious litigant who usually gets her way. Furthermore, the choice for him in Ireland appears to him to lie between going back to his mother and being put into a secure institution. Here he has his uncle and aunt, with whom he is said to have a good relationship, and access to his father. No doubt there are other courses which would be open to the Irish court but I emphasise that is how it looks to N.**

**In these circumstances the interests of the child, in my judgment, require that his future should be decided here. Since there is no international law obligation or other rule which fetters our discretion, I can put my judgment on the simplest possible ground; I think it is time someone paid attention to what N himself wants. He plainly does not want to go back to Ireland. It is not for this court to say whether his reasons for that view are good or bad. That decision will come later, but the evidence does not suggest that he is necessarily being unreasonable in wanting to stay here. In my judgment, it would be an act of cruelty for him to be sent back against his will. I therefore agree that the order under the Hague Convention should be discharged and I agree with the other orders which Butler-Sloss LJ has proposed.**

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