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Judgment: approved by the Court for handing down | *Delivered:* **14/02/11**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

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BETWEEN:

RT (A MINOR) (BY HIS FATHER AND NEXT FRIEND RS)
First Plaintiff;

RS
Second Plaintiff;

LN (A MINOR) (BY HER FATHER AND NEXT FRIEND RS)
Third Plaintiff;

RA (A MINOR) (BY HER FATHER AND NEXT FRIEND RS)
Fourth Plaintiff;

JA (A MINOR) (BY HER FATHER AND NEXT FRIEND RS)
Fifth Plaintiff;

AND

THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND
Defendant.

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ACTION

GILLEN J

[1] In this action the plaintiffs seek damages against the defendant for negligence and breaches of the Human Rights Act 1998 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) as set out in Schedule 1 to the Human Rights Act 1998 ("the Convention") in the operation of a witness protection scheme. In particular the first plaintiff seeks a declaration that the defendant has acted in breach of Articles 5 and 8 of the Convention. The second, third, fourth and fifth plaintiffs seek a declaration that the defendant acted in breaches of their rights under Article 8 of the Convention.

Background Case

[2] It was common case that RS ("P2" or "this plaintiff") and his wife G ("G") separated in August 2005. The children of the marriage, namely RT (7), LN (14), RA (16) and JA (11) resided with G but ample contact was afforded to RS. These children were the first, third, fourth and fifth plaintiffs respectively.

[3] G commenced a relationship with a man identified in this judgment as "A" and whom P2 alleges to be a UVF informant. It was P2's case in evidence before me that G soon cohabited with A and the children. He further asserted that in February 2007 A had left the jurisdiction and his whereabouts at that stage were unknown. P2 went on to assert that he learned through one of his daughters that his wife had allegedly gone on holiday with his son RT (P1). His daughters then commenced to reside with him. When he contacted his wife by telephone she informed him that she was in London with P1 on a two week break and that she would be back by 28/29 March 2007.

[4] This plaintiff further contended that on 29 March 2007 his wife telephoned to inform him that she was not on holiday but that she had gone away with A and that he would not see his son again in Northern Ireland. She indicated that A was under a Witness Protection Scheme and that she and P1 were with him. Thereafter the only contact with her was when she telephoned P2. He did make contact with his son by telephone but was unable to ascertain his whereabouts because his wife would intervene when any such questions were raised by this plaintiff.

[5] It was this plaintiff's contention that after about 2 weeks his son informed him that he wished to come home. P2 contended that the firm of solicitors he then retained had contacted the police but he received no letter or visit from the police on the matter. Thereafter he met with Social Services upon receiving information that the landlord of the house where his wife had resided with A had reported matters of concern to them. The Social Services allegedly were unaware that the three other children of the family resided at that time with P2 and had contacted the police.

[6] P2 contended that Social Services informed him they had spoken to Inspector Kincaid of the Special Intelligence Unit of the PSNI who had sought information from them on this plaintiff. P2 then made further contact with his solicitor, Social Services and local councillors. He told this court that Social Services voiced concerns about the parenting of the children when residing with his wife and A.

[7] In evidence this plaintiff claimed that his daughter RA informed him that his wife had revealed to her that she was leaving and was not intending

to come back. LN in evidence before me confirmed that her mother had told her on 12 March 2007 that she was leaving and taking P1 with her to stay with A as there was nothing for her in Northern Ireland. G allegedly exhorted LN not to reveal this to her father but to say that she was going on a 2 week holiday. LN eventually did reveal the truth to her father on 28/29 March 2007. LN's mother had invited her to join them but she had refused.

[8] LN's evidence was that during the period that she lived with her mother and A in N. Ireland on most nights there was excessive drinking in the house and that A was not "a nice man to be around".

[9] P2 sought additional assistance from his local councillor and MLA. The latter subsequently informed P2 that his office could do nothing but that he should contact the local police. P2 requested another MLA to speak to Sir Hugh Orde but nothing occurred.

[10] For completeness sake I pause to record that P2 did make a complaint to the Police Ombudsman (PO) against the police conduct in this matter. The PO carried out investigations surrounding his complaint and reported to him that he considered the matter closed in September 2009. I had before me in the discovered documentation a letter from the Police Ombudsman of 29 September 2009. This included an allegation, made by P2 that the PSNI had failed to respond to any correspondence passed between his solicitor and the PSNI. The finding of the Ombudsman was "the Police Ombudsman has substantiated this particular complaint and has made recommendations to the PSNI". This matter was not drawn to my attention in the course of any evidence. I have no idea what was the nature of the evidence presented to the Ombudsman on this issue, what period of time was being discussed (was it before or after the relevant dates in this case?) and what the various arguments on each side were. This was but one of a number of instances where there was a complete lack of any admissible or sustainable evidence on an issue.

[11] P1 did return to N.Ireland to reside with P2 on 24 June 2007 in the wake of Family Law court proceedings instituted by P2. Through picking up pieces of information from speaking to the boy on the telephone and employing the services of a private detective, this plaintiff had ascertained the name of his school. He then applied ex parte to the Family Court for a Specific Issues Order and Residence Order. This application was grounded on the allegations that since his wife had left him to relocate in England with A he had been left with the full-time care of his three daughters and he was greatly concerned about the safety and well-being of all of his children and sought the return of his son to the jurisdiction together with a Residence Order for all of his children.

[12] The matter came on for hearing before Master Wells on 30 May 2007 and she directed as follows:

> "1. Leave is granted to the applicant to make an ex-parte application for a Specific Issue Order and interim Residence Order in respect of his son.
>
> 2. The court hereby grants the applicant a Specific Issue Order namely to direct that the respondent returns his son to Northern Ireland forthwith and into the care of the applicant.
>
> 3. The court further grants the applicant an Interim Residence Order in respect of his son and that order is to expire on 21 June 2007.
>
> 4. Leave is granted to effect substituted service of the pleadings, evidence and court order on the respondent who resides outside the jurisdiction and police have agreed to assist the applicant with service.
>
> 5. The Official Solicitor is hereby appointed to represent the children pursuant to Rule 6 of the Family Proceedings Rules (NI) 1996 and to consider the ascertainable wishes and feelings of (the children) in respect of residence and contact and the Official Solicitor shall advise the assigned judge at the next hearing when she will have a report prepared if this is not available for 21 June 2007.
>
> 6. The applicant shall file an addendum Statement of Evidence on or before 1 June 2007.
>
> 7. The respondent shall file a Statement of Evidence on or before 16 June 2007.
>
> 8. Leave is granted to the applicant to amend his application for a Residence Order namely to remove (two of the children from the application)."

[13] The case was to be listed before the assigned judge, namely Weir J on 21 June 2007 for an Inter Partes hearing with the parties being directed to attend in person.

[14] The order of Weir J dated 25 June 2007 records that on 21 June 2007 counsel for both this plaintiff and his wife and counsel for the Official Solicitor appeared before him. The court directed, inter alia, that the Interim Residence Order granted on 30 May 2007 be continued until further order and that a suitably qualified person from the Northern Health and Social Services Trust should on or before 17 August 2007 prepare a report pursuant to Article 4 of the Children (NI) Order 1995 and "shall therein consider the ascertainable wishes and feelings of the child in respect of contact, residence and appropriate arrangements for the child to participate in the proceedings". The Interim Residence Order in respect of the child RT was extended until 26 September 2007.

[15] It was a matter of some surprise to me to hear the plaintiff admit in cross-examination that the first time he had learned that the police had agreed to assist with service (as part of the order made by Master Wells) was in court during this hearing. I found this difficult to accept. It seemed to me inconceivable that this would not have been explained to him by his solicitor. He was also apparently unaware, as it was put to him in cross-examination, that on 12 June 2007 Detective Inspector Kincaid, who had been contacted by Social Services, was prepared to help contact G but needed copies of the date of birth of the child and the Residence Order. As late as 20 June 2007 it would appear that Inspector Kincaid still had not been furnished with this documentation. In light of the plaintiffs' case that the police had been unhelpful in this case I found this delay somewhat disturbing.

Medical Evidence

[16] Although at an early stage there appeared to be some dispute between Mr Ringland QC ,who appeared with Mr McMillen on behalf of the defendant and Mr Kennedy QC, who appeared with Mr Girvan on behalf of the plaintiffs, as to the nature of any agreement about medical evidence, I was eventually finally assured by both counsel in unequivocal terms that the medical experts retained on each side had convened an experts meeting comprising Dr Curran consultant psychiatrist on behalf of the defendants and Professor Davidson and Dr McCartan clinical psychologists on behalf of the plaintiffs and had agreed a statement of the medical evidence which was furnished to me.

[17] In the case of RS, the agreed statement of medical evidence recorded:

> "Essentially we say that RS was emotionally distressed due to the circumstances. We do not conclude that he had psychopathology or was mentally ill as a result of the circumstances ie his

> emotional distress was real and significant but within normal limits."

So far as RT was concerned, the agreed medical evidence stated, inter alia:

> "Between March and June 2007 when RT was in GB with mother and her partner, he suffered what is best described in psychiatric nomenclature as an `adjustment reaction' … ie a state of understandable feelings given the situation he unwillingly found himself in caused by the situation; and from which he repaired when the situation resolved ie an emotional reaction with beginning, middle and an end. … During the period March through June 2007 when with his mother and her partner in GB he was excited about being abroad; uncertain of what was happening; missed his father and siblings; was perhaps bewildered about what was happening and missed his school, grandparents, father, siblings and friends. Happily these feelings repaired when he was returned to the bosom of his family, readjusted to school life and his achieving of this was greatly facilitated by his father's decision to re-establish a strong sense of family life and normalcy whilst maintaining the pretence that RT had merely been away on an extended holiday with is mother. The child does not have any mental illness and is unlikely to develop any psychiatric issues in the long-term purely because of the events of March-June 2007".

[18] In relation to the plaintiff RA, the agreed medical evidence included the following, inter alia:

> "RA is a well adjusted teenager with no evidence of mental illness and displays no evidence of any lingering mental health issues arising from the period of separation from her sibling RT March-June 2007. … She missed RT when he was away but that happily repaired immediately upon his return … She never suffered from any form of mental or psychiatric illness but, rather, had understandable feelings for the duration of RT's absence, not least because of her own part in the escapade. It is quite unlikely that she will have

> any late or long-term psychological difficulties because of the events of March-June 2007".

[19] In relation to LN, the agreed medical evidence contained, inter alia, the following:

> "LN is a well adjusted teenager with no evidence of mental health illness; and she displays no evidence of lingering mental health issues arising from the period of separation from her younger brother March through June 2007 … She never suffered any form of mental illness but rather had understandable feelings much as anyone would have, as this family drama played out over those three months. She is not at risk of any late or long-term mental health difficulties purely because of the events of March-June 2007".

[20] The agreed medical evidence in relation to JA contained inter alia the following:

> "This child did not develop any recognisable psychiatric or mental illness following the events through June 2007. … She did not develop any psychiatric illness nor require any treatment or help but may have had some feelings at the time which, if present, soon repaired with the return of RT and the establishment of proper family life which the father has fostered since June 2007".

[21] No further medical evidence was called save that I had before me a number of medical reports on each side which added nothing of substance to the experts' agreed statements .

Claim in Negligence

[22] I have already given an extempore judgment on this aspect of the case at the close of the plaintiffs' case. Viewing the plaintiffs' cases in the most favourable light I applied the test of Carswell J In *O'Neill –v- Department of Health and Social Services* [1986] NI 290 @292A where he formulated the governing test as follows :

> "The issue at this stage of the case is whether there is any evidence upon which a reasonable jury, consisting of persons of ordinary reason and firmness, could if properly directed find in favour of the Plaintiff".

In brief I concluded that "the gist of negligence" is damage (per Lord Scarman in Sidaway v Bethlem Royal Hospital Governors [1985] 1 AER 643 at 650. A wide range of interests are protected by tort law but not all interests are protected against all forms of conduct. The law must strike a fair balance between the interests of victims and the interests of injurers. The courts long ago accepted that health can be harmed by means other than overt physical attack or injury. Mental as much as physical health is protected by the law of torts. However a line has been drawn between physical/psychiatric injuries on the one hand and mental distress, anger and upset on the other in the common law world. Where the mental distress is an incident of physical/psychiatric harm or incidental to the nature of the wrong eg a nuisance, it falls to be compensated. But where it stands on its own it is not sufficient to sound in damages save in those few incidences where damages is not an ingredient of the tort, such as assault.

[23] Thus as a general rule torts that require proof of damage do not count "mere" distress or injury to feelings as a compensatable loss. There is no damage for emotional distress, anguish or grief. In Hamilton Jones v David and Snape (a firm) [2004] 1 WLR 924 Neuberger J considered that damages for distress at loss of the society of one's children is not recoverable in tort.

[24] I therefore was not satisfied that there was any evidence that compensatable loss or damage had been proved in any of these instances and consequently I dismissed the plaintiffs' claims in tort.

[25] Whilst Mr Kennedy sensibly did not take up much of the court's time contesting this largely self evident aspect of the case, he nonetheless contended that even if this were so, I should make a finding on negligence and make at least a nominal award of damages accompanied by a declaration to the effect that the defendant had been so negligent. For reasons that will be obvious from my findings later set out in this judgment under Article 8 of the Convention (see paragraphs 34-42 of this judgment), I find neither negligence nor fault on the part of the defendant in this action. Even had I been so disposed to find negligence, I do not believe that this action constitutes one of those actions in tort which are actionable per se (see Watkins v Secretary of State for the Home Department [2005] QB 883 CA per Brooke LJ).

[26] In light of these findings I did not find it necessary to determine the issues of whether a duty of care on the police arose in this instance or whether the plaintiffs could come within the categories of primary or secondary

victims even had they established some basis for a claim in negligence or some compensatable damage.

Article 5 of the Convention

[27] Article 5 of the Convention provides as follows:

> "Right to liberty and security
> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) The lawful detention of a person after a conviction by a competent court;
>
> (b) The lawful arrest or detention of a person for non compliance with a lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his continuing an offence or fleeing after having done so;
>
> (d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) The lawful detention of persons for the prevention of the spreading of infectious diseases etc;
>
> (f) The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against

whom action is being taken with a view to deportation or extradition."

[28] Mr Kennedy sought to ground the Article 5 claim of RT on his alleged detention within the Witness Protection Scheme with its concomitant strictures and risks against a background where Mr Kennedy alleged that it had been "clearly established in the Family Division of the High Court that he should never have been so detained".

[29] At the close of the plaintiffs' case I found no violation of Article 5 because I found no deprivation of liberty within the meaning of that Article. As Lord Hope adumbrated in Austin v Commissioner of the Metropolitan Police [2009] 1 AC 564, Article 5 should be understood as effecting a pragmatic balance between individual rights and the public interest. In this case on the facts before me I am satisfied that the defendant played no role in the decision by G to bring her son, who then was living with her, to England to reside with her partner of choice. In no sense could it be argued that the Chief Constable of the PSNI played any role in interfering with the right to liberty of this child. There was no evidence that the police had forced him to accompany his mother or detained him in N.Ireland or England against his will. G was clearly bent on joining A wherever he was and it was entirely the decision of his mother to bring P1 to England. There was no evidence before me that the defendant played any role whatsoever in that decision. That the family court subsequently determined that it was in the best interests of P1 that he should at the time of the Order reside with P2 is no evidence that the defendant had been in breach of Article 5 of the Convention when the child first accompanied his mother to join A or at any time thereafter .

Article 8 of the Convention – the right to respect for private and family life.

[30] Article 8 of the Convention provides:

"Article 8

Right to Respect for Private and Family Life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security,

> public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[31] In essence Article 8 is the right to live one's personal life without unjustified interference; the right to one's personal integrity. It is relevant to note the observation of the Court of Human Rights in Abdulaziz, Cabiles and Bilkandali v United Kingdom (1985) 7 EHRR 471 at p. 497 para. 67:

> "The court recalls that although the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective 'respect' for family life. However, especially as far as those positive obligations are concerned, the notion of 'respect' is not clear cut: having regard to the diversity of the practices followed and the situations obtaining in the contracting states, the notion's requirements will vary considerably from case to case. Accordingly, this is an area in which the contracting parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals."

[32] There are numerous contexts in which a claim under Article 8 may form the content of, or be relevant to, an action under the Human Rights Act against public authorities. For example parents whose children are removed after a suspicion of abuse may use Article 8 as the core of their claim although family life is not an interest protected by the law of tort (see F B Wirral MBC (1991) Fam. 69). In Anufrijeva v Southwark LBC (2004) QB 1124 the claimant alleged that the Authority's failure to provide housing suitable for an elderly family member prevented the family from living together and was in breach of Article 8. The Court of Appeal rejected the Article 8 claim. Lord Woolf said that for there to be a breach of Article 8 there had to be an element of culpability at least involving knowledge that family life was at risk. At paragraph 45 Lord Woolf said:

> "45. Insofar as Article 8 imposes positive obligations, these are not absolute. Before inaction can amount to a lack of respect for private and family life, there must be some ground for criticising the failure to act. There must be an element of culpability. At

> the very least there must be knowledge that the claimant's private and family life are at risk."

[33] In the present instance, the plaintiffs' case in essence was that the police had failed:

- To prevent the child P1 being taken out of the jurisdiction to England against the wishes of the father.

- To help have him returned e.g. by assisting with service of court papers.

- To notify the father and siblings that the mother intended to bring the child to England or to help to make contact between father/siblings and child.

- To assist the plaintiff's solicitor to obtain the address for service of proceedings.

- To prevent the child living with a dangerous person.

- To contact social services or some other relevant body before the child was taken to England by G

[34] The burden of proof is on the plaintiffs in this case. The court must be cautious to ensure that the reach of art 8 is not overstated. I found no factual evidence capable of sustaining any of these arguments mounted by the plaintiffs. In the first place, no positive evidence was adduced before me as to any means used by the police to facilitate or to assist the G to take this child out of the jurisdiction against the wishes of the father. I heard no details as to who had provided the fare for the transport or flights to England. P2 told me in evidence that his wife had sold a car and that perhaps that had financed the move. I have no idea what information G had given to the police about the state of her marriage or the nature of family commitments. The police are neither social workers nor family counsellors. It is for the family court, as in the event occurred in this case, to determine any dispute over the proper residence of a child applying the criterion of the best interests of the child. Absent any evidence of the commission of a crime I cannot see how the police could have properly intervened in this instance in the manner postulated by the plaintiffs.

[35] In any event, once the mother of this child had decided to join her partner in England with her son, and had communicated this to the police, I found nothing untoward about the police taking steps to try to protect her carrying out that decision given that she was involved allegedly with a police

informant. P2 conceded in evidence that it was known in the area that she was having a relationship with an alleged informer and was going to live with him. If, as P2 indicated, there was evidence that she was bent on joining him with her son irrespective of anyone else's view, it seems to me only prudent for the police to have ensured her safe movement thereafter. That settled and clear intent to leave Northern Ireland and join A in England with her son had, on the evidence before me, nothing to do with the police. Given that she was bent on joining A, I find no causative connection between her joining him with her son and the role of the police. To place any further burden on the police would be to potentially inhibit or delay the police taking proper steps to carry out their duties and protect the public. The very nature of G's departure had to be cloaked in secrecy for her safety and that of the boy and thereafter disclosure of their whereabouts would have endangered them as well as A. A proportionate balance had to be struck by the police in conducting their activities and I consider they did so in this instance.

[36] I thus was not in possession of any evidence that the police had culpably facilitated or aided the interference with any right of any member of this family. The defendant did not facilitate or encourage G to interfere with the family rights of any of these plaintiffs pursuant to Article 8 and certainly no evidence of such culpable interference was presented to me. Absent any evidence that the police were aware of any breach of domestic law on the part of this mother, I find no basis for the suggestion that the defendant should have imposed on her or themselves an obligation to contact the boy's father much less Social Services or any other body. To suggest, as the plaintiffs have done in this case in their skeleton argument, that the defendant was party to "abduction "of this child is unwarranted and unsupported by any of the facts before me.

[37] Similarly I find no evidence before me to sustain the argument that the police frustrated contact between P2 and his son by refusing to permit contact or help with service of documents. The solicitor in question who was retained by P2 gave no evidence of any attempt to obtain assistance from the police prior to the court hearing before Master Wells on 30 May 2007. The earliest correspondence put in evidence was that of 31 May 2007 when a series of letters were written by the P2's solicitor to various police officers requiring the assistance of the police to provide an address for G and the child. Those letters were clearly written after the order had been made by Master Wells. Inter alia, those letters contained the following:

> "We require the assistance of the police in providing with an address for G and the child or in the event that that address is not forthcoming we require your assistance in relation to the service of the Order.

> As the order was only made yesterday we are waiting to receive certified copies and if you can confirm to us that you will assist with the service of Order we can arrange to forward a sealed copy for service on G.
>
> G removed her child unlawfully from this jurisdiction and in accordance with the terms of the Order the child must be returned.
>
> We are not in any way suggesting that the police were aware that G intended to leave the jurisdiction to live with A but our client instructs us that the police are aware of A's address and that his wife is co-habiting with A."

[38] This letter is relevant in three regards. First, it makes not the slightest reference to any earlier failure on the part of the police to assist the solicitor. Secondly, it expressly deflects any blame from the police for G removing her child from the jurisdiction to live with A. Thirdly it reflects the order made by Master Wells of 30 May 2007 when police assistance was expressly requested. Thereafter I am unaware of any evidence that the police ignored the order of Master Wells or failed to give the necessary assistance. Indeed the evidence was that subsequent to the order of Master Wells, the papers were served on the wife. I do not know whether this was a result of the police passing on the information or not. The child was returned on 24 June ie. just over three weeks after the order was made. It is noteworthy that although the Official Solicitor was representing the children from the 30 May 2007 onwards no complaint seems to have been made by her of a lack of cooperation on the part of the police.

[39] In any event it seemed to be acknowledged by P2 in the course of his evidence that Inspector Kincaid had been prepared to render further assistance and had sought some information in order to effect those efforts. It was no fault of his that the processing of that information was delayed being passed to him for a considerable time. Far from "thumbing their noses" at the judicial process (as alleged in the plaintiffs' skeleton argument) it appears that the police were willing to assist.

[40] In this context it is not without significance that the diary of P2 which was produced before me and which covered the period between 13 March 2007 and 25 June 2007 did not make a single complaint by way of entry about the refusal of the police to co-operate or help. It did seem extraordinary to me that P2 was apparently unaware that the order requesting the assistance of the police had indeed been made by Master Wells.

[41] Further, I find no evidence that the police had placed P1 in a "dangerous" situation with the alleged informer. In the first place, it was the choice of his mother, not that of the defendant, to take the child to England to reside with A. Secondly, she had been living with this man along with all of her children for a considerable period after the break up of the marriage and before there was any mention of moving to England. P2 had taken no step to alert Social Services to any danger if he thought that A was an improper person with whom his children were residing. Evidence was called of a previous criminal record this man had but much of it was of some vintage. I found this attack to be disingenuous on the part of P2. The child did make telephonic communication with his father during the period he was in England and no complaint was made to P2 of any disagreeable treatment of the child by A. No attempt was made by the police to frustrate this contact between father and son.

[42] In all the circumstances therefore I find no ground for criticising the actions of the defendant and no basis for asserting an element of culpability on the part of the police. There is nothing in the procedure they adopted which is infected with any unlawful aspect. There is no evidence that they had any knowledge that the plaintiff's private and family life or that of any of his children was at risk. The question of with whom the child should reside is entirely a matter for the court to determine and it would not have been appropriate for the police to have interfered even had they been aware of the nature of the issue. When the court did determine that the child should be returned to Northern Ireland that happened within a tolerably short time.

[43] I have therefore come to the conclusion that there was no interference with the Article 8 rights of any of the plaintiffs in this case.

[44] In all the circumstances therefore I have dismissed all the claims in this matter. I shall invite counsel to address me on the issue of costs.