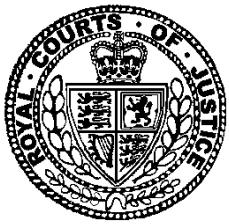

Neutral Citation Number: [2024] EWHC 1778 (Fam)

Case No: FD24P00671

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/07/2024

Before:

MR JUSTICE HAYDEN

- -

Between:

E	**Appellant**
- and –	
The Child and Family Agency of Ireland	**First Respondent**
-and-	
Lincolnshire County Council	**Second Respondent**
-and-	
MA	**Third Respondent**
-and-	
VA	**Fourth Respondent**
-and-	
Sarah Williamson	**Guardian**

- -
- -

Mr Michael Gration KC and Mr Mani Singh Basi (instructed by **Sills & Betteridge LLP**) for the **Appellant**
Mr Henry Setright KC and Mr Harry Langford (instructed by **Hunters Law LLP**) for the **First Respondent**
Ms Julia Gasparro (instructed by **Lincolnshire County Council**) for the **Second Respondent**

Hearing dates: 18th – 19th June 2024

- -

Approved Judgment

This judgment was handed down, in person, at 3pm on 9th July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

This judgment was delivered in public but a Transparency Order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

MR JUSTICE HAYDEN:

1. I am concerned with E, who is a 16-year-old young person, who seeks to appeal the recognition and enforcement of an Irish Special Care Order, pursuant to Article 23, the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. I set the title out in full given the issues in focus but will refer to it hereafter as the 1996 Hague Convention. The Recognition Order was made by DJ Jenkins, sitting as a District Judge in the Principal Registry of the Family Division. The Order dated 26th March 2024, both registered and permitted the enforcement of a Special Care Order, made in respect of E, by Mr Justice Jordan, High Court in Ireland. That order was made on 22nd February 2024. On 16th May 2024, a further Special Care Order was made by Mr Justice Jordan. That order was subject to recognition, registration and enforcement orders made by DJ Jenkins, again sitting as a District Judge of the Principal Registry of the Family Division, on 30th May 2024

2. The impact of the order, in Ireland, is to authorise E's detention in a special care unit; authorise E's release for the purposes specified in the order; to enable the Child and Family Agency of Ireland (CFA) to request that the Garda locate E and deliver him to their custody at the Special Care unit should he abscond or be otherwise removed from it. Finally, the CFA are authorised to seek the assistance of the Garda when accompanying and transporting E to and from appointments away from the special care unit.

3. An "*appeal*" pursuant to Article 23 of the Convention, as it is known in domestic English terms, see FPR Part 31, is not an "*appeal*" in the sense that we would ordinarily recognise. It does not require this court to evaluate whether the decision was 'wrong' or 'flawed' due to a procedural or other irregularity. For the sake of completeness, I should add that it does not require a preliminary application for permission, it lies as of right.

4. In support of the Appellant's notice, grounds of appeal were lodged within which it was indicated that E sought to challenge registration and enforcement of the Irish order. The premises for which are:

    a. *"The measure was taken in the context of a judicial proceeding, and other than in a case of urgency, without [E] having been provided with the opportunity to be heard, in violation of fundamental principles of procedure of England and Wales; and*

    b. *That recognition of the Irish order is manifestly contrary to public policy of England and Wales, taking into account the best interests of the child".*

5. The assertion that the order was made without E having been provided with the opportunity to be heard is, rightly in my view, no longer pursued. In their skeleton argument, Mr Gration KC and Mr Basi, Counsel on behalf of E, explain, in some detail, why that ground was included at the time when the appellant's notice was lodged and why it has subsequently been abandoned. It is unnecessary for me to rehearse their reasoning in this judgment, suffice it to say that the appeal is now advanced on the second ground alone. It is important to make the point that central to this appeal is the importance to giving effect to E's wishes and feelings and his entrenched and voluble resistance to returning to Ireland.

The Legal Framework

The 1996 Hague Convention

6. Chapter IV of the 1996 Hague Convention provides, in so far as is relevant, as follows:

> "***Article 23***
> *(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.*
> *(2) Recognition may however be refused -*
> *…*
> *d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;*
> *…*
> *Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.*
>
> ***Article 25***
> *The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.*
>
> ***Article 26***
> *(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.*
> *(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.*

> *(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.*
>
> ***Article 27***
> *Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.*
>
> ***Article 28***
> *Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child."*

7. As is clear above, Article 23 provides that recognition *"may"* be refused if one of the Article 23(2) grounds is established. The sole ground relied upon here is that of paragraph (d) i.e., the recognition of the order would be manifestly contrary to the public policy. To this end, Mr Gration submits that I should approach the issue in this way and ask myself the following questions:

    i. *Whether recognition is contrary to the public policy of England and Wales;*
    ii. *Whether recognition is in accordance with or contrary to [E]'s best interests;*
    iii. *If it is contrary to [E]'s best interests, whether it is so contrary to them that it would engage the public policy limb of this ground.*

8. Article 23(2)(d) of the 1996 Hague Convention is drafted in broadly similar terms to Article 23 of BIIa, and Article 24 of the 1993 Hague Adoption Convention. Counsel have unearthed relatively few authorities that consider this provision under the three Conventions; and even fewer under the 1996 Convention alone. Both agree that it is constructive to consider the application of the same provision under BIIa and the 1993 Hague Adoption Convention when considering how Art.23(2)(d) of the 1996 Hague Convention should be applied. As Mr Gration correctly says, whilst there is broad agreement on the route map, he and Mr Setright, arrive at wholly different destinations.

9. Whilst it is necessary for me to consider something of this comparative exercise, I do not consider it is necessary to do so extensively. Ultimately, the question in focus is whether it is contrary to the public policy of England and Wales for E to be returned to Ireland, against his expressed wishes and to be placed until a Special Care bed becomes available for him there.

10. I have been referred to the Lagarde Explanatory Report on the 1996 Hague Convention which provides the following, rather sparse, explanation of Art. 23(2)(d):

> *"125 The text sets out manifest incompatibility with the public policy of the requested State as a ground for non- recognition, but it adds, as does Article 24 of the Convention of 29 May 1993 on intercountry adoption, that public policy is to be assessed, taking into account the best interests of the child."*

11. I am not sure that the word *"manifest"* adds a great deal to the essential issue, i.e., incompatibility with the public policy of the requested state. The Practical Handbook on the Operation of the 1996 Hague Convention provides some assistance:

> "*10.9 Refusal of recognition on the basis of public policy is a standard provision in private international law. However, the use of the public policy exception is rare in private international law generally and in the international family law Hague Conventions.*
>
> *10.10 Under this Convention, as well as the other international family law Hague Conventions, this exception to recognition may only be used when the recognition would be "manifestly contrary" to public policy. Further, the best interests of the child must be taken into account when considering whether to rely on this ground. [A footnote here reads: "As in the 1993 Hague Intercountry Adoption Convention"]"*

12. What emerges is that the wording of Art. 23(2)(d) was drafted with the intention of reflecting the same restrictive approach as the 1993 Hague Adoption Convention. The wording of Art. 23 (2)(d) of the 1996 Convention is, in effect, a direct transposition of Art. 24 of the 1993 Hague Adoption Convention.

The 1993 Hague Adoption Convention

13. The *Parra-Aranguren* Explanatory Report in respect of the Hague Adoption Convention provides as follows in relation to the drafting of the 1993 Convention and the genesis of the public policy ground for non-recognition. In their characteristically helpful skeleton, Mr Setright KC and Mr Langford have highlighted paragraph 426, I adopt their emphasis below:

> "*421 Article 24 establishes as an independent provision the exception of public policy to the recognition of foreign adoptions, which had been included in article 22, second paragraph, of the draft. The question was fully discussed in the Recognition Committee and the initial lack of consensus*

explains the various suggestions made in Working Document No 142, submitted to the Second Commission of the Diplomatic Session.

422 The most radical position was variant III of article 22 A, suggesting to delete the exception of public policy, because it may weaken the recognition by operation of law of foreign adoptions. In support of the proposal, it was reminded that such a clause is not included in the 1980 Child Abduction Convention. However, the suggestion was rejected by a large majority.

423 The United States of America tried to restrict the application of the public policy exception and suggested the article to read as follows: "The recognition of an adoption in a Contracting State may only be refused if the child has been abducted or the consents to its adoption were false, fraudulent, or coerced and if it is in the best interests of the child to do so" (Work. Doc. No 77, as reproduced in Work. Doc. No 142, article 22 A, variant II), and as a sub-variant the following text was to be added:

"Recognition may only be refused by the competent authorities of the receiving State. The decision to refuse recognition shall be recognized by operation of law in the other Contracting States" (Work. Doc. No 142, article 22 A, variant II, sub-variant).

However, the proposal failed, it being pointed out that "public policy was a general principle which could not be reduced to some particular rules".

424 Variant I of article 22 A, as presented by Working Document No 142, reproduced the text of the draft (article 22, second paragraph), providing that "the recognition of an adoption in a Contracting State may only be refused if the adoption is manifestly contrary to its public policy and to the best interests of the child". Such formulation required that both grounds for refusal work cumulatively. Therefore, recognition by operation of law cannot be denied when the adoption brings about results manifestly contrary to public policy, but not to the best interests of the child, and vice versa, the adoption shall be recognized if it is not manifestly contrary to public policy, even though against the best interests of the child. Nevertheless, as pointed out in the Report of the Special Commission (para. 266), this is a rather exceptional situation that will very
seldom occur.

> *425 Article 22 A, sub-variant 2 of variant I, suggested that the recognition of an adoption in a Contracting State may only be refused "if the adoption manifestly violates fundamental principles of public policy and the best interests of the child". Consequently, in this case, both grounds were also to work cumulatively.*
>
> ***426 The text finally approved was sub-variant 1 of variant I of article 22 A, submitted by the Recognition Committee in Working Document No 142, providing that "the recognition of an adoption in a Contracting State may only be refused if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child". Therefore, it does not prescribe the cumulative application of both grounds, since the best interests of the child are only to be taken into account, it being understood that the notion of public policy shall be interpreted very restrictively, i.e., with reference to the "fundamental principles" of the recognizing State****…."*

14. Mr Setright submits that the inclusion of "…*taking into account the best interests of the child*" phrase in Art. 23(2)(d) of the 1996 Hague Convention definitively does not require the court cumulatively to assess (i) incompatibility with English public policy; and (ii) the best interests of the child. It is, he contends, a single test. Mr Gration KC disagrees, for reasons that I will discuss below.

15. Thus, the test to be applied on this appeal, under Art. 23 of the 1996 Hague Convention is "*very restrictive*". This, it is contended, is of significant reldce, where E's primary challenge to the Irish order is that it conflicts with his own notion of where his best interests lie, inevitably recognising that this is not shared by any professional in Ireland or England and Wales. Nor, it must be said, is it a view reflected by any of the professionals involved in these proceedings. It derives it is advanced on the basis that what E says should be recognised and given direct effect, predicated on his age and asserted degree of maturity. With respect to Mr Gration, the fragility of the foundation for this submission is apparent.

16. Thorpe LJ in ***Re L (A Child) (Recognition of Foreign Order)*** **[2012] EWCA Civ 1157**, **[2013] 2 WLR 152**, sub nom ***Re L (Brussels II Revised: Appeal)*** **[2013] 1 FLR 430** at paragraph 86, noted that there was a complete absence of case law on this point and extrapolated that this fact, in itself, indicated the exceptional circumstances in which an apparently valid or unimpeachable judgment would be rejected on the grounds of public policy:

> [86] "…. *I would only add that the absence of any reported case known to the specialist bar briefed on this appeal, in which recognition of an apparently valid judgment has been refused on*

> *the grounds of public policy, is a fair indication of the exceptional nature of such a finding*."

17. In ***K v K & Ors*** **[2021] EWHC 1846 (Fam)**, a public policy argument did succeed. Cobb J reviewed the position in relation to Art. 23 BIIA:

> "[37] *Thirdly, even if I were wrong on both of the earlier approaches, I am satisfied that it would be contrary to public policy to recognise and enforce an order made in a Member State which was contrary to a combination of both:*
>
> > *i) A finding of this court that an Article 13(b) 1980 Hague Convention exception had been made out in relation to a young person aged 15 who was objecting to a return to Poland, where the court had exercised its discretion not to return her and her brothers under that process; together with:*
> >
> > *ii) A subsequent contradictory order (May 2021) of the same Member State, by which it confirmed (having been made aware of the ruling in this country) that the children could remain for the time being in the care of their father in England.*
>
> *I may add that, while I accept Holman J's view that it is possible to contemplate a situation in which an order of a foreign court is so strongly contrary to the welfare of the child concerned that it would be possible to conclude that its recognition was manifestly contrary to the public policy of our State, I am not sure that I would have concluded that the fact that Mr Verdan QC had found that an Article 13(b) exception applied in this particular case (§(i) above) would have met the 'high hurdle' (Re S, ibid. at §32) of the public policy argument on its own in this case.*
>
> [38] *I note at an earlier stage that leading counsel for the mother had argued that:*
>
> > *"… it is to be noted that "public policy" in the context of Article 23(a) of BIIa is to be construed very restrictively: see, for example In the Matter of D (A Child) International Recognition) [2016] EWCA Civ 12; [2016] 1 WLR 2469."*

[39] *In the decision of Re D referred to in the passage quoted above, Ryder LJ, giving the judgment of the court, said this (at §21/22):*

> *"In Re L (Brussels II Revised: Appeal) [2013] 1 FLR 430, Munby LJ, as he then was, said:*
>
> *"[46] Article 23(a), in my judgment, contains a very narrow exception and, consistently with the entire scheme of BIIR and with the underlying philosophy is spelt out in Recital (21), sets the bar very high."*
>
> *There is undoubtedly a distinction to be drawn between the grounds described in article 23(a) and (b), to which I shall return, but I accept the submission that the exceptions in article 23 are intended to be very narrow. The judge emphasised one of the elements of the analysis conducted in Re L which is the decision of the CJEU in Case C-7/98 Bamberski v Krombach [2001] QB 709 where the Luxembourg court held that:*

"[37] Recourse to the public policy clause in article 27(1) of the convention [then Brussels 1] can be envisaged only where recognition or enforcement of the judgment delivered in another contracting state would be at variance to an unacceptable degree with the legal order of the state in which enforcement is sought in as much as it infringes a fundamental principle.""

[40] *In a different context, (namely recognition of validity of marriage), in NB v MI [2021] EWHC 224 (Fam), Mostyn J referenced Dicey, Morris & Collins on the Conflict of Laws (Sweet and Maxwell, 15th Edition), Rule 2:*

> *"English courts will not enforce or recognise a right, power, capacity, disability or legal relationship arising under the law of a foreign country, if the enforcement or recognition of such right, power, capacity, disability or legal relationship would be inconsistent with the fundamental public policy of English law".*

And went on to say:

> *"… in English domestic law it is now well settled that the doctrine of public policy should only be invoked in clear cases in which the harm to the public is substantially incontestable, and does not depend upon the*

> *idiosyncratic inferences of a few judicial minds. The court will only take the exceptional and momentous decision of non-recognition where recognition would violate some fundamental principle of justice, some prevalent conception of good morals, or some deep-rooted tradition of the common weal." (emphasis by underlining added).*

> [41] *I accept that Article 23(a) BIIR provides a "very narrow exception" as Munby LJ had pointed out, and that the circumstances under which non-recognition will be achieved under this provision will be extremely limited, and only where there is a 'clear' case. However, on the basis that the Court of the Member State where the original order has been made has itself discharged that order, it seems to me that if I were to allow the registration of the original order to stand and be enforced, this would be "at variance to an unacceptable degree" with the current state of the effective order(s) in Poland."*

18. The facts of the case before Cobb J in ***K v K*** could not have been clearer. He was being asked to recognise and enforce an order of a Member State which was in direct conflict with a finding of the High Court of England and Wales that an Article 13(b) 1980 Hague exception had been made out. Furthermore, there was a subsequent order, by the same Member State, effectively confirming the conclusion of the English court. The order being sought was, on the face of it, irrational and, within its context, manifestly contrary to public policy. It is interesting to note that Cobb J also referred (obiter) to the, also obiter remarks, in the judgment of Holman J in ***Re S (Brussels II: Recognition: Best Interests of Child) (No.1)*** **[2003] EWHC 2115 (Fam); [2004] 1 FLR 571**:

> [33] "*…I accept… it is possible to contemplate a situation in which an order of a foreign court is so strongly contrary to the welfare of the child concerned that it would be possible to conclude that its recognition was manifestly contrary to the public policy of our State …*"

19. As is clear above, whilst Cobb J was also prepared to contemplate a situation in which an order of the foreign court was so manifestly inconsistent with the welfare of the subject child that it might be contrary to domestic public policy, he was sceptical as to whether a finding of an Article 13(b) exception, in the domestic court, would *"on its own"* have established the requisite test.

20. In the High Court in Ireland, it was contended, on behalf of E, to Mr Justice Jordan, that E would not be safe in the care of the CFA. That court was also faced with a dilemma all too familiar to this jurisdiction, namely that no appropriate placement was available for E and there was no indication of a date by which one might become available. All that was possible is what Mr Gration refers to as *"stopgap"* provision.

Nonetheless, Jordan J felt obliged to make the Special Care Order. I have been provided with a transcript of this hearing and as was discussed with Mr Setright in the course of exchanges, the efforts of the Judge to focus on the need for a placement and press for a timescale exactly reflect the approach of the Judiciary in England and Wales. Indeed, so striking was the similarity that I considered that Counsel and the Judge's names could have been exchanged for mine and Counsel in this case without detection. The process is identical and the discomfort of the Judge reflects my own and all other Judges who face this situation.

21. Prior to the availability of the transcript of Jordan J's judgment, an obviously accurate note was made from which Mr Setright and Mr Langford were able to distil the following conveniently expressed points:

i. *that the court had spoken directly with [E] (as this court has also done);*
ii. *that [E] is a troubled young man who is prone to exploitation, and is vulnerable;*
iii. *that [E] resists his return to Ireland;*
iv. *that it is clear from the evidence before the Irish court that the threats to his welfare are as great in the UK as they are in Ireland;*
v. *that there are threats to [E] if he is not in the care of the CFA and if there is not a special care order made in respect of him and that this is very worrying;*
vi. *[E] may come across as an intelligent, insightful and articulate young man, but that belies the truth of the situation;*
vii. *the position is he is at very high risk at the moment in the UK;*
viii. *there is a "bleak picture" re [E]'s current situation;*
ix. *that the court was concerned in relation to the situation which prevails by reason of no special care bed being available and no indication being provided as to when one might become available;*
x. *that the court was concerned that [E] would be placed in a residential placement and not a secure care until when and if he is returned home from the UK;*
xi. *that the court was obliged (as a matter of Irish law) to approach the situation on the basis that the special care order will have effect;*
xii. *that the order should have effect from the time it is made and the result of it should be that [E] be returned to the care of the CFA when the proceedings in the UK have concluded; and*
xiii. *that it is in [E]'s best interests to be returned to Ireland as soon as possible.*

22. The full transcript bears out the accuracy of this summary. It is plain that Mr Justice Jordan considered that E's best interests lay in his being returned to Ireland, to be placed in the interim non-special care placement that has been identified for him pending the availability of a special care bed. In ***Re T (A Child) [2021] UKSC 35***, Lady Black stated, at paragraph 145:

> *"Ultimately, however, I recognise that there are cases in which there is absolutely no alternative, and where the child (or someone else) is likely to come to grave harm if the court does not act. I also have to recognise that there are other duties in play, in addition to those which prohibit carrying on or managing an unregistered children's home. I gave an idea earlier (see para 30 et seq) of the duties placed upon local authorities to protect and support children. How can a local authority fulfil these duties in the problematic cases with which we are concerned if they cannot obtain authorisation from the High Court to place the child in the only placement that is available, and with the ability to impose such restrictions as are required on the child's liberty? It is such imperative considerations of necessity that have led me to conclude that the inherent jurisdiction must be available in these cases. There is presently no alternative that will safeguard the children who require its protection."*

English law therefore expressly recognises the necessity of an unregulated placement being authorised by the court as lawful pursuant to the inherent jurisdiction where that is the only practical option available to the local authority to safeguard the child or young person's welfare.

23. Here in England, the accommodation arranged by the Local Authority is itself a crisis placement. E has been unable consistently to cooperate with it and there are allegations of challenging behaviour and absconsion. I agree with the observations of Mr Justice Jordan that the position for E in the UK is itself properly characterised as *"high risk"*. I also recognise the description of E presenting as *"an intelligent, insightful and articulate young man"*. He has conducted himself, at the hearing before me, with poise, charm and good manners. I too have found him to be articulate but, like Jordan J, I recognise from the papers that there is another side to his personality which is considerably removed from my own experience of him. I am also bound to note that he faces serious criminal offences in Ireland. Seven bench/arrest warrants have been issued in consequence of his non-attendance. These allegations include allegations of assault, theft, and threats to kill.

24. Whilst Mr Gration and Mr Basi recognise the *"exceptional"* circumstances in which a valid or unimpeachable judgment of a foreign court could be rejected on the grounds of public policy, they nonetheless submit, that E's case falls, as they put it, *"within the narrow compass envisaged by Holman J in Re S"* (supra). In endeavouring to distinguish the reported caselaw, it is contended that E's situation is different from the

reported decisions *"because the issue of recognition and enforcement has to be considered together and the ultimate outcome of enforcement is likely to lead to disastrous and lifelong consequences for [E]"*. This submission is pitched very high, but I recognise it to be faithful to E's instructions. Inevitably, Mr Gration emphasises E's clearly and consistently expressed wishes to remain in the UK and that E, at 16, is of an age where his wishes should be heard clearly and understood.

25. There can be no doubt that E endured a very difficult start to life in Ireland. This included exposure to parental mental ill health, substance abuse and consequential emotional rejection. E was initially received into the care of the CFA, by voluntary consent, shortly before his 5th birthday. There is a history of placements breaking down and of E placing himself at risk absconding from placements e.g., crossing the border to Northern Ireland, where he is said to have been discovered in the company of adults who had supplied him with illicit substances. E made allegations of physical and sexual abuse against named residential care staff. He later withdrew the complaints. I draw no inferences of any kind from this withdrawal.

26. Relatively shortly before E absconded to England, he had found himself in accommodation which was described by his Irish guardian as *"entirely unsuited to his profile need"*. Prior to this absconsion, he made a serious allegation of sexual assault which was investigated by An Garda Sichana. There can be no doubt that E's views since arriving in England have been consistently and clearly expressed. He is strenuously opposed to returning to Ireland and into the care of the CFA. He has expressed himself to be at serious risk in Ireland and stated that he fears that his life will be at risk. He has described himself as *"petrified"* by the prospect of returning to Ireland. It is his position that the contemplated order would be contrary to his welfare, having regard to his age and lived experiences and that such recognition of the Irish order would be manifestly contrary to public policy.

27. Mr Gration and Mr Basi have ensured that E's voice has been heard fully and clearly in these proceedings. E is intelligent enough to recognise the quality of representation he has received and, I believe, is appreciative of it. All this said, there can be no doubt that for non-recognition to be achieved under Article 23(2)(d), it will be necessary to establish exceptional circumstances and on the clearest of evidence. The exception provided for in Article 23(2)(d) is to be regarded as a very narrow one. The application of the principles of international comity in this sphere do not generate a tension with the principles of child welfare, on the contrary, they both support and promote the child's interests. Thus, recourse to the public policy clause requires clear evidence that recognition or enforcement of a judgment of another contracting state would be so at variance and to such an unacceptable degree that it contravened or infringed some fundamental principle in the State where enforcement is sought.

28. The facts of this case could not be further from the circumstances contemplated by Article 23(2)(d). On the contrary, the approach of the High Court in Ireland, has been so strikingly similar to the approach of this court that the two are almost interchangeable. I have already commented as to how the transcripts there resonate so

closely with the exchanges in this court. E's essential position was placed in unambiguous terms before the Irish Court at the time the further Special Care Order was made on 16th May 2024. Mr Justice Jordan took those matters into account and having carefully analysed them, concluded that it was appropriate and in E's best interests for him to be returned to Ireland and to be placed, in the interim, in the placement provided, it being clearly indicated that the placement is to endure only until a Special Care bed is made available for him. The approach of the Irish Court was to bear down on the CFA and to emphasise the importance of a continuing drive to identify appropriate care. It is a scenario with which I and very many Judges of the Family Court will be all too familiar.

29. E's circumstances are being scrutinised with careful attention by the High Court in Ireland, which has ready access to all the documentation relating to the history of this case. There is already in place a Special Care Order and E has been granted representation by a similarly experienced team. Whilst I entirely understand this young man's determination to be free of his past in Ireland, I am entirely satisfied that his circumstances and his allegations can be most effectively litigated in the Irish Court. The Article 23(2)(d) exception has not been met.