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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

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A FATHER

v

A MOTHER

IN THE MATTER OF NI (A MALE CHILD AGED 13 YEARS)

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The father appeared as a litigant in person
Ms Simpson KC and Ms Mullen (instructed by John J McNally & Co Solicitors) for the Mother

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KINNEY J

Introduction

[1] This is an application by the father for a residence order in respect of NI. He wishes NI to reside with him in England and to have contact with his mother in Northern Ireland. This judgment has been anonymized to protect the identity of the child. I have used the cipher NI for the name of the child. These are not his initials. Nothing can be published that will identify NI.

Background

[2] There is a significant history of litigation in this family over the years. I have chosen the cipher NI as that is the cipher used by McFarland J in his previous decisions involving the family. The first proceedings involving NI were in 2012 in England. The mother then moved with NI to Northern Ireland. McFarland J set out a detailed history of litigation in Northern Ireland in his judgment *In the matter of NI (a male child aged 10 years)* [2022] NIFam 10. He then summarised that litigation

background in *In the matter of NI (a male child aged 10 years) (No 2)* [2022] NIFam 28 as follows:

> "[5] In the judgment delivered on 9 March 2022 (*Re NI* [2022] NIFam 10) I set out some detail about the Northern Ireland litigation. I do not propose to repeat what was set out in the judgment, but the headline details of the recent litigation are as follows:
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> (a) The Family Care Centre on the 23 June 2016 re-affirmed residence of NI to the mother, with a detailed and extensive order setting out contact arrangements in favour of the father. An Article 179(14) order was put in place for three years.
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> (b) The father appealed that order, and the High Court on 17 December 2019 dismissed the appeal in substance, adjusted the contact arrangements and made a further Article 179(14) order for three years.
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> (c) The High Court on 4 January 2021 made a recovery order requiring the father to return NI to his mother's care. This followed an over-holding after Christmas contact.
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> (d) In February 2021 the father issued a leave application to commence a residence order application. The mother also issued a leave application to amend the contact arrangements.
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> (e) On 23 July 2021 the High Court made an interim contact order in respect of contact during the summer of 2021. The father appealed this decision and the appeal was dismissed by the Court of Appeal on 10 August 2021.
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> (f) On 7 September 2021 the High Court made case management decisions which included a refusal to conduct a fact-finding hearing in respect of some historic allegations made by the mother against the father and a refusal to grant leave to the father to instruct an expert. The father appealed this ruling and the Court of Appeal dismissed the appeal on 22 November 2021.

(g) By an email of 22 November 2021 the father confirmed that he wished to withdraw his application for leave to apply for a residence order, and by order later that day the court administratively granted him leave to withdraw.

(h) The mother's application in respect of contact was dealt with by the order of 9 March 2022. This order was not appealed by the father.

[6] The order of 9 March 2022 reaffirmed the residence order in favour of the mother and set out an extensive contact regime in favour of the father. It largely followed the pattern of the previous contact orders. It included direct contact with the father in England over the Christmas/new year period alternating each year (Christmas with mother and new year with the father in 2022, with the reverse in 2023 and so on), one week at Easter, four weeks over summer, half a week at Halloween, and the weekend nearest to the child's birthday. Weekend contact in Northern Ireland was also directed if the father wished to avail of it. There was also to be indirect contact by video call every Friday at 6 pm. Certain conditions were put in place to manage contact arrangements and a penal notice was attached to ensure compliance by the father of these conditions. The Article 179(14) order was put in place for three years."

[3] In that case, the father sought leave of the court to bring a further application for a residence order as he was required to do under the Article 179(14) order. That application for leave was refused.

[4] The father made a further application for leave under the Article 179(14) order in 2024. McFarland J carefully considered the application but refused leave. This current application has been brought by the father on the day on which that article 179(14) order expired.

[5] The father seeks the return of NI to England to his care and to join his family there including his half siblings on the paternal side. During case management, as the father is a litigant in person (albeit he has considerable experience of family proceedings), the nature of the application he was making and the evidence he should produce was explained to him. In particular, he was informed that it was for him to demonstrate how NI's welfare and best interests were served by his move to England and to his father's care.

[6] NI last saw his father at the Christmas period in 2020 when he was with his father in England. The father did not return NI after contact and this led to the recovery order made by the High Court in Northern Ireland on 4 January 2021. NI was returned although it required the mother travelling to England to collect him.

[7] Further proceedings ensued from both the father and the mother which was to effectively reopen all issues in the case. The father then (and now) was deeply unhappy with what he perceived to be the failure of the court to conduct fact-finding hearings in respect of historic allegations made by the mother against him. He also sought leave for the instruction of an expert to assist the court. McFarland J refused these applications. Subsequently a detailed judgement was issued in which an extensive contact order was made and a further article 179(14) order was made expiring on 9 March 2025. The order made confirmed the residence order in favour of the mother and provided that should remain in force until NI is 18. It set out the provisions for contact including direct contact for NI with his father in England, mainly at the holiday period. The father was also at liberty to come to Northern Ireland for weekend contact. Amongst the conditions for direct contact was a provision for handover which would take place within the terminal buildings of airports. This was described as a strict provision because of previous concerns about behaviour. Airports were described as areas which were well populated with extensive CCTV coverage along with security staff including airport police. This handover regime was put in place to provide reassurance to everyone involved and encourage a more conducive environment for the handover.

[8] The father has refused to accept airports as a suitable handover location and has never availed of direct contact either in England or Northern Ireland under the terms of this contact order.

[9] The order also provided for indirect contact including FaceTime or similar live video contact weekly. The father did avail of some FaceTime initially but discontinued this because of his concerns about the mother and her partner and their potential involvement in the FaceTime video. The father then provided a letter to NI in December 2024 and a birthday card for his birthday shortly thereafter. There has been no other contact in almost five years.

[10] Despite the information provided by the court the father has provided little by way of evidence or information regarding the benefits of relocating NI and making a residence order in his favour in England. The father remains firmly focused on his perceptions of wrongdoing against him and his perceptions of the appropriate duty of the court to make findings on his allegations and to address punishment against the mother and others.

[11] The father provided a photo diary of NI's last visits to England and pointed to his happiness and how he was clearly enjoying himself and his contact with the paternal family. He contended that the mother had lied and manipulated the courts and had manipulated NI in his views. He described the mother as insanely paranoid

and described his overholding of NI at Christmas 2020 as a nonsense. He repeatedly asserted that he had been the victim of domestic violence and this was the reason he would not attend the handover the airports. It was also why he refused to attend the court in person to make his application. He commented on the naïveté of judges. The father said that NI's views could not simply be accepted. NI knew he had to placate his mother as that was where his food comes from. He described NI as being held captive and it was not possible to rely on what he currently says. He sought the appointment of a family attachment consultant. This expert should observe NI with the father in England and then ascertain his true wishes and feelings. The expert was also to examine the father's allegations of domestic violence.

[12] The father said that he will always promote NI's welfare and would never act as the mother has. He would not put hurdles in the way of contact with the mother and said he would never have the hatred for her that would cause harm to NI.

[13] The father said he could offer NI opportunities that the mother could not. This included opportunities for travel as the mother was afraid of foreign countries. The father talked of introducing NI to the outdoor life including camping.

[14] The father dismissed the report provided by the Official Solicitor in this case. He described NI as being captive and that the court needed a proper expert to talk to NI only after NI had spent time with the father. The father considered that the Official Solicitor was not qualified and considered it was ridiculous to think she could speak to NI at school. He felt that the mother should be imprisoned because of her behaviour towards him and accused the mother of not caring about NI. He said that it was naïve to think the mother would do anything to promote contact and said he did not believe NI had seen the letters and cards sent until this application was made.

[15] The mother in submissions considered the application to be ill-conceived and devoid of merit. It was simply a rehearsal of old ground. There was nothing new of any substance in this application and the issues had been determined by a multitude of courts spanning years and jurisdictions. NI is happy settled and thriving. The mother maintains that the father would not be able to promote the relationship between NI and the mother if he had care of NI. The Official Solicitor in this case is very experienced and in her report she sets out NI's views. His wishes and feelings should be given considerable weight.

[16] The Official Solicitor provided a short paper. The father had not provided his statement until very late in proceedings and on receipt of this the Official Solicitor arranged to meet NI. The Official Solicitor recorded that NI does not agree with the father's application. He regards Northern Ireland as his home and is happy at school and with his friends. He does not envisage living anywhere but with his current family and home circumstances.

[17] NI does not wish to have direct contact with his father at this time. He clearly recalls the incident at Christmas 2020. He also recalled other negative experiences when with his father including his father calling him overweight, weighing him and bringing him to a doctor. NI said he would prefer not to have direct contact at all. NI told the Official Solicitor that he was not either happy or sad to receive the letter and card sent by his father. He does not seek further letters or cards but would accept them if they were to be sent. NI was very clear with the Official Solicitor that he did not wish to have FaceTime or phone call contact with his father. The Official Solicitor commented that while NI was polite and cooperative, the interruption to his routine caused by the conversation was not a good experience for him. The Official Solicitor believed that there should be a break in litigation from now until NI takes his GCSE exams. The Official Solicitor recommended that the father should try to connect with NI by cards and letters.

[18] The Official Solicitor had been involved with NI in previous proceedings. NI is now almost 14 and was described as articulate and able to express his views. He was clear that he did not wish to reside with his father and did not wish to have direct contact.

Consideration

[19] NI is almost 14 years old but has lived his entire life under the shadow of legal proceedings both in England and Northern Ireland. The court has attempted over the years not just to promote NI's welfare but also to promote contact. In 2016, a contact order was made in the Family Care Centre running to several pages and containing a level of detail designed to remove risks of the contact unravelling. This was adjusted and amended by the High Court in December 2019 and again in July 2021 before the current extensive order was made in March 2022. The father has not availed in any meaningful way with the contact arrangements that would have allowed his ongoing relationship with NI.

[20] The court's concern about the relationship between the parents and in particular the approach of the father has been extensively recorded in the judgments made particularly in the High Court. McFarland J said in March 2022 in *Re NI*:

> "[22] Mr Justice O'Hara's judgment contains a full analysis of the background to the case and to the situation between the parents. At [30] he came to the firm opinion that it was not in NI's best interests that he should reside with the father:
>
> > 'On no analysis of [NI's] interest is [residing with the father] likely to be better for him. In my judgment the father is incapable without help of moving on from his core belief that he has been terribly wronged. It is not remotely

> likely that he could or would facilitate contact with the mother if [NI] lived with him.'
>
> [23] Nothing has changed in the intervening period of 2 years, or indeed, since August 2013 when His Honour Judge Curl made his decision."

[21] McFarland J also noted the parents' fractured relationship in the same judgment when he said at para [19]:

> "The parents have a deep and abiding mistrust of each other which probably borders on hatred. The courts have attempted to steer a steady and determined passage through these very treacherous waters. Whilst the court has earnestly set its sights on the welfare of NI, both parents have not been so focused on their resolve."

[22] Looking at relationships now in 2025 it is clear that little if anything has changed. The father remains fixated on issues which arose many years ago. He is focused on his perception of a need for punishment for the mother. He has sacrificed contact with NI on the altar of his pursuit of the mother and his entrenched views about the past. In his application in this case the reasons he provided for seeking a residence order included the negligence of the family courts, that the mother had perverted the course of justice and that the mother's legal representatives had lied to the court. There was no focus on NI or his welfare. The father's statement to the court is again entirely focused on the father's concerns and his relationship with the mother. It is almost entirely absent any consideration of the benefits to NI of the making of a residence order and relocation to England, or any insight into the issues that would arise for a 13 year old leaving a secure and settled home, school experience and friendships for an unknown quantity of life in England and a family he has not seen for five years. The father has not set out any proposed arrangements for his care, for his education or for contact with his mother and social network in Northern Ireland.

[23] Apart from the lack of detail in the father's application it is quite clear that he has little insight into the impact of his actions on NI. The last experience NI had of his father was of the breaching of a court order requiring further court intervention. The father needs to attempt to rebuild his relationship with NI but there is very little evidence available to me to show that he can do so. He persistently raises the same issues time and again. He raises historic complaints about the mother and her legal representatives. He provided no adequate explanation for his complete lack of any effort to maintain and build contact with NI. There has been no material change in the father's relationship with NI in any positive sense. Any change has been only negative. The father cannot prioritise NI's welfare over his own obsession with his perceived injustice. He has lost any sense of proportionality and lost his way in his

relationship with NI. If that relationship is to exist in any meaningful form it needs to be rebuilt by the father from the ground up.

[24] I agree with the mother's submissions that the father's application is ill-conceived and devoid of merit. I do not consider that an appointment of an expert to consider attachment issues is necessary, proportionate or desirable. I consider that the father needs to take the first small steps at re-establishing his relationship and that any expert assessment of the kind sought is entirely inappropriate at this time. I refuse the father's application for a residence order.

[25] I also consider that the existing contact order of 9 March 2022 is entirely pointless and only the catalyst for further potential litigation. I accept NI's wishes and feelings as expressed to the Official Solicitor. The Official Solicitor in this case is extremely experienced and I have absolutely no doubt that were there any concerns about NI, his presentation or his ability to convey his wishes and feelings, these would have been relayed to me. I take into account and give weight to the expressed view of the Official Solicitor in this case that contact at this stage should be indirect only. I am, therefore, rescinding the existing order and I replace it with an order that the father may make indirect contact by way of letters and cards to NI. The father can make indirect contact up to six times a year which will include significant events such as NI's birthday and Christmas. The content of the indirect contact must be appropriate and make no reference to the father's wishes and feelings or to any allegations made in relation to any other party.

[26] The mother also has filed an application that I impose an Article 179(14) order in relation to the father. I invited submissions on this application at the hearing. The father is familiar with the nature and effect of such an order. In considering the order I have taken into account the history of the case, the risk of potential harm to NI and whether or not there has been a material change of circumstances since the last time the case was before the court.

[27] I am satisfied that the father resorts to litigation almost as a reflex action. There is no real purpose to much of the litigation that he has brought over the years but it is clearly disruptive for the mother and NI. He has been the subject of a number of orders under Article 179(14) but he continues to make applications. The last order was made in March 2022 and expired in March 2025. During the currency of the order the father made two more applications to bring an application for a residence order which were dismissed by the court. He issued the current proceedings on the day that the previous order expired. The father appears addicted to bringing such applications but each time simply rehearses the old issues and complaints that the court has already addressed on several occasions both at first instance and at an appellate level.

[28] I am satisfied that an order under Article 179(14) is required in this case. NI deserves some respite from litigation and he is entering into an important and

pivotal part of his adolescent life and his school career. I, therefore, make the Article 179(14) order which will expire on NI's 16th birthday.