



PUMP COURT CHAMBERS

Public Law cases with International Elements

Catherine Ellis

Southampton Children Law Seminar - 23 September 2026

Introduction

- Will be looking at:
 - How to approach a case where the subject child is a national of another country/has dual nationality or is very young and one or both parents are citizens of another country
- Governing legislation:
 - 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children “the 1996 Convention”
- Governing principle (for Contracting States) - Comity



Question 1: Does the UK court have jurisdiction?

- This is the first question to be asked and answered in every case
- The court must determine this question whether it is raised by any party or not
- Without determining that question, the court is not in a position to find whether threshold is made out

“it is not permissible for the court to seek to “ride two horses” by repeatedly adjourning the question of jurisdiction while at the same time seeking to progress the case as if it did have jurisdiction”

Redbridge v JL (Failure to Determine Jurisdiction) [2025] EWFC 292/ [2025] 4 WLR 122
(Macdonald, J)



Article 11 of the 1996 Convention

Court retains jurisdiction under Article 11 of the 1996 Convention pending determination of the issue of substantive jurisdiction.

Article 11 – Urgency:

“(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection”

(lapses as soon as the authorities which have jurisdiction take the measures required by the situation – per 11(2)). Where this is a non-Contracting State, Contracting State must recognise them – per 11(3)).



Article 12 of the 1996 Convention

Court retains jurisdiction under Article 11 of the 1996 Convention pending determination of the issue of substantive jurisdiction.

Article 12

“(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5-10”

(Lapsing provisions mirror Article 11)

NB: Article 7 limits acquisition of habitual residence where there has been wrongful removal or retention in another state.



Primary basis for jurisdiction: Habitual Residence (Art 5)

- Relevant date for determination of habitual residence is the date of the application
- Habitual residence can be lost during proceedings and transferred to a different state
- If so, the new state acquires jurisdiction unless there has been wrongful removal or retention of the child
- Court must check that habitual residence remains in UK as of the date of the final hearing

Hackney LBC v P (Jurisdiction: 1996 Hague Child Protection Convention) [2023] EWCA Civ 1213

Article 5 1996 Convention “The... authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child’s person or property”

NB: Can be jurisdiction under Article 6 if internationally displaced children based on presence



Habitual Residence – Useful Authorities

- *A v A (Children: Habitual Residence)* [2013] UKSC 60
- *Re KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2013] UKSC 75
- *Re LC (Abduction: Habitual Residence: State of Mind)* [2014] UKSC 1
- *Re R (Children)* [2015] UKSC 35
- *Re B (Habitual Residence: Inherent Jurisdiction)* [2016] UKSC 4

Main test:

“the place which reflects some degree of integration by the child in a social and family environment in the country concerned. This depends on numerous factors, including the reasons for the family’s stay in the country in question”

- Caution should be taken not to over summarise the test. *“Some degree of integration”* is not itself determinative or a substitute for the required global analysis;
- Factual question to be approached with the child at the centre of the exercise



Habitual Residence – Relevant Factors

- Child's day to day life and experiences
- Family environment
- Interests and hobbies
- Friends
- An appreciation of which adults are most important to the child
- Purposes and intentions of the parents are merely one of the relevant factors
- In case of a very young child, the integration of the primary carer(s) will also be relevant

Re B (Habitual Residence) [2016] EWHC 2174 – sets out 13 relevant factors at paragraph 17

(approved by CA in *Re M (Children)* (*Habitual Residence: 1980 Hague Child Abduction Convention*) [2020] EWCA Civ 1105 - **save for factor (viii)**)



Question 2: Is the child habitually resident in a Contracting State?

(assuming not habitually resident in England or Wales)

Find out: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=70>

- Three possibilities:
 - (a) The child is habitually resident in another Contracting State; or
 - (b) The child is habitually resident in a non-Contracting state; or
 - (c) Habitual residence cannot be determined?

“... the 1996 Convention is the “first port of call” including when the rival jurisdiction is not a contracting state... However, there are significant differences in the manner in which it applies depending on whether the rival jurisdiction is or is not a contracting state, including in respect of the issue of jurisdiction” (para 93)

Hackney LBC v P (Jurisdiction: 1996 Hague Child Protection Convention) [2023] EWCA Civ 1213



Impact of each possibility on options for the court

See *Hackney LBC v P (Jurisdiction: 1996 Hague Child Protection Convention) [2023] EWCA Civ 1213*

- If (a), that contracting state has substantive jurisdiction under Article 5 and it is open to English court to request transfer of jurisdiction under Article 9 (para 95)
- If (b) or (c) – jurisdiction is founded under Articles 6, 11 or 12 – “*There is ... nothing which... restricts a court’s ability to use domestic rules as to jurisdiction when the child is not habitually resident in any contracting state*” (para 99)
- If non-contracting state, principle of comity is not engaged. Orders made in either jurisdiction have no automatic entitlement to recognition or enforcement in the other (para 108)



Potential for Transfer of Proceedings

- Governed by Articles 8 or 9 1996 Convention
- Article 8 – applies if UK has jurisdiction under Article 5 (or 6) but considers that the authority of another Contracting State would be better placed to assess the best interests of the child:
 - State where child is a national
 - State in which property of child is located
 - State whose authorities are seized of an application for divorce or legal separation of the child's parents, or for annulment of their marriage
 - State with which child has substantial connection
- Article 9 – applies if another Contracting State considers it is better placed to assess the child's best interests.



Liaison between Contracting States

Whether Article 8 or 9:

- Either authority may request that the other assume jurisdiction to take protective measures (Art 8(1)/Art 9(1))
- Authorities may proceed to an exchange of views

If Article 8:

- If considers that authority of another Contracting State would be better placed etc, may suspend consideration of the case and invite the parties to introduce such request before the authority of the other State and that authority may assume direction if it considers it in the child's best interests;

If Article 9:

- If authorities of other Contracting State consider they are better placed to assess the child's best interests they may request the authority of habitual residence that they be authorised to exercise jurisdiction to take protective measures they consider necessary or invite parties to introduce such a request before the authority of habitual residence
- Authority initiating request may only exercise jurisdiction in place of the authority of habitual residence if the latter accepts the request



Notification Requirements – Art 37 Vienna Convention

Article 37 Vienna Convention on Consular Relations 1963 – not adopted into domestic law

BUT good practice in care cases (*Re E (A Child) (Care Proceedings: European Dimension)* [2014] 1 WLR 2670):

- Court must set out explicitly in judgment and order the basis on which it is either accepting or rejecting jurisdiction or basis on which it has or has not decided to request other state to assume jurisdiction;
- English court must be assiduous in providing speedily, and without reservation, information sought by the central authority of another member state;
- In cases involving foreign nationals there must be transparency and openness as between the English family courts and the consular and other authorities of the relevant foreign state – vitally important (para 46)

However – must consider Article 37 1996 Convention first



Notification Requirements – Art 37 Vienna Convention (cont)

(*Re E (A Child) (Care Proceedings: European Dimension)* [2014] 1 WLR 2670) (Per para 47):

- Should be free communication between party who is foreign national and their consular authorities – no injunctive orders to interfere with this and s12 AJA 1960 not permitted to have this effect
- Court should normally accede to request from foreign national or consular authority of the foreign state
 - For permission for accredited consular official to be present at hearing; and/or
 - To obtain a transcript of the hearing, copy of order and other relevant documents
 - Whenever a party who is a foreign national is detained or represented by a guardian or litigation friend, court should ascertain whether that fact has been brought to the attention of the relevant consular officials. If not, court must do so itself without delay.



Information Sharing - caveat

Re (O) (A Child: The Vienna Convention on Consular Relations 1963) [2021] EWHC 908 (Fam)

- Vienna Convention - Not an absolute and binding duty;
- Will be rare cases where it would be wholly inimical to the welfare best interests of the child to give the requisite notice and court may conclude it would be inappropriate to do so;
- Article 37 1996 Convention – shall not request or transmit information if likely to place child's person or property in danger or constitute a serious threat to the liberty or life of child's family member

However

- Timely request for information from the International Child Abduction and Contact Unit ("ICACU") should be made



Information sharing with other (Contracting) states

Convention provides for:

- Article 32 – Report on the situation of the child. Provided by Contracting State in which child is habitually resident/present to Contracting State with which child has a substantial connection;
- Article 33 – If placement in foster or institutional care in another Contracting State is proposed, consultation with that authority and transmission of report on the child (with reasons for proposed placement) to it is required. Placement can only take place if receiving State consents.
- Article 34 – Request for information relevant to the protection of the child (where a measure of protection is contemplated) from another Contracting State
- Exchange of views (Articles 8 and 9)



Steps when English court does not have substantive jurisdiction

- Local authority needs to arrange for family to return to country of habitual residence as soon as possible;
- Safety plan – engagement of family members in other Contracting State;
- Articles 11 and 12 jurisdiction does not lapse until authorities with substantive jurisdiction have taken a decision in respect of the measures of protection required



Other Useful Provisions – 1996 Convention

- Article 23 – enforceability and recognition of measures taken (and exceptions)
- Article 25 – findings of fact are binding on requesting state
- Article 27 – no review of merits of measures taken in other state



Useful Resources

- R12.61-12.71 Family Procedure Rules 2010 – essential reading
- The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 SI 2010/1898
- President's Guidance: Public law children cases with an international element, 21 January 2025 – can be found at <https://www.judiciary.uk/guidance-and-resources/presidents-guidance-public-law-children-cases-with-an-international-element/> which includes:
 - Link to request for co-operation form (at pg 4)
 - Contact details for ICACU
- <https://www.judiciary.uk/guidance-and-resources/guidance-from-the-president-of-the-family-division-transfer-of-proceedings/>
- <https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>



Final Considerations

- If habitual residence in UK – so court retains jurisdiction - but child is a national of Contracting State or family are foreign nationals:
 - Adoption considerations and rigour for courts and Guardians (*Merton LBC v B (Central Authority of the Republic of Latvia intervening)* [2015] EWCA Civ 888)
 - Cross-border placement and assessment practicalities:
 - CFAB or ISW
 - Timescales
 - Specialist legal advice
 - Notification
- Regularisation of child's immigration status – factor into care plan. EX660 Form to be completed by the court at an early stage.



Contact details



Catherine Ellis
Call: 2003

Described as “conscientious, hardworking and a fabulously prepared advocate”, Catherine Ellis is ranked as a Leading Junior in Children Law in the current edition of the Legal 500 and has a wealth of experience in both public and private law family matters. She enjoys a varied practice – accepting instructions from parents, guardians and local authorities alike, which enables her to bring invaluable insight to every client’s case.

Catherine regularly undertakes work in the Court of Protection and has particular expertise of cases concerning welfare decisions, as well as experience of cases involving jurisdictional issues.

Catherine displays good judgment, is pragmatic and is committed to delivering sound advice. Her people skills are excellent, as is her ability to understand her clients’ needs and present them effectively to the court. Catherine has experience in the appeal courts, but generally prefers to achieve success at first instance.



PUMP COURT CHAMBERS

London Chambers

3 Pump Court
Temple
London
EC4Y 7AJ
Tel: +44 (0)20 7353 0711
Fax: +44 (0)845 259 3241
Email: clerks@pumpcourtchambers.com

Winchester Chambers

31 Southgate Street
Winchester
SO23 9EB
Tel: +44 (0)1962 868 161
Fax: +44 (0)845 259 3240
Email: clerks@pumpcourtchambers.com

Swindon Chambers

3 Newbridge Square
Aylesbury Street
Swindon
SN1 1HN
Tel: +44 (0)1793 539 899
Fax: +44 (0)845 259 3242
Email: clerks@pumpcourtchambers.com

Canterbury Chambers

6 - 8 Longmarket
Canterbury
Kent
CT1 2JS
Tel: +44 (0)1227 764 899
Email: clerks@pumpcourtchambers.com