

## Summary

The English Court of Appeal has recently rendered an important decision concerning the enforcement of a French order in England that could be of interest to you (*Re A (a child) (enforcement of a foreign order) [2022] EWCA Civ 904*). You will find the judgment [here](#) and below a brief summary of the case. The English Court of Appeal refused to enforce a French Court of Appeal's decision relating to child arrangements because of the time that has passed since the decision was made.

## Background

The child was born in France. Parental responsibility proceedings commenced in France in August 2018 when the parents separated. A welfare report was produced in which it was concluded that separation from the mother would be difficult for the child. In February 2019, the Family Affairs Judge of the High Court of Saint-Denis (La Reunion) ordered that the child should live with the mother and gave permission for them to relocate to England, which they did. The child was to regularly visit the father in France. The father appealed the decision. On 21 October 2020 (no. 19/02294), the French Court of Appeal ordered that the child should live with him in France. The October order was then registered in England. On 12 May 2021, the *Cour de Cassation* (no. 2111228) dismissed the mother's appeal against the French Court of Appeal's decision.

In December 2021, the English High Court dismissed the mother's appeal against registration of the French Court of Appeal's order and summarily dismissed her application for a child arrangements order. The judge did not undertake a welfare assessment.

The mother appealed the High Court decision. She advanced four grounds of appeal, including that the judge was wrong to summarily dismiss the mother's application for a child arrangements order under the Children Act 1989 and should have undertaken a welfare inquiry to determine what order was in the child's best interests leading, potentially, to the application of article 23(e) of [Brussels IIa \(Council Regulation \(EC\) No 2201/2003\)](#).

## Decision

The Court of Appeal disagreed with the judge's conclusion that the English court should not undertake a welfare assessment. The question was not whether a different welfare decision would be made, but whether the circumstances justified the court undertaking a welfare assessment to determine what order was now in the child's best interests.

**The passage of time since the French Court of Appeal's decision was the key consideration in this case:** the child's circumstances had significantly changed since the French Order. Having spent a substantial part of her life in England, she was further integrated there and more distanced from her life in France. The Court also recognized that **the evidence available would be significantly different from that available to the French Court of Appeal**, which did not have recent information on the child's situation.

**Therefore, the Court concluded that the change in circumstances justified the English court's exercise of its substantive jurisdiction by undertaking a welfare determination to determine what order was now in the child's best interests.** The court made clear that, if the parents could not reach agreement, there will be a substantive welfare enquiry (presumably CAFCASS given the child's habitual residence in England).

**The English Court of Appeal said that its decision "does not represent a review of the French court's decision"** and that it is not trying to "undertake a reconsideration of that court's decision and welfare assessment". Had the circumstances and evidence not been materially different, the Court explains that it would have likely conclude that such an enquiry "would involve the inappropriate re-litigation of issues that have already been decided".