

# Practice Guidance

## Case Management and Mediation of International Child Abduction Proceedings

### 1. Introduction

1.1. For the purposes of this Practice Guidance, “international child abduction proceedings” are proceedings in which the return of a child is sought under any of the following:

- (a) The Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (“the 1980 Hague Convention”);
- (b) The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (“the 1996 Hague Convention”);
- (c) Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility (“the Council Regulation”);
- (d) The High Court’s power to make an order returning the child to another jurisdiction or to make an order for the return of the child to this jurisdiction (“the inherent jurisdiction”)

1.2. International child abduction proceedings dealt with under the 1980 Hague Convention must be completed within six weeks of the date of the application. FPR PD12F paragraph 3.5 applies the same time limit to non-Convention cases under the inherent jurisdiction, save where exceptional circumstances make this impossible. This Practice Guidance is issued to ensure all applications are case managed in a manner that facilitates these time limits, both in cases that commence with a without notice application and cases that commence on notice.

1.3. Chapter 6 of Part 12 of the FPR 2010 and PD12F provide the procedural framework for proceedings under the 1980 Hague Convention, the 1996 Hague Convention and the Council Regulation. The rules provide for case management directions in child abduction proceedings to be given “as soon as practicable” after the application has been made. In particular, the rules provide for:

- (a) Directions for the production of the applicant’s evidence (r. 12.46)
- (b) The giving of case management directions generally (r 12.48)
- (c) The filing and service of an answer (r 12.49)
- (d) The filing and service of written evidence (r 12.50)

### 2. Case Management – Procedure

#### ***(a) Without notice applications***

##### *Use of without notice applications*

2.1. Commencing proceedings by way of a without notice application pursuant to FPR r 12.47 will be justified *only* where (a) the case is one of exceptional urgency or (b) there is a compelling case that the child's welfare will be compromised if the other party is alerted in advance or (c) where the whereabouts of the child and the proposed respondent are unknown.

An urgent out of hours without notice application will be justified *only* where an order is necessary to regulate the position between the moment the order is made and the next available sitting of the court.

#### *Evidence in support of without notice applications*

2.2. The evidence in support of a without notice application must be as detailed and precise as possible having regard to the material provided by the applicant and transmitted by the Central Authority of the Requesting State. Unparticularised generalities will not suffice. Sources of hearsay must be identified and expressions of opinion must be supported by evidence and proper reasoning. The evidence should set out the orders sought, together with fully particularised reasons. Specifically, with respect to the narrow circumstances justifying a without notice application set out in para 2.1 above:

- (a) Where the justification for proceeding without notice is said to be exceptional urgency, the evidence in support of the without notice application *must* identify why the case is exceptionally urgent and why no notice, even short informal notice, can be given to the respondent (with respect to short, informal notice see para 2.8 below).
- (b) Where the justification for proceeding without notice is said to be a compelling case that the child's welfare will be compromised if notice is given, the evidence in support of the without notice application *must* demonstrate a real risk that if the respondent is alerted in advance the welfare of the child will be compromised, whether by the respondent thwarting the court's order or otherwise. Where the risk is said to be removal of the child from the jurisdiction, the evidence must address (i) the magnitude of the risk that the respondent will be minded to remove, (ii) the magnitude of the risk that, if the respondent is minded to remove, he or she will be able to evade protective measures put in place by the court and (iii) the magnitude of the consequences for the children if the protective measures are evaded.
- (c) Where the justification for proceeding without notice is said to be that the whereabouts of the child and the proposed respondent are unknown, the evidence in support of the without notice application *must* explain what steps have been taken to locate them, what disclosure orders are required against an identified agency and why there is reason to believe that that agency may be able to provide information which may lead to the location of the child.

#### *Without notice orders*

2.3. Before seeking a without notice Tipstaff order the applicant or their legal representative must speak to the Tipstaff. The Tipstaff can be contacted by telephone on 01622 858035.

2.4. Passport orders, location orders and collection orders constitute an interference with the child's and the respondent's fundamental rights. On a without notice application, parties should only seek, and the court can only be expected to grant, such orders as are necessary and proportionate having regard to the risks assessed to exist on the evidence. Where a court makes more than one disclosure order, it may provide for the sequential service of those orders.

*Case management directions at without notice hearings*

2.5. Where a without notice application is justified and the court grants a Tipstaff or other substantive order, or where a without notice application is justified but the court refuses to grant a Tipstaff or other substantive order on the merits, the court will in each case proceed to give case management directions to progress the matter, which directions may be varied and/or supplemented at the first on notice hearing where appropriate. The directions given will include the following:

- (a) A direction that at the first on notice hearing the applicant and the respondent shall each be given the opportunity to speak separately with a mediator, who will be present at the Royal Courts of Justice, to enable the mediator to discuss with the parties the possibility of mediation under the Child Abduction Mediation Scheme and, where appropriate, undertake a screening interview.
- (b) A direction pursuant to FPR r 12.46(a) for the filing of any further evidence to be relied on by the applicant in support of the application including, where it is not already contained in the evidence supporting the application, a description of any protective measures (including orders that may be subject to a declaration of enforceability or registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer for the purpose of securing the child's return.
- (c) A direction pursuant to FPR r 12.50(2)(a) for the filing and serving of the respondent's answer.
- (d) A direction pursuant to FPR r 12.50(1) for the filing of the respondent's evidence in support of the answer, to include details of any protective measures the respondent seeks (including, where appropriate, undertakings) in the event that the court orders the child's return.
- (e) An order listing the matter for hearing for summary resolution, or in the alternative, further directions, no more than seven days from the date on which the without notice order is made (where a collection order is made the Tipstaff will return the matter to court within 3 days of the order being executed) with a direction that the respondent shall attend this hearing.
- (f) A direction for the provision by HMCTS of an interpreter for the hearing where Section 11 of Form C67 indicates that the respondent does not speak English and indicates the language and dialect spoken by the respondent.
- (g) Such further or other case management directions that are appropriate in the circumstances of the case. Where it is clear on the face of the application and supporting evidence that it will be appropriate for the child to be heard during the proceedings the court may make directions to ensure the child is given the opportunity to be heard (see paragraph 3.5 below).
- (h) Unless the court directs otherwise, a direction pursuant to FPR r 12.47(3) that the applicant is to effect personal service of the standard directions order together with a record of the without notice hearing (note that where an order provides for service by the Tipstaff it is not sufficient for the order to be served by the applicant).

2.6. It is important that any without notice application is prepared in a manner that maximises the chances of the on notice hearing being effective. To this end, the without notice application and the evidence in support must contain *all* the information in the possession of the applicant that will or may assist in the prompt execution of any orders made. To further assist in achieving an effective on notice hearing, the directions order resulting from the without notice hearing will be served together with an information sheet, detailing how the respondent can obtain legal advice, public funding from the Legal Aid Agency and, if necessary, *pro bono* assistance, and a copy of the Child Abduction Mediation Scheme.

2.7. Where the application has been commenced by way of a without notice hearing, at the first effective on notice hearing the court will make further case management directions with input from both parties with a view to addressing each of the matters set out in paragraph 2.11 of this Practice Guidance where those matters have not already been dealt with by way of directions at the without notice hearing.

### ***(b) On notice applications***

#### *Notice periods for on notice applications*

2.8. FPR r 12.8 and PD12C provide that, in proceedings under the 1980 Hague Convention, service of the application on the respondent must be effected a minimum of 4 days before the first hearing and that, in proceedings under the inherent jurisdiction, service on the respondent must be effected a minimum of 14 days before the first hearing. Pursuant to PD12C para 2.2 the court may extend or shorten these periods for service. Whilst the courts have endorsed the practice of giving short, informal notice of proceedings in preference to proceeding without notice, where short, informal notice is given there *must* be evidence identifying why it was not possible to serve the application in accordance with the rules or to make an application to abridge time for service.

#### *Standard directions on issue*

2.9. Where the application is made on notice (and, accordingly, there is no without notice hearing immediately following the issuing of the application) there is a risk that valuable time will be lost between issue and the first on notice hearing. To minimise this risk, upon the court issuing an on notice application the court will, of its own motion, make standard directions upon issue pursuant to FPR r 12.5(1)(b), to include:

- (a) A direction that at the first on notice hearing the applicant and the respondent shall each be given the opportunity to speak separately with the mediator present at the Royal Courts of Justice to enable the mediator to discuss with the parties the possibility of mediation under the Child Abduction Mediation Scheme and, where appropriate, undertake a screening interview.
- (b) A direction pursuant to FPR r 12.46(a) for the filing of any further evidence to be relied on by the applicant in support of the application including, where it is not already contained in the evidence supporting the application, a description of any protective measures (including orders that may be subject to registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer for the purpose of securing the child's return.

- (c) A direction pursuant to FPR r 12.50(2)(a) for the filing and serving of the respondent's answer not less than 2 days prior to the first hearing.
- (d) A direction pursuant to FPR r 12.50(1) for the filing of the respondent's evidence in support of the answer, to include details of any protective measures the respondent seeks (including, where appropriate, undertakings) in the event that the court orders the child's return not less than 2 days prior to the first hearing.
- (e) A direction that upon service of the application the respondent file with the court a notice confirming the respondent's address and the whereabouts of the child (or that they are unaware of the child's whereabouts) and, where the respondent subsequently changes his or her address or becomes aware of any change in the child's whereabouts, a notice of the new address or of the new whereabouts of the child.
- (f) A direction that upon service of the application the respondent serve on the applicant the notice confirming the respondent's address and the whereabouts of the child (or that they are unaware of the child's whereabouts) *or* file with the court a notice indicating that the respondent objects to serving on the applicant with notice confirming the respondent's address and the whereabouts of the child and the reasons for that objection.
- (g) An order listing the matter for hearing for summary resolution or in the alternative further directions, seven days from the date the application is issued with a direction that the respondent shall attend this hearing.
- (h) A direction for the provision by HMCTS of an interpreter for the hearing where Section 11 of Form C67 indicates that the respondent does not speak English and indicates the language and dialect spoken by the respondent.
- (i) Such further or other case management directions that are appropriate in the circumstances of the case. Where it is clear on the face of the application and supporting evidence that it will be appropriate for the child to be heard during the proceedings the court may make directions to ensure the child is given the opportunity to be heard (see paragraph 3.5 below).
- (j) A direction that the applicant is to effect personal service of the standard directions order.

2.10. The resulting directions order will be served together with an information sheet, detailing how the respondent can obtain legal advice, public funding from the Legal Aid Agency and, if necessary, *pro bono* assistance, and a copy of the Child Abduction Mediation Scheme.

*Directions at first on notice hearing*

2.11. At the first hearing, the parties should attend fully prepared to deal with the case management matters that have not been dealt with by way of standard directions upon issue or which have been so dealt with but require variation, together with any additional case management matters that may arise in the circumstances of the case. The court will expect the parties to be able to deal with the following case management issues if applicable:

- (a) Further directions with respect to mediation or other non-court dispute resolution procedure.

- (b) Allocation.
- (c) Any directions required to deal with further disclosure.
- (d) Any further directions with respect to the filing and service of an answer and evidence in support, to include details of any protective measures the respondent seeks (including, where appropriate, undertakings) in the event that the court orders the child's return.
- (e) Any further directions with respect to the filing and service of the applicant's evidence in reply to the answer, including, where it is not already contained in the evidence supporting the application, a description of any protective measures (including orders that may be subject to a declaration of enforceability or registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer to secure the child's return. Where the respondent's answer raises a defence under Art 13(b) the applicant should give immediate consideration to, and take steps, in the most expeditious way available, to ensure that information is obtained, whether from the Central Authority of the Requesting State or otherwise, as to the protective measures that are available, or could be put in place to meet the alleged identified risks.
- (f) Directions in respect of expert evidence, if appropriate. Where a party seeks to adduce expert evidence, that party must comply with the requirements of FPR Part 25.
- (g) Directions in respect of oral evidence, if appropriate (in respect of directions for oral evidence see para 3.8 below).
- (h) Directions with respect to ensuring that the child is given the opportunity to be heard during the proceedings, unless this appears inappropriate having regard to his or her age or degree of maturity, including consideration of joinder and separate representation (see paragraph 3.5 below). Any application for joinder and separate representation should be made on notice prior to the first on notice hearing, to be dealt with at that hearing.
- (i) The timetabling of the final hearing prior to the expiry of the six-week deadline, including the appropriate time estimate for the hearing, incorporating time for judicial reading and judgment writing.
- (j) The arrangements for the provision of a court bundle that complies with FPR 2010 PD27A.
- (k) The arrangements for the provision, where appropriate, of skeleton arguments and an agreed bundle of authorities in compliance with PD27A.
- (l) Ancillary directions making provision where necessary for the attendance of a party not in the jurisdiction, the provision of video-links and the provision for interpreters at the final hearing. Where a video-link is sought, it is the responsibility of the parties to ensure appropriate arrangements are made for the video link and that the connection is made to the court via an ISDN line or, where an ISDN line is not available, that a 'bridging link' is arranged to ensure that a connection with the court can take place.

### **3. Case Management – Related Matters**

#### ***(a) Child Abduction Mediation Scheme***

3.1. The requirement in FPR r 1.4(2)(f) that case management includes encouraging the parties to use a non-court dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure, and the obligation imposed by FPR r 3.3(1) to consider whether non-court dispute resolution is appropriate at every stage of the proceedings, applies to international child abduction proceedings. The Lord Chancellor has set out in regulations provision on the of grant of non-means non-merit tested legal aid for mediation for applicant parents in cases under the 1980 Hague Convention.

3.2 Within this context, the court will, where appropriate, encourage the parties to engage in mediation of their dispute through participation in the Child Abduction Mediation Scheme (see Appendix). In any case where it is alleged or admitted, or there is other reason to believe, that the child or a parent has experienced domestic abuse or that there is a risk of such abuse, the court will have regard to these matters when deciding whether it is appropriate to encourage the parties to mediate. Participation in the Child Abduction Mediation Scheme is voluntary and without prejudice to the parties' right to invite the court to determine the issues between them. An unwillingness to enter into mediation will not have an effect on the outcome of the proceedings. It is important that parties and their representatives note that entering into a process of mediation will not ground a defence of acquiescence (see *In Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72 at 88-89).

3.3. The Child Abduction Mediation Scheme will operate in parallel with, but independent from, the proceedings. Where parties agree to enter into mediation, the court will give any directions required to facilitate the mediation. The parties or the parties' representatives must be in a position to address the court on the question of mediation at the relevant hearing to enable the court to consider the appropriateness of such directions. The mediation will proceed with the aim of completing that mediation within the applicable timescales. Where the mediation is successful, the resulting Memorandum of Understanding will be drawn up into a consent order for approval by the court. If the mediation is not successful, the court will proceed to determine the application.

#### ***(b) Issue Identification***

3.4. Key to ensuring that the final hearing is dealt with in a manner commensurate with the summary nature of most international child abduction hearings is the identification at the case management stage of what matters are truly in issue between the parties. It is particularly important that the directions hearing(s) preceding the final hearing be used to identify the real issues in the case, so that the judge can give firm and focused case management directions, including as to the form that the hearing will take. Parties can expect the court to be rigorous and robust at the case management stage in requiring parties to consider and identify the issues that the court is required to determine and to make concessions in respect of issues that are capable of agreement.

#### ***(b) Participation of the Child***

3.5. Art 11(3) of the Council Regulation requires the court to ensure that child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard

to his or her age or degree of maturity. Where it is clear on the face of the application and supporting evidence that it will be appropriate for the child to be heard during the proceedings the court may give directions to facilitate this at a without notice hearing or by way of standard directions on issue. Where directions have not already been given, the question of whether the child is to be given an opportunity to be heard in proceedings having regard to his or her age and degree of maturity, and if so how, must be considered and determined at the first on notice hearing. The methods by which a child may be heard during the proceedings comprise a report from an Officer of the Cafcass High Court Team or party status with legal representation. In most cases where it is appropriate for the child to be given an opportunity to be heard in proceedings an interview of the child by an officer of the Cafcass High Court Team will be sufficient to ensure that the child's wishes and feelings are placed before the court. In only a very few cases will party status be necessary. Where the exception relied on is that of settlement pursuant to Art 12 of the 1980 Hague Convention, the separate point of view of the child will be particularly important. The court should record on the face of any final order the manner in which the child has been heard in the proceedings.

### ***(c) Witness Statements***

3.6. Paragraph 2.13 of Practice Direction PD12F recognises that, to avoid delay, the *initial* statement in support of the application may be in the form of a statement given by the applicant's solicitor based on information transmitted by the Central Authority of the Requesting State. The applicant's initial statement of evidence *must* however, include the applicant's evidence establishing the necessary requirements for a return, a description of any protective measures (including orders that may be subject to a declaration of enforceability or registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer for the purpose of securing the child's return and full details of any proceedings in the Requesting State or in England and Wales of which the applicant is aware.

3.7. Witness statements filed in support of the answer and in reply to the answer should be as economical as possible and should deal only with those factual matters relevant to the issues raised in the answer. The court will rarely be assisted by a detailed account of the history of the parents' relationship. Appropriate translations of exhibits should be provided with the statement. Where the maker of the statement does not speak English, the statement should be prepared and served in the maker's own language and then certified translation into English provided by the party concerned.

### ***(d) Oral Evidence***

3.8. The court will rarely make a direction for oral evidence to be given. Any party seeking such direction for oral evidence will need to demonstrate to the satisfaction of the court that oral evidence is necessary to assist the court to resolve the proceedings justly. Any party seeking to rely on oral evidence should raise the issue at the earliest available opportunity and no later than the pre-hearing review.

### ***(e) Bundles***

3.9. The court bundle for any hearing must comply with FPR PD 27A. PD27A limits the size of the bundle to a single file containing no more than 350 pages (PD 27A para 5.1). The limit of 350 pages includes the skeleton arguments. Only those documents which are relevant to the

hearing and which it is necessary for the court to read, or which will be referred to during the hearing, may be included (PD 27A para 4.1). It will not generally be necessary to include in the bundle the application sent from the home country's Central Authority to ICACU. Where an issue arises as to the inclusion of this document, that issue will be dealt with by direction of the court. Skeleton arguments and other preliminary materials prepared for use in relation to earlier hearings should be excluded. Any separate bundle of all authorities relied on for any hearing must comply with PD 27A para 4.3. Each authority relied on must be provided with the relevant passages highlighted by means of a vertical line in the margin. Skeleton arguments must be filed by no later than 11am on the working day before the hearing (PD 27A para 6.4).

3.10. The time limits set out in FPR PD 27A para 6 for preparing and delivering the bundle and case management documents represent the *minimum* time limits applicable to this task. Where the hearing is on notice and the respondent is a litigant in person, the applicant should prepare and deliver the bundle pursuant to PD27A para 6 in a timeframe that ensures that the bundle and the case management documents are provided to the litigant in person at least three working days prior to the hearing.

***(f) Time estimates***

3.11. The time estimate for the final hearing should make reasonable allowance for judicial reading time and judgment writing. In those cases where permission for oral evidence has been given a witness template for the final hearing should also be completed at the time that the direction for oral evidence is made to ensure that the time estimate for the final hearing is accurate.

***(g) International Judicial Liaison***

3.12. The following matters may appropriately be the subject of direct international judicial liaison: (a) information concerning the scheduling of the case in the foreign jurisdiction, (b) seeking to establish whether protective measures are available for the child or other parent in the State to which the child would be returned, (c) ascertaining whether the foreign court can accept and enforce orders made or undertakings offered by the parties in the initiating jurisdiction, (d) ascertaining whether the foreign court can make a 'mirror order', (e) confirming whether orders were made by the foreign court and (f) verifying whether findings about domestic violence were made by the foreign court. This is not an exhaustive list. It is important to remember that international judicial liaison is *not* intended to be a substitute for obtaining legal advice, a means to avoid having to seek expert evidence as to foreign law or procedure, a mechanism for judges to settle welfare disputes or a means of making submissions to a foreign court. All requests for international judicial liaison should be made through the International Family Justice Office ([IFJOffice@hmcts.gsi.gov.uk](mailto:IFJOffice@hmcts.gsi.gov.uk)) and should be accompanied by a (preferably agreed) concise case summary and a set of focused questions to be put to the network judge which ask for information of a practical and non-legal nature, phrased in a neutral, non-tactical way.

***(h) Final Hearing***

3.13. Article 11 of the 1980 Hague Convention requires the judicial or administrative authorities of Contracting States to act expeditiously in proceedings for the return of children. Article 11(3) of the Council Regulation also requires a court to which a return application is made to act expeditiously and stipulates that, unless exceptional circumstances make this

impossible, the court must issue its judgment no later than six weeks after the application is lodged. Within this context, whilst the quantity and nature of the evidential material required to reach a proper determination of the application at final hearing will depend on the individual case, as will the format of the final hearing, including the extent to which oral evidence is permitted, the final hearing will be dealt with *summarily* and in most cases based on the written material then available to the court.

***(i) Orders***

3.14. The Tipstaff passport, location and collection orders are in a standard format that has been arrived at after careful consultation and revision. It is for the court to draw the relevant Tipstaff order once granted. Legal representatives should *not* provide a draft of the passport order, location order or collection order sought. Legal representatives should provide drafts of any disclosure orders sought and a separate draft of the case management directions sought alongside the Tipstaff and/or disclosure order(s) applied for. Orders which discharge Tipstaff orders, including orders for the release of passports held by the Tipstaff, will only be accepted by the Tipstaff if they are sealed.

3.15. Where one of the parties is a litigant in person, the advocate for the represented party will need to ensure that any case management and disclosure orders made by court are drafted and submitted for approval by the judge. When the solicitor for the represented party sends a copy of the order to the litigant in person, the solicitor should highlight in writing to the litigant in person any case management steps that the order requires them to take. Counsel instructed on a Direct Access basis cannot conduct litigation on behalf of their client. The obligation on Direct Access counsel ends once the order has been submitted to the court. Case management directions made against the client must accordingly be met by them as a litigant in person.

3.16. Where an order refusing the return of the child (a ‘non-return’ order) has been made in respect of an applicant from an EU member state on the grounds set out in Art 13 of the 1980 Hague Convention, the procedure set out in Art 11(6) of the Council Regulation, requiring the transmission of certain documents to the court with jurisdiction or Central Authority in the Member State where the child was habitually resident within one month of the date of the non-return order, must be complied with.

***(j) Appeals and Applications for Stay***

3.17. Any application for a stay pending an application for permission to appeal and the application for permission to appeal should be made expeditiously. Any application for permission to appeal and any stay should be made to the judge if possible and, if not possible or if refused, to the Court of Appeal. The filing of the notice of appeal should not be delayed until the appellant has received a copy of the approved transcript of the judgment under appeal.

Sir James Munby

*President of the Family Division*

13 March 2018

## APPENDIX

### Child Abduction Mediation Scheme

#### Introduction

1. The requirement in FPR r 1.4(2)(f)) that case management includes encouraging the parties to use a non-court dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure, and the obligation imposed by FPR r 3.3(1) to consider whether non-court dispute resolution is appropriate at every stage of the proceedings, applies to international child abduction proceedings. The 1980 Hague Convention itself, by Arts 7(c) and 10, places weight on the desirability of a negotiated or voluntary return or the amicable resolution of the issues.

2. In 2006, a child abduction Mediation Pilot Scheme run by Reunite, with funding from the Nuffield Foundation, found, in the context of twenty-eight cases which progressed to a concluded mediation, that there is a clear role for mediation in resolving cases of alleged child abduction and that parents were willing to embrace the use of mediation. Seventy-five percent of cases resulted in the parents concerned reaching a Memorandum of Understanding.

3. The Child Abduction Mediation Scheme is a mediation scheme that aims to ensure that parties engaged in child abduction proceedings are able, in an appropriate case, to access a mediation service as an integral part of the court process and in parallel with, but independent from, the proceedings. Whilst mediation will not be appropriate, or suitable, in every case, it is an option that should be explored by the court in all cases of alleged international child abduction.

#### Child Abduction Mediation Scheme – Key Principles

4. The Child Abduction Mediation Scheme is an independent mediation scheme run with the assistance of Reunite, which organisation provides mediators with specialised knowledge of international child abduction, trained and experienced in mediating cases of this nature. The following key principles apply to the operation of the Child Abduction Mediation Scheme:

- (a) The mediation will run in parallel with, but independent from, the proceedings in court, with the aim of completing the mediation within the timescale applicable to the proceedings.
- (b) Mediation is voluntary and will only be undertaken with the consent of both parents. An unwillingness to enter into mediation will not have an effect on the outcome of the proceedings.
- (c) Mediation will only be undertaken if the mediator considers that it is appropriate and safe to do so, and following an assessment of the parties and their situation during the required screening stage.
- (d) Participation by the parties in mediation is without prejudice to the applicant's right to pursue the return of the child, and without prejudice to the respondent's right to defend the proceedings.
- (e) Participation by the parties in mediation does not prevent the parties from requesting that the court determine the issues between them.

(f) If the mediation is not successful in resolving the issues then the matter will return to the court arena for determination.

5. The Child Abduction Mediation Scheme complements the proceedings and is only embarked upon once proceedings have been issued (Reunite also runs a mediation scheme that operates independent of court proceedings. Full details of this scheme can be found at <http://www.reunite.org/pages/mediation.asp>).

6. The operation of the Child Abduction Mediation Scheme will be facilitated by the presence at the Royal Courts of Justice of mediators from Reunite with specialised knowledge of international child abduction who will be available to speak with parties on child abduction matters.

### **Child Abduction Mediation Scheme - Operation**

7. The scheme has three key stages, namely (i) identification, (ii) screening and (iii) mediation. The three key stages operate as follows:

#### ***Identification***

8. Participation in the Child Abduction Mediation Scheme is voluntary. Mediation will only be undertaken with the consent of both parents and where it can be undertaken safely. However, it is also important that parties to child abduction proceedings are aware of, and have the proper opportunity to indicate their willingness to participate in the Child Abduction Mediation Scheme.

9. Within this context, the following steps will be taken by the court in each case, with a view to identifying those cases in which the parties are willing to consider mediation of their dispute:

- (a) At the first without notice hearing, or by way of standard directions following an on notice application, the court will, where appropriate, direct that the applicant and the respondent shall each be given the opportunity at the first on notice hearing to speak with a mediator.
- (b) At the first on notice hearing, the court will, where appropriate, encourage the parties to consider the option of mediation and, in an appropriate case, will invite the parties to speak with a mediator.
- (c) Where the parties agree to speak with the mediator, the mediator will discuss with the parties the possibility of participating in mediation under the Child Abduction Mediation Scheme and will carry out an initial screening interview (see paragraph 11 below).
- (d) Where the parties consent to mediate *and* the case is suitable for mediation, the court will give any directions necessary to facilitate the mediation and will record on the face of the order the proposed outline timetable for the mediation, in consultation with the parties and the mediator.

10. Where one party is outside the jurisdiction, the steps set out at Paragraph 9 will be accomplished by telephone at the first on notice hearing. Where this is not possible, for example due to a time difference, they will be accomplished on an agreed date shortly after the hearing. If these steps are accomplished on an agreed date shortly after the hearing, the parties

will inform the court of the outcome and, where necessary, the court will either approve agreed directions to facilitate any agreement to mediate or list the matter for the purposes of giving any such directions. In any event, the mediator will ensure that the required screening and assessment is carried out prior to the mediation commencing.

11. It is important to note that entering into a process of mediation will not ground a defence of acquiescence (see *In Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72 at 88-89).

### **Screening**

12. In addition to the parents being willing to mediate, the case must be suitable for mediation. Mediators have a responsibility to ensure that the parents take part in any mediation process willingly, and without fear of violence or harm. The mediator will undertake a screening procedure to confirm that this can be achieved. The mediator will have particular regard to the welfare of the child or children. The mediator will also have particular regard to any allegation or admission of domestic abuse (as defined in FPR PD12J paragraph 3), or other reason to believe that the child or a parent has experienced domestic abuse or is at risk of such abuse.

13. Within this context, an initial screening interview will be undertaken individually with each of the parents prior to undertaking mediation, in order to ensure that the parent is willing to take part in mediation and to assess whether the case is suitable and safe for mediation. The screening interview will also allow the mediator to confirm to each parent at the conclusion of the interview whether it is appropriate for mediation to be offered and, if so, to ensure that each parent understand the purpose of the mediation and to provide an opportunity for any concerns relevant to mediation to be further discussed.

14. As provided for at paragraphs 8(c) and 10, where possible, the screening interviews will take place at the first on notice hearing when the parents speak with the mediator, either in person or by telephone. However, where the screening interview takes place at a later agreed date, the parties will inform the court of the outcome and, where necessary, the court will either approve agreed directions to facilitate any agreement to mediate or list the matter for the purposes of giving any such directions.

15. Where both parents indicate a willingness to engage in mediation, during the screening interview the mediator will deal with the following matters:

- (a) Whether or not the case is one that is suitable for mediation.
- (b) Whether or not both parents are willing to mediate and to attend mediation with an open mind.
- (c) Whether or not the subject child appears to be of an age and level of maturity at which their voice should be heard.
- (d) Provide information about the mediation and how the mediation process will work in parallel with, but independent from, the proceedings.
- (e) Address any concerns that either parent may have relevant to the conduct of the mediation.

16. Within the context of the matters set out in paragraph 12, the assessment of the suitability of a case for mediation will include an assessment of whether the mediation can be conducted safely. In any case in which the parents are willing to mediate but it is alleged or admitted, or there is other reason to believe, that the child or a parent has experienced domestic abuse (as defined in FPR PD12J paragraph 3) or that there is a risk of such abuse, the mediator will assess, through the screening procedure, whether a mediation can be conducted safely having regard to the matters set out in FPR PD12B paragraphs 5.1 and 5.2 and FPR PD12J. A mediation will take place in such circumstances only after the mediator has undertaken a risk assessment and is satisfied that appropriate measures are in place to protect the safety of those participating in the mediation process.

17. If, during the screening interview, it is identified that the subject child appears to be of an age and level of maturity at which their voice should be heard, the court will direct that the child be interviewed by a member of the Cafcass High Court Team and a report filed with the court and provided to the parents and mediators.

### ***Mediation***

18. Where the parties agree to mediate and the case is suitable for mediation, the mediation will be timetabled so as to ensure that the timescales applicable to the proceedings are met.

19. Reunite will contact both parents to arrange appropriate dates for mediation. Where it proves impossible for an applicant to come to this jurisdiction for the purposes of mediation, the mediator will conduct the mediation with the applicant attending by way of a telecommunications application such as Skype.

20. In some circumstances public funding from the Legal Aid Agency may be available to cover the costs of flights and hotel for the applicant parent to come to this jurisdiction for the purposes of mediation, in which case Reunite will co-ordinate travel and accommodation arrangements.

21. Where the parent has requested the services of an interpreter, this will be provided throughout the mediation session(s).

22. Parents are free at any stage during the course of the mediation to consult their respective legal representatives in this jurisdiction or overseas, or any other individual they wish to consult and the mediator may encourage them, as appropriate, to consult.

23. Where a safeguarding issue concerning a child or an adult arises during the course of the mediation, the mediator will, where appropriate, terminate the mediation and will notify the relevant agencies.

24. Where the mediation is successful, the agreement reached between the parents will be set down in the form of a Memorandum of Understanding. Parents will be encouraged to seek advice on the Memorandum of Understanding from their respective legal representatives if they have them. The court will be informed of the outcome of the mediation and the Memorandum of Understanding will be reduced to a consent order which will be placed before the court for approval. Any consent order will explain how the child has been heard in the context of the mediation process.

25. Where the mediation is not successful, the court will proceed to determine the case. Ordinarily, there will be no further reference to the mediation or to anything said during the mediation, save where child protection concerns have been revealed or a report has been prepared by the Cafcass High Court Team pursuant to paragraph 17 above.

13 March 2018