

# **THE OUTCOMES FOR CHILDREN RETURNED FOLLOWING AN ABDUCTION**

**A report by the reunite Research Unit**

**Funded by The Foreign and Commonwealth Office**

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**International Child Abduction Centre**

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Mr Bill Glaser MP, The Rt. Hon. Clare Renton, Sir Henry Rombold Bt, Mr Timothy Scott QC

Registered Charity No: 1075729



**reunite** would like to extend their thanks and gratitude to all the parents who contributed to this research as without their input the research would not have been possible.

# The outcomes for children returned following an abduction<sup>1</sup>

## 1. BACKGROUND

**reunite** International Child Abduction Centre is a registered charity and is part funded by the Department for Constitutional Affairs, The Foreign and Commonwealth Office and The Home Office. The focus of the organisation is to provide advice, information and support to parents and guardians who have lost a child through abduction, to those who fear abduction, and to those who may have abducted their child. **reunite** also advises on international contact issues, as well as providing specialist advice and training to lawyers, Government departments and other professionals involved in this area. **reunite** is recognised as a leading specialist organisation on the issue of international parental child abduction.

**reunite** is committed to making the best provision possible for the families concerned in abduction cases. Whilst enthusiastically supporting the concept of the 1980 Hague Convention on the Civil Aspects of International Child Abduction<sup>2</sup>, **reunite's** Legal Working Group<sup>3</sup> shares some of the concerns expressed by a number of commentators and scholars regarding the implementation of the Convention as it relates to the return of children following an abduction. This is especially so where anxieties have been expressed about the effect of the return on the child. These anxieties may have formed the basis of a defence to the application for the return of the child in judicial or administrative proceedings or, similarly, may have been expressed in the course of a negotiated settlement leading to return. It is also possible that such anxieties were not expressed and it is for this reason that the research has not been

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<sup>1</sup> This research was undertaken by **reunite's** Research Unit, and was led by Marilyn Freeman, Senior Family Law Lecturer, London Metropolitan University, who is the author of this report. Particular appreciation is expressed to Henry Setright, Q.C. for his valuable contribution to the task of data analysis.

<sup>2</sup> Adopted by the Fourteenth Session of the Hague Conference on Private International Law. Opened for signature October 25<sup>th</sup> 1980. See 19 ILM 1501. Hereafter "the Convention".

<sup>3</sup> The Legal Working Group advises the All-Party Parliamentary Committee on Child Abduction. The author of this report is a member of The Legal Working Group.

limited to cases where a formal article 13b defence<sup>4</sup> was raised. Accordingly all cases which otherwise fell within the remit of the research parameters were considered for inclusion. Once the child has been returned, there is normally no further contact between that child and the authorities in the returning State. Nothing, therefore, is known in the returning State about the actual circumstances faced by the returned child. Nothing is known in the returning State about the subsequent legal decisions taken in the jurisdiction to which the child has been returned.

In recognition of these concerns, **reunite** decided to conduct a research project to investigate the outcomes for children returned following an abduction. The research findings would be compiled into a Report which would be made available to all those involved in abduction issues, including Government departments, the Hague Secretariat and The All-Party Parliamentary Committee on International Child Abduction. The Report would also be made available via the **reunite** website. By providing fundamental data regarding what happens in practice in the matters which have long concerned those working in this field, it was hoped that the research findings would make a useful contribution to the debate surrounding the manner in which abduction matters are dealt with.

Due to the very heavy demand on resources that it was recognised that such an exercise must make, it was decided that the research would be undertaken by the **reunite** Research Unit in three stages:

- (i) The first stage was a pilot project conducted through the distribution of 23 questionnaires, the results of which formed an Information Document at the Fourth Special Commission into the operation of the 1980 Convention in The Hague in March 2001.<sup>5</sup> The conclusions of the pilot project are repeated here so that the background and context of the current stage of the research project may be clearly understood.

“[t]he sample under consideration tends to support the already widely held view that mothers are more often the abductors of their children than fathers, and that, in most cases, it is the primary carer who will abduct their child.

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<sup>4</sup> Article 13b of “the Convention” provides that the return of a child may be refused if there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

<sup>5</sup> Hereafter Information Document. Also see September [2001] IFL 1

Although the giving of undertakings by the applicant parent is often considered as a token of good faith by the courts of the requested State, the frequent failure to honour such undertakings must call into question whether such an assumption is supportable. The mirroring of such undertakings (see explanation of this term at p27 below) does not appear to provide any guarantee that they will, in fact, be honoured. Even where undertakings relate to the maintenance of de facto care of a young child by the primary carer parent, evidence exists that such undertakings have been broken, in one case at the airport of the State of habitual residence, where the left-behind parent removed the child from the primary carer parent on arrival, in breach of the recently given undertaking. Additionally, in some jurisdictions, family decisions are taken by administrative, rather than judicial, authorities. In these cases the procedures involved may be very different from those which form part of a recognised judicial process. Undertakings, in such cases, may not even be considered.

The data relating to substantive custody and leave to remove applications does not, at present, allow reliable conclusions to be drawn. This is an issue which will be followed up on the research exercise, when it is hoped that useful conclusions may be developed which may assist in the debate on how to proceed”.

- (ii) The second stage of the research project, upon which this report is based, has been a longer-term research exercise based on personal interviews with, wherever possible, both parents involved in the cases concerned. It was considered necessary to impose certain limitations on the scope of the sample in question in view, once again, of the significant resource implications of such work. This stage of the project, therefore, has been limited to those cases where the child or children involved have “ended up” in a European jurisdiction.<sup>6</sup> **reunite** is extremely grateful to the Foreign and Commonwealth Office for their encouragement and support in this undertaking.

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<sup>6</sup> see further Methodology below

- (iii) The third and final stage of the research project, for which **reunite** is currently seeking funding, is intended to be a global exercise without jurisdictional restrictions.

## 2. METHODOLOGY

This stage of the research exercise was conducted by personal interview and it was recognised that, in order to retain the required balance, it would be necessary to interview both parents in as many cases as possible. However, it was also recognised at the outset that these criteria might prove difficult to satisfy. This prophetic anxiety was to be tempered in the reality by the whole-hearted endorsement of our concerns by, and the committed support of, many of those from whom we sought assistance in this aim. Although we hesitate to refer to any one source, it would be wrong not to highlight the role played by those administering “the Convention” in Australia during the author’s period of research there, and for which we offer our sincere thanks.<sup>7</sup> This led to a rare opportunity of accessing the records of The Family Court of South Australia to discover the outcomes of cases where the child had been returned to that jurisdiction.<sup>8</sup>

We considered the need, and the suitability of, including the abducted child in the scope of those to be interviewed. **reunite** supports the growing awareness of a child’s right to be heard as part of the recognition of the child’s human rights<sup>9</sup> and appreciates the considerable importance of child research interviews. We sought expert professional advice<sup>10</sup> on this issue as our prime concern was not to do anything which would make things more difficult for the child. Although we were fortified by the view expressed that interviews do not make things worse for the child unless false promises are made and, indeed, that there are very positive

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<sup>7</sup> In particular, our renewed appreciation is expressed to Doreen Muirhead, NSW Central Authority; Lydia Makiv, Crown Solicitor’s Office, South Australia; The Family Court of Australia, Adelaide Registry; Rosa Saladino, Attorney-General’s Department, Australian Commonwealth Central Authority, Canberra. The author also expresses thanks to the Law Faculty of UTS, Sydney for the facilities provided during her research scholarship

<sup>8</sup> results of which appear at 4 (w) below

<sup>9</sup> as recently expressed by Butler-Sloss L.J. (P), Solicitor’s Family Law Association Annual Conference, Southampton, March 2003 in relation to the requirement to listen to and to give children a voice in order to achieve sufficiently the bringing up of children in the spirit of peace, dignity, tolerance, freedom, equality and solidarity as required by the preamble to the UN Convention on the Rights of the Child 1989.

<sup>10</sup> We are grateful to Dr. Judith Trowell, Consultant Child and Adolescent Psychiatrist, The Tavistock Institute for her help on this matter. Dr.Trowell is co-author of *The Importance of Fathers:A Psychoanalytic Re-Evaluation*. Trowell and Etchegoyen, Taylor & Francis Books, 2002.

benefits which may accrue to the child from such experiences, it was decided that we would not include child interviewees in the second stage of the research project. Our decision was prompted by our belief that such interviews should be conducted in collaboration with a properly qualified and experienced therapeutic agency and it is our aim to enter into such a partnership in the next stage of our research.

We have, where necessary, framed some of our findings in statistical terms for ease of reference but should emphasise that this project has been carried out by the Research Unit of a Non-Government Organisation, and not by statisticians. We have drawn on the skills and expertise of the lawyers on the Legal Working Group in identifying the practical issues upon which the project has focused, as well as the manner in which the data has been analysed<sup>11</sup>, and the conclusions drawn, and in so doing have reminded ourselves continually of the aim of the project – to discover what happens when a child is returned following an abduction.

Although the majority of the preliminary work was conducted by the Legal Working Group, the specific skills of a limited number of experts in other disciplines was sought and, once again, **reunite** offers its appreciation for the many generous contributions which were made in this way.

The need for consistency was pivotal in the manner in which the interviews were conducted. For this reason, a structured interview format was developed by the Legal Working Group for use as a basis for the individual interviews which were to be conducted. The specific questions and content of the structured interview were the results of the extensive experience of such cases by all of the members of the Legal Working Group, as well as an appreciation of the areas of concern in the evolving law and practice in this area. It was, however, understood by all concerned that the structured interview could only form a framework for the actual interview, the dynamics of which would be dictated by the personalities involved and the individual circumstances relating to the subject matter.

The first challenge was to obtain the research sample. Clearly, **reunite** is uniquely placed, through its database of those who have used its services, to draw on those contacts for the purposes of research. However, it was acknowledged that, even for those who felt some loyalty towards **reunite**, the research exercise might not prove attractive. Where the conflict was

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<sup>11</sup> Particular appreciation is expressed to Henry Setright, Q.C. for his valuable contribution to this task

still unresolved, it could be expected that parents might be too distressed. On the other hand, where the conflict was over, it was anticipated that parents might want to put the past behind them, rather than dragging up events and emotions with which they had struggled. On a more practical level, where the conflict had never really been resolved but where things had quietened down, parents could feel apprehensive about re-activating the now smouldering embers of what had usually been an all-consuming conflagration – a case of “let sleeping dogs lie”.

It was also recognised that, in addition to the possible difficulties in obtaining a sufficient sample through the **reunite** database, it was necessary to obtain a broader sample of cases, rather than limiting the research to those which could be found through **reunite**, in order to ensure research findings that do not attract criticisms of self-selection. However, self-selection is, to some extent, endemic to research in that those who choose to take part may be those for whom the experience was extreme and those for whom the experience was less significant will have moved on and may not choose to become involved. Although this was a matter for consideration when the research project was first undertaken, our view was that there was little that could be done to redress any imbalance which might result from such natural impetus. In the event, the constitution of the sample was more representative in this way than we had anticipated. It included those for whom the experience had been especially traumatic, as well as those for whom the experience had been less extreme. This welcome outcome went some way towards re-assuring us in relation to any possible “skewing” of results by reference to the extreme nature of the experience of the research participants.

It was decided, therefore, to throw the net as wide as possible but, at the same time, the need for confidentiality was anticipated. For this reason, the following approach was adopted:

A letter was sent in August 2001 to all Central Authorities seeking their assistance in research being undertaken by **reunite**. A disappointing number of replies was received to these initial contact letters, although it is true to say that some replies were eventually received after the next stage of action had already been taken.

A letter was then sent in March 2002 to those Central Authorities who had responded, each of which included four invitation packs which could be passed on to any parents which the relevant Central Authority believed may be interested in taking part in the research. The invitation packs

included an invitation letter to the parent, setting out the details of the research, inviting any interested party to complete a questionnaire (included with the pack) and to return it in a stamped addressed envelope to the **reunite** office. The completed questionnaire, once received, would be evaluated on the criteria established for inclusion within the research project. If those criteria were satisfied, the parent would be contacted again with details of the interview which would be offered.

Where no reply had been received from the Central Authorities to our original letter, we wrote again, enclosing a copy of that letter. In anticipation of any concerns regarding confidentiality which might have prevented a response (and it is interesting to note here the wide divergence of practice and approach between Central Authorities on this issue), our second letter proposed a system under which the Central Authority could forward copies of letters which we had enclosed for the attention of those lawyers in the specific jurisdictions concerned who dealt regularly with abduction cases. These letters invited the individual lawyers to contact **reunite** if there were cases which with (s)he had dealt which might fall within the remit of our research project, as explained in the letter. Once contacted, we would forward copies of the questionnaire which could be passed on to any potentially interested parents. It would then be a matter for the parent concerned whether to take the matter further by completing and returning the questionnaire. At no point would we know the identity of the parties unless and until they decided to contact us. More than 30 such letters were sent during February and March 2002. Where we received indications from the Central Authorities that we needed to contact the relevant Bar Council, we wrote individually to those concerned, seeking their assistance. Replies came in various forms and, although overall the response was still low, there was unilaterally heartening support from those who did respond.

Additionally, letters were sent in August 2001 to all the lawyers on the **reunite** Lawyer's Network<sup>12</sup> requesting assistance in the research project. Again, the response was disappointing, although those who did respond provided some extremely valuable information and leads, all of which were pursued. We wrote again to those who had responded, enclosing copies of questionnaires which could be forwarded to those parents in cases in which the lawyer had been involved and which (s)he felt might be suitable for inclusion in the research project. Again, it would be a matter for the parent concerned whether to take the matter further by

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<sup>12</sup> The **reunite** Lawyers Network consists of lawyers who specialise in family law and have knowledge of international parental child abduction

completing and returning the questionnaire, upon receipt of which an evaluation would be made on the eligibility of the case for the purposes of our research exercise. We also wrote again to those on the Lawyer's Network who had not responded to our original letter, as well as any new entrants to the Listing, enclosing a copy of that letter, together with copies of questionnaires for distribution to any parents who might be interested in taking part in the project and who were thought to fall within the remit of the research. Again, the response was low but, where a response was received, the effect was both supportive and of great practical assistance.

We also wrote to all those who had completed the original questionnaire, upon which our pilot project was based in 2001, inviting those parents to take part in the second stage of the research exercise by attending a personal interview. We similarly wrote to all those parents who had recently contacted **reunite** concerning an abduction, explaining the remit of the research exercise and including a questionnaire for completion so that we could evaluate the case for eligibility. If the case was one which fell within the parameters of the research, an interview date would be offered.

We also wrote to all members of the United Kingdom Legal Working Group<sup>13</sup> (including both solicitors and counsel actively involved with abduction cases), as well as the European Legal Working Group,<sup>14</sup> enclosing copies of our "parent pack" for distribution to any parents in relevant cases. This included an invitation letter, explaining the remit of the research, as well as a questionnaire and stamped addressed envelope. In the usual way, the questionnaire would only be completed and returned by a parent interested in taking part in the research.

In this way, it was felt that the opportunity to take part in the research had been made available to the greatest number of parents, whilst preserving the undoubted need for privacy and confidentiality. There was no requirement on gender or status, in terms of being either an abducting, or left-behind, parent. The majority of cases (approximately 60%) involved returns occurring between 1-3 years ago; the remainder of the cases involved earlier returns ranging from 4 to 7 and a half years ago. The spread of these "ages" meant that we were able to obtain information

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<sup>13</sup> The **reunite** Legal Working Group consists of UK specialist solicitors/barristers who have expertise in international parental child abduction and undertakes research on behalf of **reunite** and The Parliamentary All Party Group on Child Abduction

<sup>14</sup> The **reunite** European Legal Working Group consists of European lawyers who have expertise in international parental child abduction and undertake research on behalf of **reunite**

about the outcomes for the returned children at different stages of their return.

The interviews were categorised either as:

- (i) primary interviews which, for the purposes of this research, were defined as interviews with the person with whom contact was first made, and
- (ii) spouse interviews which, for the purposes of this research, were defined as interviews where contact was initially made with the other (primary interviewee) parent and where the “spouse” subsequently agreed to participate in the research.

However, no requirement of a marital relationship was made so that the research incorporates the full spectrum of parental relationships. The interviewees in both categories, i.e. primary and spouse, comprised both abductors and left-behind parents.

The intention was, as already stated, to conduct interviews with both parents in as many cases as possible. Clearly, the acquisition of contact details for both parents was going to be a sensitive matter and, indeed, the spouse interviews were the most difficult to obtain. Significant suspicion was demonstrated in many cases relating to the purpose and use of the proposed interview material. In some cases, it proved possible to re-assure the prospective interviewee. However, in others it was not possible to do so.

We were also aware that this was going to be a very sensitive piece of research in other ways. As in most matters concerning children, as their lives go on beyond the scope of the research until they reach maturity, it is crucial to be scrupulous in avoiding the identification of the research subjects. Our attention to this aspect may have led to an apparent blandness in the examples given within this report. This should not be taken as indicative either of the manner in which the research was approached, or the depth of feeling involved in the specific case. Rather, this is reflective of the acknowledged need to avoid doing anything which would lead to being able to identify the children involved in the cases.

Although the information provided in the structured interviews was delivered verbally by the interviewee, supporting documentation was requested in each case. Some parents were able and willing to supply such documentation at the time of the interview. Others did not do so but

undertook to provide it at a future date. Where that documentation was not received, efforts were made to obtain it by further contact with the interviewee. However, although it did not prove possible in every case to achieve full supporting documentation, we did not consider this to be crucial to the outcome of the research. Although documentation allows easier verification of certain elements of a verbal account, this research does not strive to be judgmental in its approach and, therefore, strict reliance on documentation is not required and, indeed, may not be helpful. The aim of the research has been practical – to discover what the outcome has been for children who have been returned following an abduction. Our view is that, although it would be desirable to interview both parents, and this end has been vigorously pursued, we recognise that this may simply provide two versions of those events. Supporting documentation of events post return, where such exists, cannot be considered determinative in the absence of forensic examination, and we were mindful both that matters may not be documented, as well as that other, contradictory, documentation may exist of which we had no knowledge. Our approach has been, therefore, to rely on the information provided in the individual interviews, cross-referenced where both parents have taken part in the research. Where documentation has been made available, we have accepted it subject to the consideration outlined above. Such limitations have been necessary in pursuit of our aim, the need to obtain as much information as possible on the outcomes for the children concerned.

### **3. PRELIMINARY MATTERS**

In all, thirty interviews were conducted. However, although we undertook 30 interviews, our sample relates to 22 individual cases (as we interviewed both parents in 8 cases). The 22 cases involved 33 children. In 17 cases, the parents were married. In 5 cases, the parents were unmarried. We are conscious that 22 cases amounts to a relatively small sample. We believe, however, that it is of sufficient size to enable helpful information to be obtained and useful conclusions to be drawn, particularly as, to our knowledge, no previous study of this type has been undertaken, which can perhaps be explained by the undoubted obstacles in obtaining a larger sample, as previously described.

Each of the interviews took between three to six hours. The time taken depended on the complexity of the case and the pace at which the parent was able to deal with the questions posed as, although all the interviews

were conducted on the basis of the standard form interview, it was neither possible, nor desirable, to standardise the time frames for the answers to questions concerning such deeply emotional issues.

Of the thirty completed interviews, twenty two were “primary interviews”. For the purposes of this research, the term “primary interview” was used to denote an interview with the person with whom contact was initially made through one of the avenues set out above. The remaining eight interviews were “spouse interviews”. For the purposes of this research, the term “spouse interview” was used to denote an interview where contact was initially made with the other parent who had already been interviewed and where the “spouse” had subsequently agreed to participate in the research. However, no requirement of a marital relationship was made so that the term “spouse interview” includes the full spectrum of parental relationships. The interviewees in both categories of “primary” and “spouse” have been both abductors and left-behind parents, and both mothers and fathers.

The break-down within these categories is as follows:

“Primary interviews”

22 primary interviews were conducted. 10 of these interviews were with abductors (all of whom mothers) and 12 of these interviews were with left-behind parents (8 of whom were mothers, 4 of whom were fathers).

“Spouse interviews”

8 spouse interviews were conducted. 1 of these interviews was with the abductor (who was the mother) and 7 of these interviews were with the left-behind parents (all of whom were fathers).

(See Tables 1 and 2 below)

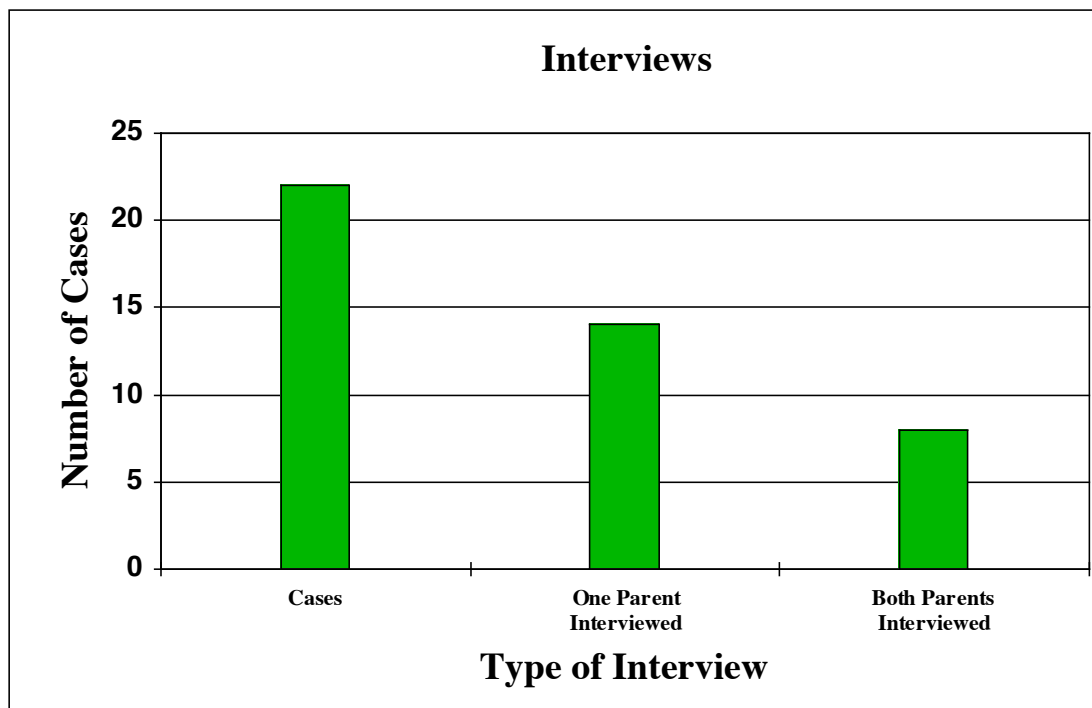
The following points can be made:

1. In 8 of the 22 cases studied we were able to interview both parents. Although we had hoped to achieve a higher percentage of cases where both parents participated in the research, we were satisfied to reach 36.36% of the overall sample in this

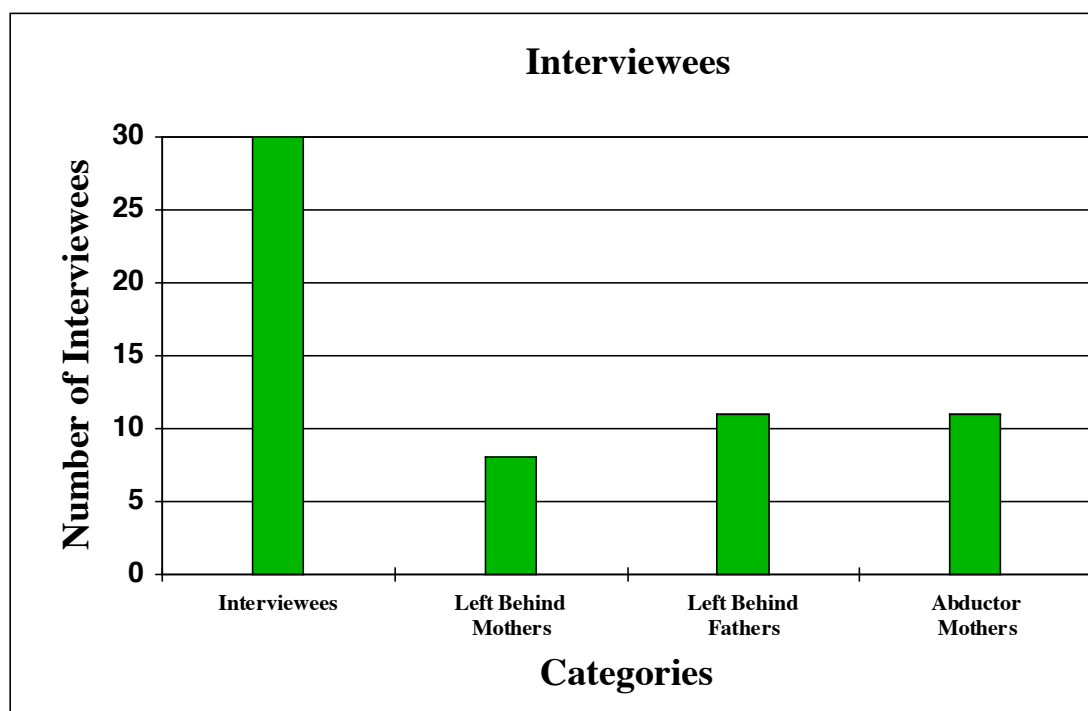
category, in the light of the very real obstacles which stood in the way of increasing this result.

2. All of the 11 abductors taking part in the research were mothers.
3. Of the 19 left-behind parents taking part in the research, 11 were fathers and 8 were mothers
4. The overall number of mothers taking part was, therefore, 19.
5. The overall number of fathers taking part was, therefore, 11.
6. No opportunity arose within the spectrum of cases which presented themselves for any interview to take place with a father abductor.

**TABLE 1**



**TABLE 2**



It may be seen from these figures that those with whom we made contact most easily were mothers. 18 of the primary interviewees were mothers (which represents 81.8% of the primary interview sample). Although this represents an interesting statistic, it is one from which we were unable to draw any reliable conclusions.

The location of the interview varied according to the circumstances of the interviewee. The “spread” of countries involved reflects the well documented profile of abduction cases.<sup>15</sup>

15 of the “primary interviews” took place in England, 11 of which were conducted in London, 2 in Wolverhampton, 1 in Newcastle and 1 in Leicester. The remaining 7 of the “primary interviews” took place abroad (2 in Ireland, 1 in Portugal, 2 in France, 1 in Italy and 1 in Australia). This result is not surprising as the best opportunities for providing the

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<sup>15</sup> See, e.g. Lowe, *Statistical Analysis of Applications made in 1999 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, Prel. Doc No. 3 at Fourth Special Commission on the Operation of the 1980 Hague Convention, The Hague, 2001.

sample for primary interviews are likely to be within the home jurisdiction of the Research Unit where our closest contacts are situated.

Almost all the “spouse interviews” took place overseas, 1 in Croatia, 1 in Portugal, 1 in Greece, 1 in France, 1 in Italy, 1 in Scotland, 1 in Australia. Only 1 “spouse interview” therefore took place in England. This involved an overseas parent travelling to England for the purposes of the interview.

## **4. FINDINGS**

Before proceedings to specific findings, one of the fundamental general findings of this research relates to the obvious distress felt by almost all of the parents interviewed when recounting the events of the abduction. This was evident even when the abduction had occurred several years before and seemed to be triggered either by the memory of the despair felt at the time of the abduction or by the memory of seeing the child again for the first time after the abduction. Both mothers and fathers reacted similarly in this context and both abductors and left-behind parents appeared equally affected.

It is also worthy of note that 14 of the 22 cases (over 63% of our sample) involved an abduction by the mother of the child(ren), the remaining 8 cases involving abductions by the father. Although this is unsurprising in the light of previous research findings, it is interesting to see the position so clearly repeated in our sample.

### **(a) Primary Carers**

For the purposes of this research, we adopted the statement of approach to the categorisation of primary care which was offered in the Information Document presented to the Fourth Special Commission on the Operation of the 1980 Hague Convention in The Hague, 2001<sup>16</sup> which we include below:

“There is no universally accepted definition of primary carer, although there is some general consensus on the elements which make up such a

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<sup>16</sup> Also see Research Project Concerning Return Orders, Primary Carers and their Children, September [2001] IFL 1

category. **reunite** offers the following statement of its approach to the categorisation of primary care, upon which it bases its statistics and research. **reunite** does not consider the issue of primary care to be gender specific, and the categorisation is always made by **reunite** without consideration of gender:

Advanced systems of family law recognise a difference between legal rights and practical status. The English legal system is an example of this. The parents of children will have joint rights of legal custody if they are married, and sometimes when they are not married, even when those couples are separated. Very often there is no order beyond this defining their “rights”. Nevertheless, where those parents are separated, the child will generally live, in practical terms, in the house of one parent. That parent will be the primary carer. In less clear cut cases, e.g. where the parents are not separated or where (very rarely, in practice) equal time sharing occurs, there will sometimes be a preponderant carer where, e.g., one parent works in paid employment and the other remains at home. It is plain, that with a young child, the latter is likely to be the primary carer, bearing the primary practical responsibility for the child. There will be cases where the parents are not separated and both are working in full-time paid employment. In such cases, both parents may be said to be primary carers for the child, there being no preponderant carer”.

The interviewees were asked the question “who was the main person who looked after the child(ren) before the removal or retention”? Of the 11 mother abductors interviewed, 10 expressed themselves as primary carers of their children. Only one considered that the father was primary carer for the child concerned. In those cases where both parents were interviewed, the views expressed by both parents relating to the primary care of the child was the same in 50% (i.e. 4 cases) of the cases. However, in the other 50% (i.e. 4 cases), the parents disagreed on this issue. In each of those 4 “disagreed” cases, the mother had expressed herself as the primary carer, whereas, in 2 of the cases the father stated that the parents had been joint primary carers, in 1 case the father said that, although both parents had cared for the child, the father had undertaken this 60% of the time, while the mother had only done so for the remaining 40% and in 1 case the father stated that other relatives had performed the primary care function for the children.

Where only one parent had been interviewed, the interviewee stated themselves to be the primary carer on 11 occasions, 10 of which were mothers, 1 of which was the father. In 2 further cases, the interviewee

stated that the parents were joint primary carers, on one occasion the interviewee being the mother and on the other occasion the interviewee being the father. In 1 further case the interviewee (the father) stated that the other parent had been the primary carer.

Perhaps the most striking aspect of this part of the research is the apparent importance placed on the status of primary care by both the abductor and the left-behind parent in terms of the perceived public acceptability and justification of the abduction. It was a question which met with emotional and emphatic responses from the interviewees.

**(b) With whom the child was living at the time of the abduction**

In 8 cases, involving 12 children, the child was living with the mother at the time of the abduction. In 1 case, involving 2 children, the children were living with the father at the time of the abduction. In 13 cases, involving 19 children, the children were living with both parents at the time of the abduction. This statistic further broke down into 2 cases where the children were living with the abductor alone before the abduction, 7 cases where the children were living with the left-behind parent alone before the abduction, and 13 cases where the children were living with both parents before the abduction. In most cases, therefore, children were abducted from a situation where they had been living with both parents, emphasising the acknowledged change from the “classic” early abduction where the non-custodial parent abducted the child from the care, and home, of the custodial parent, often during a period of access, but sometimes through snatching the child.

**(c) Gender**

Of the sample of 33 children, 17 were boys and 16 girls. In 10 cases, siblings were abducted together.

**(i) 0-5 age range (including those aged 5)**

51.5% (17) of the 33 children were in the 0-5 year old age range. Of these 17 children, 8 were boys and 9 were girls. 8 of the children in this age range were abducted as single children (5 girls and 3 boys), 9 of the children in this age range were abducted with siblings (7 boys and 2 girls).

(ii) 5-10 age range (including those aged 10 but not including those aged 5, already taken into account in 0-5 age range)

39.3% (13) of the 33 children were in the 5-10 age range. Of these 13 children, 8 were boys and 5 were girls. 3 of the children in this age range were abducted as single children (2 boys and 1 girl) and 10 of the children in this age range were abducted with siblings (6 boys and 4 girls).

(iii) 10 + age range (not including those aged 10, already taken into account in 5-10 age range)

9.09% (3) of the 33 children were in the 10+ age range. Of these 3 children, there was one boy and two girls. One boy and one girl were abducted with siblings. One girl was abducted as a single child.

These figures seem consistent with the general view that it is younger children who are most often abducted.

#### **(d) Jurisdictions**

(i) 9 of the cases studied involved an abduction from England. The remainder of the abducted-from jurisdictions and their recurrence were as follows:

Scotland (1) Portugal (1) Turkey (1) France (2) Australia (1) Greece (2) Croatia (1) Ireland (2) Italy (1) United States (1)

(ii) 10 of the cases studied involved an abduction to England. The remainder of the abducted-to jurisdictions and their recurrence were as follows:

Australia (1) Ireland (2) Northern Ireland (1) United States (3) Spain (3) Italy (2)

(iii) In 16 of the cases the abducted-to jurisdiction was the home country of the abductor. This result would suggest that the overwhelming majority of abductors are returning home and it may also, in conjunction with the reasons for abduction provided at (g) below, support the theory of mother abductors returning home against a background of domestic

violence or abuse as where the abductor was interviewed (11 cases, all of whom were mothers) the reason given by the abductor for the abduction in 5 of the cases was related to abuse of the abductor or child by the left-behind parent. In those cases where the left-behind parent was also interviewed, this reason was not supported by the answers given by the left-behind parent. We have no way of verifying the reasons provided by the abductor; however, it is hardly surprising that, if true, the abuse is denied by the left-behind parent as it must be rare that such events would be admitted by the perpetrators. As the abductor was not interviewed in 11 cases (50% of the sample), the reasons for the abduction as seen from the abductor's perspective are unknown. It may be that the statistics regarding the background of abuse or violence would be substantially altered if that information were available.

(iv) In 6 cases the abducted-to jurisdiction was not the home country of the abductor. Where the abducted-to jurisdiction was not the home country of the abductor, the reasons for choosing that jurisdiction were as follows:-

1 case (as expressed by interviewee, i.e. left-behind father) was that the mother abductor's boyfriend and family lived in the abducted-to jurisdiction;

1 case (as expressed by interviewee, i.e. left-behind mother) was that the father abductor chose the jurisdiction as it was one which the left-behind mother would not have considered as a refuge state;

1 case (as expressed by interviewee i.e. left-behind mother) was that the father abductor was living and studying in the abducted-to jurisdiction;

1 case (as expressed by interviewee, i.e. the mother abductor) was that it was where her parents were living. "Spouse interviewee" confirmed this reason;

1 case (as expressed by interviewee, i.e. left-behind father) was that it was where the mother abductor's parents were living;

1 case (as expressed by interviewee, i.e. left-behind mother) was that it was a jurisdiction which the father abductor liked.

(e) **Existence and terms of custody order at the time of abduction**

In all 8 cases where both parents were interviewed, there was agreement between the parents on this question.

In 9 of the 22 cases a custody order was in existence at the time of the abduction. In 13 of the 22 cases, no custody order was in existence. In the majority of cases, therefore, there had been no judicial pronouncement relating to custody at the time of the abduction.

In 6 of the 9 cases in which a custody order was in existence at the time of the abduction, removal without the consent of the other parent or without the leave of the court was specifically prohibited within the terms of the custody order. In another 1 case, removal was expressed to be permissible for holidays so that the interviewee deduced that removals other than for holidays were not permissible within the terms of the custody order. In 2 of the cases, removal was not prohibited within the terms of the custody order.

#### **(f) Warning Discussions**

It was unusual to find that a specific discussion had taken place on the issue of removing the children or that specific threats had been made to do so. The circumstances were more usually that a general discussion had taken place concerning the unhappiness of either one or both of the parents and that, during the course of such discussions, one of the parents had indicated that, should the other parent wish to leave, (s)he was not at liberty to also take the child(ren). Such discussions constitute “warning discussions” for the purposes of this research.

Of the 8 cases where both parents were interviewed, in 50% (4) of the cases the primary interviewee stated that there had been warning discussions. In 50% (4) cases the primary interviewee stated that there had been no warning discussions. In all but one of the cases, the parents were in agreement on whether there had been any warning discussions. In the remaining 14 cases, warning discussions, as expressed by the interviewee, had taken place in 7 cases. There had been no warning discussion, as expressed by the interviewee, in the other 7 cases.

It would appear, therefore, that warning discussions took place in approximately half of the cases involved. Caution must be exercised in interpreting the lack of warning discussions as denoting a hitherto harmonious relationship interrupted by an inexplicable abduction.

Several abductors explained the lack of warning discussion by reference to the unpleasant past behaviour of the left-behind parent and the anticipated repeated response to such a discussion.

**(g) Reasons for Abduction**

This was, perhaps, the most apparent area of disagreement between the parties where both parents were interviewed. In only 1 of the 8 cases where both parents were interviewed did the parents agree on the reason for the abduction, which was given as the abductor being financially unable to remain in that jurisdiction. Even in this case, however, there was disagreement between the parties as the left-behind parent thought that a way could have been found to deal with this issue, rather than running away, while the abductor felt there was no other way to deal with the problems she faced.

In the other 7 cases the reasons offered by both the abductor and the left-behind parent were as follows:

	<u>Abductor</u>	<u>Left-behind parent</u>
1.	a better life	to punish
2.	abuse of abductor by left-behind parent	family pressure
3.	mistreatment of child	to go home
4.	breakdown of marriage/ quality of life	family pressure
5.	end of marriage	new boyfriend
6.	sexual abuse of child	family pressure
7.	child's needs	wanting to keep child

Of the remaining 14 cases, the reasons as expressed by the left-behind parent interviewees in 10 cases were as follows:

1. to prevent the divorce

2. to control the left-behind parent (2 cases) and obsession with the child
3. family pressure (in 2 cases)
4. to return home
5. to keep the child
6. to punish the left-behind parent (in 2 cases)
7. to be with new boyfriend
8. ostensibly because children wanted to live in father's home country

The reasons expressed by the abductor in the remaining 3 cases were as follows:

1. fear of the left-behind parent (1 case)
2. unhappiness and despair (2 cases)

The reasons expressed are unsurprising. They reflect the emotions routinely experienced in the breakdown of relationships, to which child abduction is merely an extension.

**(h) Existing proceedings in home country or proceedings begun before return of abducted child**

Practitioners and judges have always been concerned about attempts made to obtain orders in the requesting State either immediately before or during the course of Hague proceedings, most particularly when this effects a change of primary carer, as this creates a suspicion that the left-behind, previously non-custodial, parent may gain an inappropriate advantage from such action post return. However, the data provided below does not indicate that this type of action by the left-behind parent is a common occurrence.

In the 8 cases where both parents were interviewed, the parents agreed in every case on this issue.

In 2 cases there were proceedings in being (i.e. ongoing) in the home country before the child was abducted. In 5 cases there were no proceedings in being in the home country before the child was abducted. In 1 case, proceedings were begun before the child was returned (in this case, leave to permanently remove the child from the jurisdiction).

In the remaining 14 cases, proceedings were in being (i.e. ongoing) at the time of the abduction in only 2 cases. In all other cases, there were no proceedings in being or commenced before the return of the child.

**(i) Length of abduction, i.e. time between abduction and return of child**

Of the 33 children involved in the sample, one child (in the age category 10+ years) has not been returned.

The other 32 children were abducted for the following periods:

**(i) 0-5 years of age (using age categories as above)**

17 children. The relevant periods are as follows:

1	1 week
2	6 weeks
1	7 weeks
1	2 months
2	2 and half months
3	3 and half months
2	4 and half months
1	5 months
1	10 months
1	14 months
1	15 months
1	1 year 7 months

The average length of abduction (on the basis that 1 month equates to 4 weeks) in this category is 18.8 weeks.

(ii) 5-10 years of age (using age categories as above)

13 children. The relevant periods are as follows:

1	7 weeks
1	2 months
1	2 and half months
4	3 months
1	3 and half months
2	4 and half months
1	5 months
1	1 year 7 months
1	2 years 3 months

The average length of abduction in this category (on the same basis as above) is 21.9 weeks.

(iii) 10+ years of age (using age categories as above)

2 children. The relevant periods are as follows:

1	2 weeks
1	4 and half months

The average length of abduction in this category (on the same basis as above) is 10 weeks. (N.B: the information relating to the additional child in this category who has not been returned has not been included in this calculation).

These results support the view that older children are less often abducted and, where they are abducted, the periods involved are shorter than those of younger children. The children in the age range 5-10 years were those who were abducted for the longest periods. This result may be the practical outcome of older children being less easy to abduct unwillingly and younger children being less easy to look after for someone who is not entirely committed to their care.

**(j) The reason for the return of the child**

In 19 of the 22 cases, the return was as a result of Hague proceedings in the requested State. In one case, the child was returned as a result of the

physical apprehension of the abducting parent through the employment of an international warrant of arrest. In one case, the child was returned by an order of the Court which was not under the provisions of the Hague Convention. In the last case, the interviewee was unsure whether the return was by Order of the Court or whether the abducting parent chose to return voluntarily once the application for return under the Hague Convention had been served on that parent.

These figures would support the view that Hague Convention proceedings are the usual, and most effective, way in which abducted children are returned to the State of habitual residence.

### **(k) Legal representation and legal aid in the proceedings for return**

#### Left-Behind Parents

In one of the 22 cases the question of representation in return proceedings was not relevant as the child was returned through the operation of an international warrant. However, there were clearly other legal costs involved.

In only one of the remaining 21 cases was the left-behind parent not legally represented. The left-behind parent was therefore legally represented in 95.2% of cases.

In 5 of the 20 cases in which the left-behind parent was represented, the parent was not legally aided but in one of those 5 cases the parent had been able to secure pro bono representation. In another one of the cases in which the left-behind parent was represented in the return proceedings, it was not known whether legal aid had been available.

#### The Abducting Parent

In 17 of the 21 cases, the abductor was legally represented in the return proceedings. In 2 cases, the abductor was not legally represented. In 2 cases, it was not known whether the abductor was legally represented. In the 17 cases where the abductor was legally represented in the return proceedings, legal aid was available on 11 occasions. In 2 cases legal aid was not available to the abductor in the return proceedings. In 4 cases it was not known whether legal aid was available to the abductor in the return proceedings.

One issue which was mentioned several times relating to legal representation concerned the lack of awareness of the legal machinery in international child abduction issues by many of the lawyers to whom the parents had first turned for advice. On several occasions, the matter had been initially approached by those advising the left-behind parent as one of custody, rather than of the summary non-welfare based abduction process. In one case the left-behind mother was specifically informed by the lawyer she consulted that she must go to the country to which the child had been abducted to seek the return of the child, notwithstanding that both countries were signatories to the Convention. Additionally, where parents had sought legal advice before abducting the child, the abducting parent had sometimes been advised that she was not acting incorrectly in taking the child where she enjoyed custody rights, even where the other parent shared those rights. These situations were not confined to one jurisdiction and it appears that lack of awareness of the relevant legal framework is common amongst the general legal profession within Convention States. Where parents were able to contact specialist lawyers in the first instance, they often spoke of the solid and emphatic advice received, both as abductors and left-behind parents. One abductor mother states that she did not resist the return of the children once she understood “the inevitability of return”.

### **(I) Concerns relating to return as expressed by interviewee**

Where both parents were interviewed, there was consensus on the concerns expressed by the abducting parent.

#### **Abducting Mothers:**

In the 22 cases forming the sample, 63.63% (14) concerned abducting mothers. This supports the interim findings expressed in the Information Document in relation to the high incidence of mothers abducting their children.

In 5 of these mother abductor cases the mothers did not raise any concerns relating to return.

In the remaining 9 of mother abductor cases, the abducting mothers raised the following concerns (NB some cases involved more than one concern):

- (i) on 4 occasions the abducting mother raised domestic violence as a concern;
- (ii) on 2 occasions the abducting mothers raised child abuse as a concern;
- (iii) on 2 occasions the abducting mothers raised splitting the family/siblings as a concern;
- (iv) on 1 occasion the abducting mother raised the child's objections as a concern;
- (v) on 1 occasion the abducting mother raised the unfitness of the other parent as a concern.

#### Abducting Fathers:

In the 22 cases forming the sample, 36.36% (8) concerned abducting fathers. In one of these cases the child was not returned through Hague proceedings and concerns were therefore not expressed. Of the other 7 cases, fathers did not express concerns relating to return in 3 cases. In the remaining 4 cases, the abducting father raised the following concerns:

- (i) child abuse as a concern on 2 occasions;
- (ii) child's objections as a concern on one occasion;
- (iii) the unfitness of the other parent as a concern on one occasion.

#### **(m) Involvement of Court Welfare Officers**

Our intention was to consider the role of welfare officers in terms of the effect of their advice on the future outcome of the case concerned. However, the data provided did not allow for reliable conclusions to be drawn on this matter, although the following statistical data was made available.

Where both parents were interviewed, there was consensus on this matter.

Of the 21 relevant cases (in the other case in the sample, the child was not returned through the judicial process) welfare officers, or persons charged with interviewing the child in the relevant jurisdiction, saw the child in 23.8% (5) of the cases. In 66.6% (14) of the cases, welfare officers were not involved. In the remaining 2 cases, it is not known whether welfare officers were involved.

## **(n) Undertakings**

Where both parents were interviewed, there was consensus on this matter save for the comments made below in relation to maintenance of undertakings.

Of the 21 relevant cases (see above), undertakings were given in 57.14% (12) cases. Undertakings were not given in 42.85% (9) cases.

The undertakings that were given, and their frequency, in the 12 cases fell into the following categories (NB usually more than one undertaking was given in each relevant case):

- a) violence (non molestation) - 6
- b) not to initiate criminal proceedings - 8
- c) non removal from care of returning parent - 7
- d) non reliance on previous court order - 2
- e) accommodation and maintenance - 7
- f) contact/non contact – 2
- g) to mirror the undertakings – 3

The fact that in 50% of those cases in which undertakings were given those undertakings included one relating to violence may be an indication of the background against which these abductions took place

### **Mirroring of undertakings**

“mirroring” in this context is the process whereby orders are sought from the courts of the habitual residence jurisdiction which reflect the undertakings, stipulations or agreements upon the basis of which return is ordered by the Requested State’s courts.

In the 12 cases in which undertakings were given, those undertakings were mirrored in the requesting State in 5 cases. The undertakings were not mirrored in 7 cases.

In one of the 5 cases in which the undertakings were mirrored, the left-behind parent undertook to organise the mirroring of the undertakings but, in fact, this could not be arranged until the returning parent was within the jurisdiction of the home State. As the left-behind parent failed then to carry out the mirroring process, the returning parent was left to arrange

for the mirroring to take place. This created a hiatus in the protection available to the returning abducting parent for 2 weeks while the procedure took place.

In one of the 5 cases, the return was contingent on the left-behind parent mirroring the undertakings. In the event, he was able only to obtain a Court stamp from the local court of the requesting State on a translated version of the English Court Order. It is possible that, although the stamp was an acknowledging receipt of the document, it was not, in reality, a registration of the undertakings. It was, however, sufficient to satisfy the returning Court and to enable the return of the child and mother.

In one of the cases the undertakings were supposed to be registered before the abducting parent returned with the child to the requesting State. The abducting parent states that she was told that this had been done but could not provide supporting documentation.

In one case, no information was available save for the assurance of the left-behind parent interviewee that undertakings were mirrored in the home jurisdiction.

In one case the returning parent states that the undertakings were mirrored after her return to the home jurisdiction but the circumstances of such mirroring are unknown.

### **Maintenance of Undertakings**

Undertakings were broken in 66.6% (8) cases out of the 12 cases in which they were given. In 25% (3) cases undertakings given were maintained. In one case the child, the subject of undertakings, did not return and therefore cannot be considered in terms of maintenance of undertakings. Where the undertakings were broken, the following information was provided:

- (a) violence (non molestation) – 6 given – broken on 6 occasions
- (b) not to initiate criminal proceedings – 8 given – broken on 1 occasion
- (c) non removal from care of returning parent – 7 given – broken on 4 occasions
- (d) accommodation and maintenance – 7 given – broken on 5 occasions
- (e) contact/non contact – 2 given – no information on outcome

- to mirror the undertakings – 3 given – no information on outcome
- (f) non reliance on previous court order – 2 given – no information on outcome

Although there was consensus on this issue in the majority of cases where both parents were interviewed, in 2 cases the parents disagreed on whether the undertakings given were maintained. Even where consensus existed, the parent who gave and broke the undertakings usually offered a benign and “innocent” explanation of the reasons and manner in which the failure to honour the undertakings had occurred e.g. because the returning parent did not keep to the arrangements made at the time of the return Order and undertakings. Occasionally, however, it was clear from what was stated by the undertaking parent that the failure to honour was deliberate and premeditated.

This was an area where interviewees expressed strong feelings. Financial undertakings were often broken (see above) with serious effects on the returning parent and child. One mother said that it left her in the position of not having bread to make sandwiches for her child when the father refused to pay for accommodation in spite of his undertaking to do so. One mother stated that she had expected the undertakings, which had been fiercely negotiated, to last until the leave to remove hearing took place in the home jurisdiction. In the event, that hearing did not take place until 2 years after her return. The undertakings were quickly varied, however; in particular, an undertaking in the return Order that “payment is to be made until the issue of financial support and such housing provision is considered before the appropriate Family Court in [...] on an inter partes basis” was altered within 2 months on the application of the father on the basis that he could no longer afford the payments.

Where the undertakings were maintained (3 cases - 25% of those cases in which they were given), they related to the following matters:

In one case the undertaking was not to remove the children from the care of the returning parent. The undertaking was not mirrored.

In one case the undertakings were not to remove the child from the care of the returning parent, to provide accommodation and maintenance, non molestation, not to institute criminal proceedings. These undertakings were not mirrored.

In one case the undertaking related to contact. It was not mirrored.

Once again, as concluded in the Information Document, it appears that the best guarantee of undertakings is the bona fides of the undertaker.

An important ancillary issue relates to how the undertakings have been viewed by the authorities in the home State. In one case, the mother states that the undertakings were thought of “as a joke” by the authorities in the home State. This was sometimes exacerbated by the other parent’s argument that the mother’s home country had not allowed her to stay, demonstrating its disapproval by returning one of its own nationals to the requesting State. Some left-behind fathers have stated that they were advised by their lawyers to agree to the undertakings which were being sought by the Court in the requested State because the laws in the home State were different and “the undertakings mean nothing”. It must also be remembered that, where the issue of custody is dealt with administratively in the home State, undertakings may not even be considered.

In one case the mother called the police in relation to the constant pestering and harassment by the father in the home State in contravention of an undertaking given to the English Court. These undertakings had been registered in the local Court in the home State. Nevertheless, the mother states that the police advised her that she would have to obtain a protection Order as the undertaking had “no real effect”. The mother states that she has heard this story time and again from women who have been sent home subject to undertakings. She states her view that undertakings are “completely ineffective”.

In another case, the father retained the children after a period of agreed access in the home State in breach of an undertaking not to do so, and refused to return the children even when advised to do so by his own lawyer. The mother was advised by the local police that the Order of the returning State was insufficient and that an Order of the local Court was required before the police could offer assistance. The mother states that the English Court Order containing the undertakings “meant nothing”.

### **Enforcement of Undertakings**

In 3 cases, the parent relying on the undertakings did not seek to enforce them when they were broken. One mother stated that she did not do anything about the undertakings given and broken by the father because legal aid is not widely available in the home jurisdiction and she did not

have funds to pursue litigation. Another stated that she did not litigate to enforce the undertakings as she was waiting for the outcome of the custody proceedings. Often parents seek to deal with the non-maintenance of undertakings in the eventual substantive proceedings. This is particularly relevant in jurisdictions where legal aid is not available, or widely available, as returning parents are often unable to fund even one set of legal proceedings and will refrain from engaging in any type of non-essential proceedings in order to reserve their meagre resources for the crucial custody issue.

Where it was sought to enforce the undertakings through police complaint, the outcome was generally unsuccessful. In one case the undertaking father (on a legal aid basis) successfully sought to dismiss his obligations under the return Order. In one case, the returning mother, who had given an undertaking on contact, successfully sought to dismiss that obligation in the Court of the home State (on a self-funding basis). In one case, the mother confirmed the undertaking through the grant of a local Order, for which she was self funding.

It would appear that it has proven extremely difficult to enforce the undertakings in the home jurisdiction. A new Order of the local jurisdiction has been required, which often means that the parent seeking to rely on the undertaking must finance and pursue that aim, at a time when she may be struggling with the effects of return on both her and the child, as well as the effects of the non compliance of the undertaker with the promise given to the Court in the requested State. When that undertaking relates to financial support, this places the parent seeking to rely on the undertaking in an impossible position where the home State does not provide financial legal aid.

#### **(o) The return of the abducting parents**

These figures include those parents who abducted their child and returned to the State of habitual residence, even if the child returned separately in the care of the left-behind parent. It should be remembered that all the abductor interviewees were mothers and that no father abductors were interviewed. Information on father abductors has therefore been drawn from interviews with mother left-behind parents. On the other hand, in the cases where the mother abductors were not interviewed, the information was supplied by the father left-behind parents. In those cases, the fathers stated that the mothers had returned to the State of habitual

residence either with or at the same time as the child returned. There is no reason to suspect that the information provided by the mother left-behind parents is less reliable than that provided by the father left-behind parents.

The 22 cases necessarily involved 22 abducting parents. This figure was made up of 14 mother and 8 father abductors.

13 of the mother abductors returned to the State of habitual residence, either with the child in their care or at the same time as the child returned. Only 1 mother abductor did not return.

None of the 8 father abductors returned.

These figures tend to support the view that most mother abductors return with their child(ren) to the State of habitual residence, notwithstanding concerns which they have relating to the return and which have been expressed in the course of the return process. Although it may be thought that this undermines the concerns and defences raised, it may conversely be considered to be a mark of the devotion of the mothers concerned that they are willing to sublimate their personal anxieties in order to be with their children, particularly bearing in mind that domestic violence was raised as a concern in 44.4% of the cases in which the abducting mother raised a concern relating to return.<sup>17</sup>

(p) **Return to a country other than the State of habitual residence**

In all cases, the child was returned to the State of habitual residence.

(q) **Length of time before the authorities of the State of habitual residence considered the substantive welfare decisions relating to the child**

It should be remembered that, notwithstanding an early first consideration of the matter (i.e. the local judicial or administrative authorities becoming seized of the matter), it may be some considerable time before its final determination. In some cases, this may mean that undertakings, envisaged to take effect only until the authorities in the home State become seized of the matter, lapse far earlier than the determination of

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<sup>17</sup> see 4(l) supra

the substantive issues. Where the left-behind parent either breaks the undertakings deliberately, or takes advantage of the hiatus created by the lapse of the undertakings once the local court has become seized in order to alter the situation as envisaged by the returning Court, and where those “breached” undertakings relate to the custody of the child, the time taken to reach the final determination may be of crucial importance. This is especially the case in view of any status quo argument which may develop and which will have the potential of undermining the case of the returning parent. Where legal aid is not available to that parent to pursue her legal remedies, the scope for, and significance of, such tactics is of concern. In such cases, some of which formed part of the research sample, it has proved impossible for the returning parent to redress the injustice caused by the initial breach of undertaking.

3 cases of the sample of 22 cases did not involve further legal consideration following the return of the child.

9 cases were first considered within 1 month of return.

10 cases were first considered between 1-6 months after return.

## **(r) Legal aid in substantive proceedings**

### 1. The Abducting Parent

Of the 19 cases which resulted in further legal consideration following return of the child, the abductor was legally aided in 26.3% (5) cases. The abductor was self-funding in 52.63% (10) cases. In 1 case the abductor was self-representing. In 2 cases the abductor was not represented. In 1 case no information was available on representation of the abductor.

### 2. The Left-Behind Parent

Of the 19 cases which resulted in further legal consideration following return of the child, the left-behind parent was legally aided in 26.3% (5) cases. The left-behind parent was self-funding in 63.15% (12) cases. In 1 case the left-behind parent was not represented. In 1 case, no information was available on representation of the left-behind parent.

Although it is regrettable that legal aid is not available to all parents to pursue child custody matters, it would appear that this detriment is fairly equally distributed between returning abductors and left-behind parents.

**(s) The award of custody**

Custody was awarded to the mother in 12 cases and to the father in 3 cases. Joint custody was awarded in 2 cases. (Therefore of the 17 cases in which custody was considered and decided following return, the mother was awarded custody in 70.5% cases). The custody issue is still ongoing in 1 case. Custody was not considered in 3 cases. In 1 case, custody had been decided prior to the abduction and the child was returned to the pre-abduction situation. Custody was therefore not considered again following return and the only proceedings concerned contact. Custody was awarded to the abductor in 58.82% (10) of the 17 cases where custody was considered and decided post return and to the left-behind parent in 29.41% (5) of those 17 cases (joint custody being awarded in the remaining 2 cases).

This figure suggests that the abduction has not prima facie been held against the abductor in the substantive custody issue. However, this must be read in the light of the outcomes of the leave to remove applications detailed below which suggest that, notwithstanding custody being awarded to more than half of those who abducted, less than half of those were given leave to remove from the jurisdiction. Custody, in these terms, denotes an apparently narrow interpretation of associated rights.

**(t) Leave to remove applications**

We considered the question of how many times the abductor applied for leave to remove and how many times it was granted.

Of the 17 cases where custody was considered and decided upon post abduction, leave to remove was requested in 11 cases. In 5 of these cases the abductor mother was granted leave to remove. In 1 case, the abductor father was granted leave to remove. In 5 cases the abductor mother was refused leave to remove.

In a further 2 of the 17 cases in which custody was considered and decided upon post abduction, the mother abductor removed the child after custody was granted. In both cases the father believes that the custodial parent is not allowed to unilaterally make decisions concerning where the

child should live where that would involve living outside the home jurisdiction. In one case, this resulted in a second application for return being made under the Hague Child Abduction Convention. In the other case, the matter was settled between the parties after an initial period of discord.

4 of the cases in which custody was considered and decided upon post abduction did not involve a leave to remove application.

**(u) The outcomes of concerns expressed by the abductor relating to return**

The clearest method of making this calculation is to draw on the information supplied by the 11 abductors who were interviewed.

Where both parents were interviewed, the outcomes of these concerns were cross-referenced. Where the abductor was not interviewed, it was not thought helpful to include these cases in this calculation as the assessment would not then be made on the same basis, i.e. it was the abductor who had expressed any concerns and it would have been the left-behind parent who was assessing the outcome of those concerns.

One of these abductors (all of whom were mothers) did not resist return. From their comments, all of the other 10 abductors felt that their concerns were proven to be founded.

Several of the mothers referred to the left-behind father's broken financial undertaking which placed them, and the returning children, in unstable and worrying circumstances on their return. They spoke of their "struggle" to deal with their lives whilst waiting for the substantive proceedings to take place. Several talked of this as a "waste of time" in view of the eventual outcome of the substantive proceedings including, in many cases, leave to remove from the jurisdiction. Others linked this to the "damage suffered by the children" as a result of: the police involvement in their lives due to harassment from the left-behind parent once they had returned; of the aggression of the left-behind parent and his family in their efforts to influence the outcome of the substantive proceedings to their advantage; of the pursuit of proceedings against the mother in order to show her in a poor light in terms of the custody proceedings. In one case the mother had brought to the attention of the requested Court her belief of the father's propensity for violence and her fear that, if returned, she would face almost certain violence at his hands.

She also warned of her fear that the father would take the children from her if she were returned. She states that both of these fears proved to be well-founded. Another mother feared that she would be disadvantaged by the judicial system in the home State, where legal aid would not be available to her, and that the father would not keep his promises relating to the custody of the children. Again, this fear is stated by the mother to have proved to be well-founded. Another abductor raised an article 13b defence in the light of the alleged sexual abuse of her child by the father and feels that the child was left at risk following the substantive hearing in the home State.

**(i) Effect on the Child**

This was considered in 3 categories:

- (a) as a result of the abduction
- (b) as a result of not being returned post abduction
- (c) as a result of being returned post abduction

Clearly, it could be expected that the replies of most left-behind parents would concentrate negatively on (a) and (b) where applicable. It was also predicted that they might tend to glorify the post-return situation in an effort to confirm the advantages to the child of the custodial parent's care. Similarly, it could be expected that the replies of most abductors would concentrate negatively on (c). However, it may be considered a measure of the integrity with which interviewees attempted to deal with the questions put to them that this was not always the case. Where the answers fell into the expected pattern, it was instructive to hear of the ways in which the perceived harm manifested in the child concerned.

View of left-behind parents:

12 felt that the children had suffered harm as a result of the abduction.

3 felt that the children had not suffered harm as a result of the abduction

In 4 cases there was no information on harm as a result of the abduction.

Where it was felt that harm had been suffered, examples of harm were given as insecurity; depression; nervousness; stress; missing the left-

behind parent while away; emotional harm, including being told that the left-behind parent had died, therefore having to grieve alone and without cause for that parent before finding that the abducting parent had lied and that the left-behind parent was still alive; being dangerously detached on return; confusion; suffering loss from losing the abducting parent with whom an attachment had grown as part of a survival need; educational disruption; parental alienation; anger with left-behind parent for not rescuing the child.

Where harm was believed to have been suffered by the child, several parents spoke of the lack of provision available to the child on return to address these issues in the form of counselling or other support services. One abducting mother states that her child is attending Social Services group therapy, about which she is pleased, although she had to seek out and instigate the treatment herself as nothing was offered to her.

Where no harm was believed to have been suffered as a result of the abduction, one left-behind parent commented that the child saw the time away as an adventure. Another parent stated that, although no harm had been suffered, the child had learned how to keep secrets and to be manipulative. Although these consequences may still be objectively considered to constitute “harm”, no definition was offered to parents as it was left to the individual to determine whether harm had been suffered in their estimation.

#### View of abductors:

Only 1 abducting mother did not feel that the return of the child had caused harm. The other 10 abducting mothers included the following examples of the harm suffered by returning the child: stress while waiting for the substantive custody decision; witnessing violence against the mother; ill-health, including nightmares; taking responsibility for the abducting mother’s unhappy situation leading to self-harm; lack of stability; refusal to become attached; emotional and psychological damage requiring counselling; educational disruption; splitting of siblings.

#### **(ii) Effect on Left-Behind Parent**

The effect on the left-behind parent was addressed from the perspective of that parent in the context of the original abduction and, where appropriate, in the context of effects which had survived the return of the child.

Several parents spoke of the serious financial effects of retrieving their children both directly and in the fact that they were unable to work properly or at all. One of the parents talks of the lasting effect that this has had, involving long periods of sick leave from her employment.

Two of the parents described having to sell their homes in order to meet their legal costs in retrieving their children.

Many of the parents described themselves as being under great stress and feeling depressed. One mother said that she felt “widowed and bereft with an awful loneliness”; a father said that, during the time that the child was abducted, he took twice the recommended dose of sleeping tablets, together with alcohol, and thought of killing everyone involved in the situation; several spoke of the isolation, powerlessness and hopelessness they felt. Two mothers referred to the undermining effect of the abduction in terms of feeling that they must be blameworthy, as well as their perceived need to avoid society because it revolved around children and, thus, constantly reminded them of their loss.

Most parents felt fear and panic at the loss of the children but not all had been able to deal with these feelings as they had to focus on retrieving the children and, where the children had been returned, had felt compelled to concentrate on the children's' needs since return.

One father said that there were no words to describe the effect on him of the abduction. Another father said he would rather lose an arm than go through the pain of losing his child. The thought of never seeing the child again and the fear of re-abduction are recurring themes in the interviews and the effect on grandparents was an issue mentioned many times.

One positive comment from a left-behind father was that he now spent more time with his children, who had been returned, than he did before the abduction.

When considering the question of post-abduction support services, it is important to remember the traumatic effects suffered by some parents who may need help in adjusting to life following the return of their children, as well as during the time in which their children are missing.

### **(iii) Effect on Abducting Parent**

The effects on the abducting parent were addressed from the perspective of that parent in the context of the return of the child, usually but not always with the abducting parent, to the State of habitual residence.

One mother said that she thought her nightmare was over when she arrived home in the refuge State and that she did not think that, after that, she would lose custody of her children. When she was returned under the Hague Convention she believed that she would be given leave to remove from the jurisdiction of the State of habitual residence. In the event, she lost custody and says that the thought of regaining it is the only thing which keeps her going.

Another mother said that the effect on her of return was “awful”. She felt that her wish to start a new life was being ignored and that she was being cornered into a life which she no longer wanted and where she could not develop. She views this as an interference with her personal choice.

Another mother described the return as “shocking” and believes she is now in a state of non-responsiveness. She wants to leave but is not being allowed to do so.

Another mother spoke of her feeling that nobody had listened to what she had been saying.

Several mothers spoke of feeling isolated and missing the support of their families. They felt anxiety, some becoming ill, others becoming angry and bitter. It was felt generally that these reactions impacted negatively on the children.

Once again, post abduction support services must be viewed in terms of all the parties to the abduction who may have an equal need for help in dealing with the issues emanating from the abduction event. Abductors may be as much victims of the abduction situation as the left-behind parent and the child.

### **(v) Contact**

This was considered in terms of the number of cases where the abducted child has contact with the non-custodial parent after return.

In 45.45% (10) cases, contact is taking place regularly between the child and the non-custodial parent.

In 27.27% (6) cases, although telephone contact takes place, the issue of direct contact is unsettled so that, in spite of agreement in principle to the concept of contact, there had been difficulties in its exercise.

In 4.45% (1) case contact was taking place very occasionally and on an ad hoc basis.

In 4.45% (1) case indirect contact takes places very occasionally with no attempt being made at direct contact.

In 4.45% (1) case supervised contact, which had been taking place, had been stopped because of concerns regarding the non-custodial parent's behaviour. It was due to be re-started but difficulties were being encountered with that course of action.

In 9.09% (2) cases there is no contact because the custodial parent has obtained a no-contact Order following return of the child.

In 4.45% (1) case the left-behind parent cannot make contact with the child in spite of the grant to the custodial parent of leave to remove from the jurisdiction being based on the other parent's continued contact with the child.

These statistics indicate that, in nearly half of the cases studied, contact is taking place satisfactorily between the child and the non-custodial parent post abduction return. This is an encouragingly high percentage, given both the often extremely difficult circumstances surrounding abduction cases, and the considerable difficulties which are often associated with general contact disputes, which have been described as "highly emotive, difficult and sensitive"<sup>18</sup>.

## **(w) A Comparative View**

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<sup>18</sup> see Making Contact Work, A Report to the Lord Chancellor on the Facilitation of Arrangements For Contact Between Children and their Non-Residential Parents and the Enforcement of Court Orders For Contact, February 2002. A Report of The Advisory Board on Family Law: Children Act Sub-Committee at 1.2

The outcomes of cases where the child was returned to the State of habitual residence were also considered in the light of the research undertaken at the Family Court of South Australia referred to above<sup>19</sup>.

There were 11 relevant cases (i.e. involving a return to South Australia following an abduction) dealt with by the Central Authority for South Australia from 1997 to the date the research was conducted, 6<sup>th</sup> December 2002.

In 1 of the 11 cases, the parties were reconciled. In 9 of the cases, it was the mother who had abducted the child. In 1 of the cases, the identity of the abductor was not clearly stated in the papers although, from the remainder of the documentation, it seems likely that the abductor was the mother.

Leave to remove was granted in 30% (3) of the relevant cases. Custody was vested in the mother in each case. These cases involved Australia/Canada as well as Australia/UK (2). In one of the cases involving the United Kingdom, the mother was allowed to remove the child from Australia on the condition that she did not move more than a certain distance from the designated new home in the United Kingdom without prior consent, the order to be mirrored in the United Kingdom prior to the departure from Australia of the mother and child.

In 60% (6) of the relevant cases, removal of the child from the jurisdiction was not allowed although in each case custody was vested in the mother. It is not clear whether leave to remove was specifically sought in each of these cases, but in each case it appears that the grant of custody specifically excluded the right to permanently leave the jurisdiction. These cases involved Australia/USA(2); Australia/UK (3) and Australia/New Zealand.

In 1 case, leave to remove does not appear to have been addressed. Custody, in this case, was given to the father with contact to the mother. It was not clear from the papers but this may have explained the reason for the apparent lack of consideration of the leave to remove issue. The father, being Australian, was awarded custody and had no desire to leave the jurisdiction.

Therefore, although custody was vested in the mother in 90% of the cases considered by the Family Court post return, in 60% of the cases

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<sup>19</sup> see footnote 7 supra

considered, leave to remove was not allowed and the mother remained in Australia. This apparent narrow interpretation of custody may be said to reflect the European experience detailed above<sup>20</sup>.

This outcome may appear, to those in the jurisdiction of England and Wales, to be rather disappointing as it is quite apparent that some jurisdictions take a harder line against the wishes of primary carer parents to re-locate than within our own jurisdiction, where the philosophy is to grant such applications where it is in the best interests of the child to do so. However, in terms of the utility of Hague Convention returns, it is interesting to note that the mechanism of return appears, in fact, to provide a real and substantive advantage for the child. As can be seen from the above statistics, although the mother abductor was very often granted custody, it was not a foregone conclusion that she would also be granted leave to remove the jurisdiction. This goes some way towards countering the argument that there is little point in returning a child, with its primary carer parent, to the State of habitual residence as it is overwhelmingly likely that the Courts of the home State will, in the substantive proceedings, award custody and leave to remove to the primary carer parent. It has been said that, in such circumstances, return is “an empty gesture”<sup>21</sup>. Although there are, undoubtedly, cases where return in such circumstances will amount to an “empty gesture” in that the child will, ultimately, be allowed to re-locate with its primary carer parent and will come back to the refuge State to continue with the life begun during the abduction, there are clearly other cases where this will not be the outcome.

## **5. CONCLUSIONS**

The research project has, primarily, confirmed that the Hague Convention although working extremely well and providing valuable support for abducted children, is not a panacea. It is not a matter of implementing the Convention and then finding, suddenly, that everything is wonderful. Like unscrambling an omelette, sorting out an abduction situation cannot be undertaken without fallout. It is generally accepted that it is best to put things back to the pre-abduction situation in order for the familial conflict to be determined, but it is impossible for this to happen without

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<sup>20</sup> see 4s. and 4t. supra

<sup>21</sup> see, e.g. *Ali v Ali* FP 048/1083/90 (Otahuhu District Court, 2 April 1998 (NZ) where the judge viewed the outcome of the Australian proceedings which the mother would immediately institute on return as inevitable, so that return may, therefore, be an empty gesture.

fallout, against which it is, again, impossible to fully protect the returning parent and child.

The fallout in abduction cases has, through the research, been confirmed to include some common elements. These are predictable difficulties and do not offer any real surprises. Returning parents feel resentment at being forced to stay, often for fairly long periods, in a place which they would rather leave. This is compounded by very real financial difficulties, especially when the left-behind parent refuses to maintain their promises to provide financial assistance or a separate place to live. Sometimes, this leads on to the returning parent having to stave off the unwanted attention of her former partner, while having to battle with what may for them be an alien legal system, language and administration. None of this is surprising.

What is surprising, however, is how many parents speak positively of the outcome of their experience, which does not reflect the common apprehension of abducting parents that their return to the State of habitual residence is a tragedy beyond compare. This turns out to be just as misconceived as their earlier, wrong-headed, view that by abducting to a familiar jurisdiction, there would be an advantage gained and that all would be well. Conversely, many of the left-behind parents who used the Hague Convention were also labouring under a misapprehension when they thought that by using it to ensure the return of their former partner and child, they would achieve complete success based on gaining custody. Such parents have ended up disappointed.

It would appear that the Hague Convention is not working as a problem solver, as many abductors would wish, but as a problem mover. The familial problems which prompted the abduction still need to be resolved and some of the problems are, undoubtedly, difficult and demanding. Nobody can expect to emerge unscathed from such experiences. However, in most cases in our sample the returning parents were able to emerge eventually to get on with their lives, sometimes in the country of their choice, sometimes in a country which they would rather leave. This, however, is the fallout of having an international family which, in the case of breakdown, will lead to at least one part of that unit being distanced from those they wish to be with. In a small number of more extreme cases, the concerns which have led the abducting parent to resist return have not been sufficiently ameliorated by the structures put in place by the returning State to address these issues, and the fears expressed by the returning parent have materialised to the very real

detriment of the returning parent and child. These cases are in the minority but no less deserving of our attention for that. As, almost always, the outcome for returned children and parents appears to be less traumatic than they have foreseen, this study appears to corroborate and support the approach by English, and other, judges to article 13b defences and the policy of such Courts in returning a very high proportion of children who are subject to Hague Convention proceedings, and not returning children in only the very rare cases where it is appropriate to do so.