Case No: **FD22P00284**

Neutral Citation: [2022] EWHC 2597 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Before :

Mr Paul Hopkins QC
(sitting as a Deputy High Court Judge)

- -

Between :

J.W.K.	**Applicant**
- and -	
D.A.W	**Respondent**

- -

Ms Miriam Best for the Applicant
Mr Paul Hepher for the Respondent

Hearing dates:
21 and 22 July 2022
(and 29 July 2022 for judgment)

- -

JUDGMENT

- -

[/415] Electronic pagination main bundle

INTRODUCTION

1. These proceedings concern one child, namely D.C.W. born [x], who has therefore just turned 4 years old. I shall refer to D.C.W. as "the child" in this judgment.

2. J.W.K. is the child's mother and the applicant in these proceedings. D.A.W. is the child's father and the respondent. I shall refer to them as "the mother" and "the father" respectively in the course of this judgment.

3. The mother seeks the child's summary return to Czech Republic pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980 ("the Convention"). She asserted by way of opening written argument that the father wrongfully retained the child in England and Wales on a date between September 2021 and February 2022 (at the latest) with a date in late September 2021 becoming the focus of her case in the hearing. The father has defended the proceedings.

4. There is also an ancillary issue as to direct contact between the child and mother. Whilst interim contact within England has been agreed by the parties, the mother seeks the court's permission for the child to travel to Czech Republic next month in order to attend a family celebration for the maternal grandfather's birthday. In reality, the outcome of that discrete issue will be dependent, in part, on the outcome of the mother's application pursuant to the Convention.

5. The final 'in person' hearing took place on 21 and 22 July 2022. Unfortunately, the hearing on 21 July 2022 was effectively lost as an interpreter for the mother was not arranged by the court. The hearing then proceeded on 22 July 2022, with oral evidence from both parents and then closing oral submissions. The evidence was intended to be limited to the issue of consent / acquiescence. In the event, cross examination of both parents exceeded those parameters to an extent. Due to the loss of court time on the first day, it became necessary for the court to find further time to hand down judgment.

THE PARTIES' POSITIONS

Mother

6. The mother's case, in more detail, as to the date of the alleged wrongful retention of the child was refined in the course of closing submissions to late September 2021, with particular reference to 29 September 2021. It is her case that the child was habitually resident in Czech Republic at that date. She also seeks to resist the defences raised by the father.

Father

7. The father's case in response is multi-limbed. By way of preliminary response, it is submitted, pursuant to Article 3 of the Convention, that the child had become habitually resident in England and Wales from August 2020. In the

alternative, it is submitted that the child had become habitually resident in England from the Spring of 2021 onwards. It follows that, on either limb, it is submitted on father's behalf that the child was habitually resident in England by 29 September 2021.

8. The father also then raises, in the alternative, a number of potential exceptions or defences, namely:
    (a) Potential settlement in accordance with Article 12;
    (b) Consent/acquiescence in accordance with Article 13(a);
    (c) Grave risk of harm/intolerability in accordance with Article 13(b).

RELEVANT LAW

9. In the event there was no significant disagreement between the parties about the relevant law. I am extremely grateful to the parties' counsel for settling an agreed note on the law. This judgment is designed to be read in conjunction with that note, which should also be annexed hereto.

NATIONALITIES

10. The mother is a Czech Citizen, who currently lives in Czech Republic. The father is a British Citizen, who lives in 'S' [town], 'N' [county] in England. The child was born in Czech Republic. It follows that the child is a dual Czech / British citizen, who holds both British and Czech passports.

BACKGROUND

11. The mother was raised in Czech Republic. She is, by profession, a trained Montessori teacher. She is also a business owner. The mother has another child, M, born on 25 October 2012, from a previous relationship, who is aged 9 years old. He lives with mother in Czech Republic and has regular contact with his father. M is therefore the child's half sibling. I also digress to note that the mother is pregnant with a further child by her new partner.

12. The father was raised in N [county], England. It seems that his family have been resident in that county for many generations. He helps to run the family's caravan / motor home business in that county. Whilst the father has been previously married, he does not have other children.

13. The parents first met in 2014. At that time the mother was married. They began a relationship as partners later in 2017. The mother had by then separated from her husband. At the time the father was still married to his former wife, albeit they too were separated. There are issues between the parties as to the mother's state of knowledge of the father's earlier marriage and whether the father expressed a genuine interest in relocating to Czech Republic at an early stage in their relationship.

14. There are a number of other allegations by the mother about the father before the court about his lifestyle, the early circumstances of their relationship and his

alleged behaviour. However, the core issues in this case do not require the same to be rehearsed, let alone determined where controversy arises.

15. However, it is common ground that the father started providing financial support for the mother, both before the child was born, and following his birth, which continued beyond the date of the alleged wrongful retention of the child.

16. It is agreed that there was fairly frequent movement by the parties between Czech Republic and England during the early part of their relationship. I note that the chronology filed in the bundle [A1-5] contains little, if any, controversy in relation to dates. The child also moved back and fore between the two countries when he was younger. I digress at this point to refer to (and gratefully adopt) a chronology agreed by the parties as to the child's movements and periods in each of the two countries:

    - [x] (the child's birth) to 3 March 2019: The child was in Czech Republic (xxx days)
    - 3 March 2019 to 22 March 2019: The child was in England (19 days);
    - 22 March 2019 to July 2019: The child in Czech Republic (c.101 days);
    - July 2019 to August 2019: The child was in England (c.31 days)
    - August 2019 to 17 July 2020: The child was in Czech Republic (351 days);
    - 18 July 2020 to 9 October 2020: The child was in England (83 days);
    - 9 October 2021 to 17 December 2020: The child was in Czech Republic (69 days);
    - 17 December 2020 to 27 December 2020: The child was in England (10 days);
    - 27 December 2020 to 7 February 2021: The child was in Czech Republic (42 days);
    - 7 February 2021 to 20 February 2021: The child was in England (13 days);
    - 20 February 2021 to 2 March 2021: The child was in Czech Republic (10 days);
    - 2 March 2021 to 27 October 2021: The child was in England (239 days)
    - 27 October 2021 to 8 November 2021: The child was in Turkey on a holiday with both parties (12 days);
    - 8 November to date: The child has been in England (c262 days).

17. Unfortunately, the child has a medical issue with an enlarged kidney. This appears to have been diagnosed in Czech Republic in May 2019, with a number of follow up appointments [89/415]. More happily, it does not appear that this medical condition unduly affects the child, who is otherwise in good health, with seemingly no issues about him meeting his milestones [190/415].

18. Whilst the child experienced significant travel between the two countries in his first 2 years, as referenced above, it is now common ground that he was habitually resident in Czech Republic during this period.

19. In my judgment that concession on the part of the father is well grounded. During this early period, he spent the greater part by far of his overall time in the same home in the Czech Republic, living with the mother and M. The mother, who breast fed the child for the first two years of his life, was plainly his primary carer at that time. The child was also having regular contact with his wider Czech maternal family. The times he spent in England during this period were more in the nature of visits, albeit in the same paternal family home and, on occasion, for prolonged periods. The child also had regular contact with his English extended family during these visits.

20. The outbreak of the Covid 19 pandemic significantly affected the parties, as it did everyone else, in the Spring of 2020. The mother, the child and M were living in Czech Republic at this time. Effectively no foreign travel was permitted for most people during the early period of the pandemic. However, when travel restrictions eased, the father travelled to Czech Republic in a motor home. The paternal family business, along with so much else, was effectively on hold, with the result that he could spend an extended period away. He stayed with the mother and the child in Czech Republic from June 2020 until later that summer.

21. The mother, the child and M also travelled to England later that summer, spending time with the father at his family home. The mother then returned with M to Czech Republic on 30 August 2020. M was due to attend school there at the start of a new academic year starting early in September 2020. The child remained with the father in England. I digress to note that the father contends that this marked the "turning point" i.e. the commencement of the child's habitual residence in England. I will make a specific finding in that regard later in this judgment.

22. On the mother's return to Czech Republic at the end of the Summer of 2020, she enrolled the child in a Montessori pre-school in O [city], Czech Republic. The mother returned to England towards the ends of September 2020 and, following a further short stay for a few days with the father, left with the child for Czech Republic in early October.

23. However, I digress to note that the parties also visited a Montessori school in N [county], England on 1 October 2020 [401/415] before she left. I digress to comment at this stage in my judgment that it must follow that a potential future for the child living in England was at least within the mother's contemplation at that time in 2020.

24. The father then visited the mother and the child for two short visits in Czech Republic in the last quarter of 2020 before the mother, the child and M returned again to the father's home in England to spend an early Christmas together there effectively as one family. They then all travelled back to Czech Republic. The father enjoyed an extended stay, returning alone to England at the end of January 2021.

25. There followed a further relatively short visit by the mother and child to stay with the father in England in the first half of February 2021, before they both returned to Czech Republic.

26. There was then a further Covid 19 lockdown in Czech Republic at the end of that February 2021. The mother contends in her evidence that she faced significant travel restrictions within the Czech Republic as a result of that lockdown and was concerned about lacking sufficient access to support for her family. Therefore, it was decided that mother, M and the child would travel to stay with the father in England to form a Covid 19 "bubble." They duly travelled to England on 2 March 2021. It is the mother's case that this marked the start of what was always planned to be a temporary stay for the child, with a return to Czech Republic in September of that year.

27. The father agreed in his evidence that the aim was indeed to form a Covid 19 'bubble' at the time the mother arrived in early March 2021. I digress to comment that such 'bubbles' at that time, and at other times during the pandemic, were essentially temporary arrangements. However, it is part of father's case that this visit marked the continuation of the child's move to England that had begun the previous summer.

28. During the early stage of this stay, following an interruption of a few weeks, the Montessori pre-school in Czech Republic provided some remote education for its children. There is an issue between the parents as to how much access the child had to this remote service. However, in view of his age at the material time, in my judgment, he would have derived relatively limited benefit from this arrangement in any event.

29. The parties then visited a number of nursery placements in the area of the father's home in the early Spring of 2021. It is the mother's case that this was essentially part of a short-term arrangement to provide some assistance for the father in terms of care for the child when she returned to Czech Republic, for some social interaction for the child with other children and to improve his English. By contrast, the father's case is that he saw this development as a step further cementing the child's long term base in England. I deal with the parties' intentions at this time in more detail later in this judgment.

30. In April 2021 the mother returned with M to Czech Republic as his school was reopening. She left the child with the father in England, with a plan for him to attend a nursery for the reasons set out earlier. She planned to return later to spend most of the Summer in England.

31. In the event, the nurseries that the parties had visited were not suitable. After the mother returned to Czech Republic in April 2021, the father alone found an alternative nursery, namely the 'L.S' nursery. This had not been seen by the mother. The father told the mother about it. Although it was not a Montessori school, the mother pronounced the choice as "perfect" in messages exchanged with the father [191/415] at the time. The child was enrolled at this nursery and

started there on 11 May 2021 [190/415]. I digress to note that the messages between the parties are silent as to the duration of that nursery place.

32. The mother then returned to the father's home some two months later in the middle of June 2021. At some point in July, the parties and the child attended an 'open day' at L.S. nursery, which also served as a social event for all the children and their parents.

33. M also joined the parties and child towards the end of July when he had finished school. He spent approximately one week with the parties and the child in the paternal family home.

34. At the end of July 2021 the mother returned with M to Czech Republic. The child stayed in England with the father. It is mother's case that she was returning to attend a memorial service for her uncle. It was felt by mother, on her case, that the reason for this trip was sombre in nature and not appropriate for the child. On his case, the father saw the child continuing in his care as merely part and parcel of the longer term plan for his future in England.

35. It is then mother's case that, as envisaged in joint planning with the father, the child was due to be returned to Czech Republic in September 2021 for the start of the new academic year. She says that she also enrolled him in a gymnastics class in September as part of this planning. By contrast, the father says that he was not expecting the child to return to Czech Republic at this time.

36. I therefore turn to important events in September 2021. That said, there is a lack of clarity in evidence as to the dates of some of these events. It is clear that by a date in early to mid-September the mother was asking for the child to return to Czech Republic. This was via telephone conversation/s between the parties as there is no evidence of any exchanges in electronic communication at that time. The father said that he did not have the child's passport as it had been submitted as part of a claim by him for nursery financial support. In reality, the father did not agree to the child travelling to Czech Republic at all. At some point in September he had instructed solicitors in England for advice as to his position in law in relation to the child's residence arrangements.

37. It is the father's case that there had been a change in his relationship with the mother by about this time. His divorce from his wife was finalised at this time and that the mother reacted badly to his failure to propose to her. It is his case that the mother was seeking to put pressure on him to commit to a future with her and was using the child as a "lever" at this time.

38. The mother booked a flight on 17 September 2021 for her to travel to England on 24 September 2021 and for the child to travel back with her to Czech Republic on 29 September 2021. She duly travelled over to England, arriving on 24 September 2021. The father refused to allow the child to leave with her when she left on 29 September 2021. It is that later date on which, on the mother's refined case, the father wrongfully retained the child in England.

39. The mother contends that the father then promised to travel to Czech Republic with the child on two occasions in October 2021. He did not do so. In the event the parties agreed that they, along with the child and M, would go to Turkey on a holiday. The mother and M flew first to England, before journeying with the father and the child to start the holiday.

40. I digress to comment that I find the arrangements relating to this holiday perplexing and surprising. On the mother's case, the father had refused to allow the child to return to Czech Republic in September and had failed to take the child there subsequently. She must have been, on her present case, highly anxious. Yet she accompanied him on a holiday. Equally, on the father's case, the mother was seeking for the child to return to Czech Republic when the plan by then was for him to stay in England long term. He had already sought legal advice. He too must have been anxious at this time. I will address whether either, or both, parties had other agendas at the material time later in this judgment.

41. At the end of the holiday to Turkey, the mother and M returned to Czech Republic. The father and the child returned to the paternal family home in England.

42. On 6 December 2021 the mother sent the father an e mail [126/415] setting out a number of the points that she now makes in her evidence in these proceedings and formally requesting the child's return to Czech Republic. The father did not reply. I digress to note that this could also potentially amount to a later date for an alleged wrongful detention within the mother's wider time frame. The maternal uncle also sent a similar e mail on 13 December 2021. There was, once again, no reply

43. The mother then sought legal advice in Czech Republic later in December 2021. She was provided with a draft 'care' agreement for her and the father to sign, which provided for the child to be returned to Czech Republic.

44. There then followed another perplexing and surprising development in the light of unfolding events. The mother contends that the father agreed to bring the child to Czech Republic before Christmas, only later changing his mind. She therefore travelled with M to England and spent Christmas with the father and the child. It is common ground that their relationship was physical at this time. In particular, it is agreed that the parties last had sexual intercourse at around New Year 2021/22.

45. The mother contends that the father declined to sign the draft 'care' agreement settled by her Czech lawyer during the Christmas visit. In response, the father contends that the draft agreement was not mentioned by the mother. The mother returned to Czech Republic, without the child, on 2 January 2022.

46. There was then further communication between the parties after mother's return to Czech Republic. It is her case that she sought further legal advice in Czech Republic on her return there.

47. However, there was further outwardly pleasant communication between the parents in these messages in early January 2022 [198-199/415], to which I shall return later in this judgment.

48. The mother then commenced court proceedings in Czech Republic seeking 'custody' of the child and child maintenance on 3 February 2022. She also sent a detailed e-mail to father seeking the child's return to her care in Czech Republic [128/415]. However, shortly after doing so, she then travelled to England once again, where she and the father spent further time together on "holiday" (term as per mother's chronology) in London with the child and M. She then returned to Czech Republic without the child on 6 February 2022.

49. The mother then sent another e-mail on 7 February 2022 [139/415] with a further request to father to send the child to Czech Republic, along with flight details for him. This did not occur. The final e-mail trail ended on 15 March 2022 [147/415].

LITIGATION HISTORY BETWEEN THE PARTIES

50. As indicated above, the mother issued court proceedings seeking 'custody' of the child and child maintenance at the P District Court on 3 February 2022 [85/415]. It is currently unclear whether any order has been made at this court.

51. The mother's application under the Convention was formally issued on 16 February 2022 in Czech Republic, which was referred to the ICACU on 28 February 2022. The application at this court was issued on 28 March 2022.

52. The mother's application was first listed without notice to the father before Morgan J on 11 April 2022. A location order, along with other orders, was made at that hearing. The order was duly served on the father.

53. The following on notice hearing took place before Moor J on 3 May 2022 when directions were made for this final hearing. The parties also agreed some interim contact for the mother with the child by that hearing.

SUMMARY OF EVIDENCE / ASSESSMENT OF WITNESSES

54. I confirm that I have read the contents of the main and supplementary bundles, together with the extremely helpful skeleton arguments filed by counsel. I also heard relatively short oral evidence from the mother (via an interpreter) and the father. I therefore turn to my assessment of each of them as a witness, specifically directing myself as to authorities in relation to this exercise.

The mother

55. In the course of cross examination there was exploration by father's counsel as to whether the need for her to have an interpreter was, in reality, genuine as she is near fluent in English. I agree that it certainly appeared that the mother

seemed, at times, to be assisting the interpreter. However, I decline to criticise the mother for electing to have an interpreter. As an advocate, and part time judicial office holder, in Wales, it is my experience that witnesses there sometimes elect to give evidence in Welsh with an interpreter when they are entirely fluent in English as Welsh is their first language in which they experience no impediment in terms of free expression. In principle, I refrain from criticising the mother for the same reason.

56. That said, taking evidence via an interpreter can become stilted and challenging, where attention to detail can be lost. It is important that I remind myself about such challenges, which are no fault on the part of the relevant witness, in terms of my assessment of her as a witness.

57. However, even making suitable allowance for the circumstances relating to the medium in which mother gave her evidence, I found her, at times, to be an unsatisfactory witness.

58. In my judgment a number of inaccuracies on the part of the mother were established in the course of cross examination. She was taken to a message she had sent to the father on 13 November 2021 [410/415] following the holiday to Turkey where she said she had reported to others that the father was her *"partner*". She said in evidence that she saw him as such, but did not know his feelings about her. There was other evidence before the court that their relationship ended after this holiday. She was also seeking to make the father feel jealous by giving him, ultimately misleading, information about another man ("H") said to have been interested in her.

59. The mother was also referred later in the same message to father to the following : "…*we did a deal in September*" about dividing the child's time as to 6 months in the care of each of them. She accepted that whilst she had suggested something along these lines (i.e. the child was to spend all the school holidays with the father amounting to a significant part of the year later described as the *'Italian'* shared parenting model) there had been no such "deal". There is no mention in the messages of any such '*Italian' model.* There is only a repeated reference to 6 months each with the child.

60. The mother was also, at times, hesitant and then, in my judgment, deliberately evasive in part of her evidence. In particular, she was evasive in her evidence about her messages sent to father in early 2022. In her message sent on 6 February 2022 [408/415] she said that she had received an offer of employment in England and needed father's assistance to obtain settled status in the UK. She said in evidence in chief that this was to "test" the father as he said that he had loved her during their Christmas together. Later the mother eventually told the court, following deliberate avoidance in legitimate cross examination, that she did not have any offer of employment and did not wish to seek settled status in the UK. She said again that she was "testing" the father. She wanted him to go to Czech Republic. I remind myself that she had already instructed lawyers in Czech Republic to seek the return of the child. It follows that, on her case, she deliberately lied to the father in the message. However, it remained unclear to

the court what the apparent aim underlying the "testing" the father would, in fact, achieve in the circumstances. In short, I am satisfied that this aspect of the mother's evidence was wholly unsatisfactory.

61. The same explanation of "testing" the father was effectively given by the mother for a similar message [200-415] sent on 7 January 2022 about wishing to live with the father in England and to have employment there. I also digress to remind myself of part of the message, referred to earlier, the mother sent to the father on 13 November 2021 [410/415] when she said that she hoped the father would ask her to marry him on the night they spent together in England before they left for their holiday in Turkey.

62. Whilst I shall return to this aspect later in my judgment, at this stage I merely comment that the mother has plainly had fluid emotional feelings about the father and held aspirations for a future together with him until relatively recently.

The father

63. The father was also hesitant at times in the course of his evidence. In particular, he was unclear as to whether there had a clear plan for the child to move to England before finally confirming that paragraph 37 of his first statement [178/415] was correct. He was also straining somewhat in asserting that the child's base was to be his home in England from August 2020 onwards. He was also initially somewhat reluctant to accept that he was forming a "bubble" with the child and mother in March 2021, before ultimately accepting that this was correct. He also added to an important part of his narrative when he asserted that mother had completed the forms for possible nursery placements in England, which had not been included in his statement.

64. I was invited by father's counsel to draw a clear distinction between him and the mother in terms of him being an 'innocent' by comparison to her, with no propensity on his part to manipulate. I have anxiously reflected on this aspect. As set out earlier, I remain surprised that he went on the holiday to Turkey with the mother in the prevailing circumstances and that he also invited her to share Christmas with him at his home. However, I ultimately concluded that, whilst he may have had a number of motives of his own underlying these plans, I am not satisfied that he was seeking to manipulate the mother in the way she demonstrated she was capable of so doing.

65. It is also correct to note, by contrast again with the mother, that there were no inaccuracies recorded by the father in any of his communication with her.

66. In short, in my assessment of the two witnesses who gave evidence before me, I concluded that the father was, to a large extent, the more reliable of them in relation to the crucial period from March 2021 onwards.

FINDINGS OF FACT

67. As indicated earlier, the oral evidence by the parties exceeded the tight parameters set at the outset. I permitted the same as the evidence was relevant, helping to inform, in part, the court's determination. This evidence gave rise to a number of issues that merit specific findings as part of this judgment.

The plans for the child between August 2020 and March 2021

68. I am satisfied on the evidence before the court that the parents were actively considering making father's home in England the long term base for the child, and for that matter the mother, towards the end of 2020. In my judgment, the visit by the parties to a local Montessori in October 2020, and the nature of their inquiry of the school, is directly supportive of such a finding.

The parties' plans from March 2021

69. I am satisfied that whilst the precise reason for the visit to England was to form a 'bubble' with the father at that time, I am equally satisfied that her plans for both herself, and the child, were somewhat fluid at that time.

The choice of nursery / duration of the nursery

70. It is the mother's case that placing the child in a nursery in the Spring of 2021 was always a short-term plan for the reasons summarised earlier. Furthermore, it was suggested that, as a teacher herself, she had a particular interest in the child's education. This explains the extent of visits to possible nurseries. By contrast, the father contends that these visits were part of more careful and detailed long term planning for the child.

71. I note again that the exchange of messages between the parties is silent as to duration of the nursery place. On balance, and even allowing for the mother's particular interest in education, I find that the extent of enquiries of different nurseries is more consistent with longer term planning than just some temporary practical assistance for the father, child socialisation and exposure to English.

72. I am therefore satisfied that, by the time the child was enrolled into L.S. nursery in May 2021, this was part of longer term planning for him. I am satisfied that this was certainly the case on the part of the father and increasingly so on the part of the mother, whose plans had been, as I have already found, already fluid.

Plan/s for the child's return to Czech Republic later in 2021

73. The mother has filed evidence, accurately summarised in the mother's opening skeleton argument in paragraph 28, of a number of flights booked by her for herself between Spring and July 2021 to Czech Republic. Two of the flights, in April and at the end of July, also included the child. However, even allowing for these flights, the mother's case has repeatedly been that she intended for the child to be returned to Czech Republic in September 2021 for him to resume his place at the Montessori School. The father disputes that there was any such plan.

74. It was confirmed in oral evidence that the child's Montessori pre-school in Czech Republic was closed during the Summer. The school reopens either on 1 September (if that is Monday) or, if not, the following Monday. This is the start of a new academic year for the children at the school. However, the mother did not book any flight for the child in advance of early September. In fact, she did not actually book a flight for the child at that time at all until 17 September 2021, with a view to departing on 29 September 2021 [238/415]. That would have been approaching a month after the new academic year had commenced.

75. The mother sought to explain this surprising lack of planning by asserting that the child would have been in his old class at the start of September, before moving up to a different class later in the term. I found that explanation, in the absence of independent supporting evidence, frankly unconvincing. The fresh academic year was due to start on or about 1 September 2021. A planned move of the child to a different class weeks later seems very unlikely.

76. I remind myself again of the mother's keen interest in education. I am satisfied that if there was a clear plan to have the child back in September to resume his place at the Montessori pre-school, it is likely that she would have booked a flight in advance, probably at some time during the last week of August 2021 or thereabouts (and not approaching a month later) in order to settle the child before term started.

77. In relation to this point, I also note that whilst the mother asserts in her statement that she paid the fees for the Montessori pre-school up to the end of the academic year, the evidence of the last payment of the fees relates to May 2021, which I note coincides broadly with the date when the child started at L.S. nursery in England.

78. There are also other details in the evidence, arguably small in isolation, that also help to inform, in part, the court's assessment in this regard. Firstly, the mother accepted that she sent more of the child's possessions over to England during this period, including the child's bike. Secondly, they attended an open day at the L.S. nursery in July 2021.

79. In short, I am satisfied, and I so find, that there was a change in the mother's attitude towards both the father, and in relation to the child's future, in early September 2021 before she booked the flight for the child later in that month. I find that there was no clear plan on the part of the mother for the child to be taken to Czech Republic in time to resume school in September 2021 until she changed her mind at some point in that month.

The parties' feelings towards one another later in 2021 and 20/22

80. I am nevertheless satisfied that the mother's aspirations in relation to pursuing a long term relationship and marriage with the father resumed and then continued into the last quarter of 2021 notwithstanding their disagreement in September 2021 which had led her to seek the child's return to Czech Republic

and her booking a flight for him. In reaching that conclusion I take into account the following:

- She was willing to share with him a de facto family holiday in Turkey later in October / November 2021;
- She was willing to spend a family Christmas with him in 2021;
- The warmth in some of the messages she sent to the father over some of this period [200/415] and into early 2022 [198-199] is clear.

81. Equally, I am also satisfied that the father was sending the mother 'mixed messages' in terms of his perception of the nature of their relationship then and in the future over this period.

Christmas 2021 / the draft 'care' agreement

82. The mother contends that she produced the draft 'care' agreement for the father to sign over the Christmas period. Father disputes that there was any reference to the same during the visit. Whilst I am satisfied that the mother may well have taken the document, seemingly signed and dated by her on 23 December 2021, with her during this visit, I am not persuaded it was shown to the father. In reaching this conclusion, I take into account the exchange of electronic messages shortly after this visit. Mother refers to having had a pleasant visit [199/415] in her communication with him. I doubt that the visit would have been as pleasant at all had this document been produced. It would no doubt have led to a disagreement. Furthermore, in my judgment it is highly likely that the document, together with any surrounding discussions or disagreements, would also have been referenced in that near contemporaneous exchange of messages in early 2022 if the mother had produced it over Christmas.

Father's financial support

83. The mother refers to the continuation of financial payments referenced with the name "D" for a number of months after the alleged wrongful retention. She submits that this is a reflection of the father's understanding that the child's home was still with her. In response the father contends that he had provided such financial assistance from before the child was born [399/415]. He says that he wanted to support the mother and later the child. His name is also "D.

84. I have considered this aspect with care. I am not persuaded that the regime of payments by the father necessarily has the significance suggested by mother. The payments do appear to have commenced before the child was born. They also continued after there was, on any view, an issue between them from September 2021 onwards concerning the future arrangements for the child. I would have expected most people in the father's position to have immediately stopped all payments at that time. The fact that he continued to do so, including a relatively small payment for M's benefit at around Easter 2022 is, in my judgment, more reflective of his generosity then forensically important in terms of casting light upon his state of mind.

DATE OF THE ALLEGED WRONGFUL RETENTION

Overview

85. I therefore turn to set out my determination of this application and begin with the date of alleged wrongful retention.

86. In the course of the hearing and closing submissions, the mother's case as to the date of the alleged wrongful detention was refined so as to assert 29 September 2021, namely the date that she returned to Czech Republic without the child, having sought the child's return to her care.

87. In view of the events that followed after 29 September 2021, I can see why mother's counsel had expressed a potential 'window' of September 2021 to February 2022.

Discussion / Determination

88. That said, in my judgment, the refined date of 29 September 2021 is the correct date under this heading. Whilst there was no express request recorded in writing in any format for the child to be returned to the mother in Czech Republic, or refusal by the father, it was clear from both parties that such a request was indeed made by the mother in September 2021 which was rejected, with the result that the mother returned alone to Czech Republic on 29 September 2021.

89. In the event that I am wrong in relation to this primary determination, the alternative relevant date for wrongful retention is 6 December 2021 when, as referred to earlier, the mother set out her position in relation to the child at that time in detail in an e mail to the father. However, I digress to comment that it would follow that the child would have been present in England for approximately 9 months at that time.

90. I also note at this point that there was no issue raised in the case relating to the mother's Rights of Custody in accordance with Article 3 of the Convention.

HABITUAL RESIDENCE

Overview

91. It is the mother's case that the child was still habitually resident in Czech Republic on 29 September 2021 in accordance with Article 3 of the Convention. The father's case, in outline, is that the child's habitual residence had changed by then.

Change in habitual residence from August 2020 / Mother's response

92. The father's primary case in closing remained that the child's habitual residence had changed from Czech Republic to England from August 2020. The father's secondary case was the child's habitual residence changed from Czech Republic to England from the Spring of 2021 onwards. In response, the mother contended

that little had, in fact, changed for the child by comparison to his first two years in relation to either start date and the date of the alleged wrongful retention.

93. I specifically remind myself at this stage that the mother bears the burden of establishing that the child's habitual residence was in Czech Republic at the time of the alleged wrongful retention. I also remind myself that the court's analysis in relation to the determination of this issue must be child focused.

94. Whilst the father did not abandon the primary limb of his case in closing on habitual residence, I can be properly brief in my determination of this aspect of the father's case in that I am satisfied that the child remained habitually resident in Czech Republic between August 2020 and March 2021. I have reached that conclusion for a number of reasons.

95. It is now accepted that the child had been habitually resident in Czech Republic for the first two years of his life up to August 2020. In the months that followed between August 2020 and March 2021, in my judgment, he plainly continued to have social integration there in a social and family environment. I bear in mind the following in reaching that determination:

- Whilst certainly not determinative, the child spent the majority of his time during this period in Czech Republic;
- Whilst the child had moved back and forth to England during his first two years of life, he had spent the majority of his time over those first 2 years in Czech Republic;
- The child was at all material times (and still remains) a Czech citizen when he was living there and was entitled, as of right, to reside in that country;
- The child had a settled and stable home with his mother and M, his half sibling, in Czech Republic;
- Whilst the mother travelled between Czech Republic and England over this period, and may have been contemplating a removal to England to live with the father, she remained integrated, herself as a Czech citizen, in Czech Republic and was herself still habitually resident there;
- The child was aged 2 years rising to 2 ½ years old over this period and was entirely dependent on mother, his primary carer, for most of that period, save when he was in the care of father, or both his parents, when they spent time together as a family;
- The child was having contact with his maternal family at this time, who are Czech and are resident in that country;
- The child was enrolled in a Montessori pre-school in Czech Republic and attended at that school during times when he was present in the country;
- Whilst the child's speech would have been relatively limited during this period, I am satisfied that it is likely that he understood a degree of Czech spoken to him;
- I am satisfied that the child continued to have his usual possessions around him at this time;

- The child was, in short, closely and practically connected to Czech Republic during this period;
- Parental intentions, which are not determinative, must be borne in mind. I have found that these intentions were fluid on the part of the mother over this period, in that a potential removal of the child to a longer term base in England in the near future was within her contemplation;
- Parental intentions on the part of the father in relation to the child's future in making his home the child's base were more aspirational in nature at this time.

Change in habitual residence from Spring 2020 / Mother's response

96. The focus of the father's case in closing was, in fact, predicated more upon the secondary limb of his case, namely that the child's habitual residence had changed from Czech Republic to England between the Spring of 2021 and the end of September 2021. The mother sought to robustly resist this aspect of the father's case as well, citing a number of aspects in support already summarised above in relation to the determination of the primary limb of the father's case which were effectively said to be continuing in nature beyond the Spring of 2021.

97. However, this aspect of the exercise the court has to discharge requires more detailed analysis in view of the merits of the respective arguments. The main points advanced on behalf of the mother may be summarised as follows:

- The child was consistently present in England during this period for only about six months;
- The child was still very young, aged only 2 ½ years old, at the start of this period and was still dependent on his mother as his primary carer at this time;
- There was no change in the habitual residence in Czech Republic of his mother over that period as that primary carer;
- There was no change to his nationality and right of abode in Czech Republic over this period;
- The reason for the move to England was, according to the mother, temporary in nature;
- The child continued to have some outreach / remote education from the Czech Montessori pre-school in England for a number of weeks in this period;
- The child's Montessori pre-school in Czech Republic was retained for him over the summer period into September 2021 (The child's place at Montessori pre-school is, in fact, still open for him);
- Whilst the child lost his ability to speak Czech, there are grounds for optimism that, in part, his earlier grounding in the language will mean that he will recover his command of the language quickly if returned to Czech Republic;
- The child still had many possessions in Czech Republic;
- The child was still practically connected to Czech Republic. In particular, he was (and still is) registered for medical (including under

the care of the paediatric medical service for his kidney condition) and dental needs;

- The child continued to have the benefit of health insurance in Czech Republic at this time;
- The child had some extra-curricular activities arranged (e.g. swimming / gymnastics) for his return in September 2021;
- There were also other ongoing connections (e.g. continuing utility bills referable to the child) between the child and Czech Republic;
- In assessing whether there has been a change in his habitual residence, the court was referred to the extent of his previous connection with Czech Republic. It is submitted that the child was still integrated in social and family environment there. In particular, the mother, M and other members of his extended maternal family, with whom he has relationships, were (and still are) living there. Particular reliance was placed upon the child's sibling bond with M in this regard;
- In view of his past integration in Czech Republic, the slower will be the attainment of sufficient social integration in England;
- The absence of detailed long-term planning for the child in England is at odds with the quick development of social integration;
- The continuing presence of the child's family members in Czech Republic, with particular reference to the mother and M, represent a clear and enduring link on his part with country with the result that any change in habitual residence will take place more slowly;
- Parental intentions, which are not determinative, must again be borne in mind. The mother asserted that she had a clear intention to return the child to Czech Republic in September.

98. I therefore turn to assess the significance to be attached to these submissions, where specific comment is merited, before turning to consider the submissions advanced in support of the father's secondary case:

- The duration of time the child was in England over this period was, in fact, closer to 7 months at this time;
- Duration of time is not in any event determinative;
- Whilst the child was still relatively young, at 2 ½ years, at the start of this period, this would nevertheless have been an important stage in his development and in terms of his awareness of the circumstances of his life;
- Whilst I have found that the child's move to England on 2 March 2021 was in furtherance of the mother's plan to form a 'bubble', I have also found that her longer term plans for the child were fluid;
- Whilst the child may have had limited further exposure to the remote Czech Montessori pre-school teaching, the impact of the same would have been relatively limited in the light of the other prevailing influences in his life at that time;
- The arrangements for continuing extra-curricular activities in Czech Republic are of limited significance;

- Reference to the child in terms of any utility bill is of extremely limited, if any, significance;
- Whilst the child had been habitually resident in Czech Republic during the first two years of his life, he had also spent significant periods at the father's home in England as well during this period;
- Whilst I note, and acknowledge, the relevance in particular of the child's sibling bond with M in terms of considering the child's integration in Czech Republic, the fact remains that he had, before Spring 2021, spent periods of time away from M, who had regular contact with his father, and that he had been apart from M for most of this period;
- In relation to parental intentions, I have already made a finding which is at variance with mother's submission.

99. I now turn to consider the submissions advanced on behalf of the father. I have already effectively referred in my analysis to a number of his arguments against the continuation of child's habitual residence in Czech Republic from Spring 2021 onwards. In terms of the positive submissions in support of a change in habitual residence to England within the meaning of the Supreme Court authority of Re C, the following represents a concise summary:

- The court has been reminded that for habitual residence to be established, the residence of a child must reflect only some degree of integration on his or her part in a social and family environment. It is submitted that this is satisfied in relation to the child in England;
- The trip to England in Spring 2021 was never planned to be in the nature of merely a 'fortnights holiday' type of stay;
- In relation to the actual duration over this period, whilst not in any way determinative, the 6 to 7 months of the child's life is a very significant period, well in excess of what has been considered sufficient to establish habitual residence in other cases;
- The child's lifestyle became settled and regular during this period, arranged around attendance at nursery and home life involving the father and the extended paternal family;
- There were no issues relating to the child's right to stay in England and in terms of his joint British nationality;
- The child settled in his nursery from early May 2021 onwards;
- It is agreed that the child, sadly, lost his ability to communicate in Czech over this period, communicating solely in English by September 2021;
- There is no issue but that the child has further developed relationships with his paternal grandmother and uncle who live near to him;
- Some of the child's possessions were brought or sent to England in the Spring and subsequently;
- The father's family, and the child by implication, is closely connected not just with England, but with N [county] in particular. These ties are durable;
- There are other practical connections e.g. the father has registered the child with his GP, who is now aware of his kidney condition;
- The child's life at this time can be properly described as having genuine stability;

- The child's primary carer from March 2021 onwards was mainly the father, who was fully integrated into the local community along with his family;
- Whilst the child plainly had strong connections with Czech Republic, there was nevertheless a lot of movement in his life before the Spring of 2021;
- The father asserts that the reason for the child's stay in England from Spring 2021 was essentially part of a long-term plan.

Discussion / Determination

100. The submissions advanced on behalf of the father are highly significant and, in my judgment, are both meritorious and informative in terms of the exercise the court has to discharge in relation to this application. In short, I am indeed satisfied that the child's habitual residence had changed between Spring 2021 and 29 September 2021. In particular, the following aspects are worthy of further note:

    - The duration of the child' stay in England at this time is of significance in the particular circumstances of this case. The period of about 6-7 months represents a significant period in terms of the child's overall life and a very significant period in terms of the child's formative life, rising from approximately 2 ½ to over 3 years old, at this time;
    - Small snippets of evidence, which may in the context of other cases have been inconsequential, were illuminating. Whilst I would not wish to overplay the same, by way of illustration, the evidence of the open day at the L.S. nursery in the summer of 2021 was significant. This was an opportunity for the children to have a 'fun day' along with their cohorts and their parents. The child would have been enrolled in the nursery for about two months at the time. The description of the day was consistent with the child having fully settled into his nursery having found his place within his cohort of peers;
    - It is stability rather than permanence that is relevant to the court's exercise. In my judgment there is an abundance of evidence that there was stability in the child's life in England over this period;
    - In terms of linguistic development, this 6 to 7 month period occurred at a crucial time in terms of the child's intellectual development. It resulted in him becoming a *monoglot* English speaker. I digress at this point to emphasise, what is surely clear to both parents, namely that every effort should be made in the future for him to attain fluency in both languages for a number of reasons, not least in terms of the future rounded development of his self-identity as a person of mixed nationalities and heritage;
    - The position of the child's carers over the relevant period requires specific analysis. I am satisfied that when the mother was also present in England for periods between March until September 2021, she was discharging the role, by then, of co-primary carer. It follows that she was a visitor to England at that time. However, I am satisfied that the father was also directly involved in caring for the child as well. At times when the mother was back in Czech Republic, the father became the child's

sole primary carer, along with some help from his family and others. There is no issue about the extent of father's integration in England. Indeed, there is evidence before the court as to the particular extent of the integration of father's family in N [county];

- The child's early life is of some significance in this case. I remind myself that the deeper the child's integration in the 'old' state, the slower will be his or her integration into the 'new' state. In this case, whilst the child plainly had a strong connection with Czech Republic, he also experienced a considerable amount of movement between the two countries, spending no less than 83 days in England during one such visit when he was about 2 years old;
- It therefore follows that this case is to be distinguished from others where a child is solely resident in the 'old' state for a number of years before removal to a 'new' state where he or she has never visited;
- The extent of planning for a child's move can also be significant in terms of assessing the speed of acquiring a new habitual residence, in that the greater the degree of pre-planning, the quicker the change of habitual residence may occur. I am satisfied that there was a limited degree of rapid planning by the mother in advance of the looming further lockdown in Czech Republic in 2021. This militates somewhat against a rapid change in habitual residence. That said, this lack of detailed planning must also be seen in the context of the general fluidity in mother's plans for the child's future at the time;
- Furthermore, whilst the parents' intentions are to be specifically taken into account, they are not determinative. Whilst there may have been the absence of concrete unanimity in terms of the plans for the child's future at the start of this period, I am satisfied, and have made a finding, that the mother did not over this period formulate a clear plan to return the child to Czech Republic by September 2021 and that her plans for his future evolved in terms of becoming more England centric by September 2021 before there was then a sudden change on her part in September;
- Finally in terms of parental intentions, once again small snippets of otherwise minor evidence in the context of other cases was, in part, informative. The mother's decision to post the child's bike to England, even though he may not have had a bike in England, was just such an example.

101. Following careful reflection, I have, in the event, reached the clear conclusion that the child's habitual residence had changed from Czech Republic to England over the period of about 6 to 7 months leading up to 29 September 2021 and that, accordingly, the mother's application for a summary return of the child to Czech Republic pursuant to the Convention must fail. Decisions about the child's future will be taken in the jurisdiction of England and Wales.

FATHER'S EXCEPTIONS / DEFENCES

102. Notwithstanding the outcome in this judgment in relation to the child's habitual residence at the time of the alleged wrongful retention, in my judgment, it is appropriate for the court to set out its determination in relation

to the father's exceptions or defences in order to contingently address the eventuality that the court's earlier conclusion as to habitual residence proves to be wrong.

103. I immediately remind myself that the burden moves to the father in relation to the advancement of his defences.

THE SETTLEMENT EXCEPTION

Overview

104. I can once again be properly brief in relation to the Settlement exception in accordance with Article 12 of the Convention in that this was not fully advanced in argument on behalf of the father and would, in view of the court's finding as to the date of alleged wrongful retention, if correct, not be available to him in the light of the date of issue of the application pursuant to the Hague Convention less than 6 months later in any event.

THE CONSENT / ACQUIESCENCE EXCEPTION

Overview

105. I therefore turn to the consent / acquiescence exception or defence. This exception potentially arises pursuant to Article 13(a) of the Convention. In the course of the father's closing argument, it was submitted that mother's behaviour amounted to acquiescence, rather than consent, to any wrongful retention.

106. The mother denies that she either consented or acquiesced at any time and that the father has failed to discharge the burden of establishing clear and unequivocal evidence of the same. It was submitted that some of mother's behaviour after September 2021 was reflective of increasing desperation to secure the child's return to her care.

Discussion / Determination

107. I have been reminded by father's counsel of the House of Lords authority of Re H (Abduction: Acquiescence) [1998] AC 72, [1997] 1 FLR 872. I briefly incorporate the essential principles from the agreed note into this judgment:

    (a) The burden of proof whether the wronged parent had consented lies on the abducting parent;

    (b) The court is looking to the subjective state of mind of the wronged parent, to ask whether he has in fact consented to the continued presence of the child in the jurisdiction to which the child has been abducted. Acquiescence is a question of the actual subjective intention of the wronged parent, not of the outside world's perception of his intentions.. The question whether the wronged parent has acquiesced in the removal or retention of the child depends upon his actual state of mind;

(c) In the ordinary case the court has to determine whether in all the circumstances of the case the wronged parent has, in fact, gone along with the wrongful abduction;

(d) The only exception to "the ordinary case" is "where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his rights to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced".

108. Whilst I have referred to mixed messages and other possible motives on the part of the father underlying events from September 2021 onwards, I now refer, in particular, to the following referable to the mother:

- The mother's actions in joining the father on the 'family' holiday to Turkey;
- The mother's messages to father on 13 November 2021 (which include an offer by her for the child to live with the father for 6 months each year);
- The mother's subsequent inaction in relation to the child until sending her e-mail on 6 December 2021;
- The mother's very contrasting action shortly after sending that e-mail in joining the father and the child for a 'family' Christmas;
- The mother's message on 6 January 2022 which, on her own case, sought to mislead the father as to her plans;
- The warmth in mother's messages on 7 January 2022;
- The mother's actions in joining the father and the child for a further 'holiday' as recently as early February 2022.

109. I am satisfied that, very exceptionally, when these messages and actions by the mother are taken together in a very fact specific way, they do unequivocally show, and led the father to believe, that she would not assert her rights to try to seek the summary return of the child to Czech Republic. I find that the messages and her actions are inconsistent with such a return and that justice does indeed require that the mother be held to have acquiesced.

Discretion

110. It also follows that it would, in these circumstances, be necessary for me to exercise my discretion as to whether the child should still, in fact, be returned to Czech Republic. Had this exercise become necessary, and notwithstanding general aspects of Convention policy, I would have exercised my discretion in favour of not returning the child to Czech Republic, not least in view of the particular reasons underlying my finding that the mother should be held to have acquiesced and the amount of time that the child has remained in England.

THE HARM / INTOLERABILITY EXCEPTION

Overview

111. I now have to identify and address the further alternative scenario whereby the court is wrong in its determination both as to habitual residence and in relation to consent / acquiescence. I therefore turn to consider the father's final defence, namely the harm exception.

112. The harm exception potentially arises pursuant to Article 13(b) of the Convention. The father's case is, once again, two limbed. Further to the father's primary limb, it is his case that if the child is returned to Czech Republic, he would not be able to accompany him due to his commitments in the family business in England, with the result that the child would be removed from his care and "uprooted" from his home. It is submitted that this would give rise to a grave risk of emotional harm to the child.

113. Further to the father's second limb, concerns are raised as to the limitations of the home that the mother could now provide for the child in Czech Republic. The mother has had to move home since Spring of 2021, returning more recently to her family home. The father contends that the facilities there are cramped and inadequate and that, if compelled to live there with the mother and M, there would be grave risk of emotional harm to the child.

114. The mother seeks to resist both limbs of the father's case. In relation to the first limb, it is submitted that this exception or defence is not, in fact, available to the father in the way expressed on his behalf. In the alternative, it is submitted that, whilst the move may be unsettling for the child in the short term, the effect cannot be described in any way as a grave risk of harm.

115. In relation to the second limb of the father's case, it is submitted that the court should not enter into a comparative analysis of the respective merits of the quality of the home that each parent could provide for the child and that, whilst the mother has had to 'downsize' due to an adverse change in her financial situation, the accommodation is sufficient for the child's needs.

Discussion / Determination

116. Whilst I am firstly satisfied that the exception within the father's primary limb is open to him in law in the way in which his case has been framed, I am not satisfied that he has discharged the burden upon him that directing the child return would give rise to a grave risk of harm to the child.

117. I specifically remind myself of the association of the term 'grave' both to the extent of the risk and the nature of the harm. In the event that I were to direct the child's summary return to Czech Republic, I accept the father's contention that he would not be able to accompany him. This would mean a change in home environment, country and primary carer for the child.

118. However, whilst this combination of circumstances would amount to a very significant change in the child's life, I remind myself that I would be returning the child to the care of his mother. The child has known his mother all his life. She was previously his primary carer for a substantial early period in his life. Whilst there has been some recent interruption in his contact with her, he has nevertheless remained in contact with her. She has had direct contact with him very recently, with no reports of any issues arising.

119. In short, whilst I am satisfied that whilst such a move would be unsettling for the child, and perhaps significantly so, I am not persuaded that this comes close to amounting to grave risk of harm.

120. I therefore turn to consider the secondary limb of the father's case. I accept that, due to the mother's changed circumstances, the child would also see a material change in his home environment in the event that I were to direct his return. However, there is merit in the mother's argument in this regard. In my judgment, absent truly exceptional circumstances, a comparative analysis of the competing home environments is not appropriate. I also bear in mind my earlier observations set out immediately above in relation to the mother as a previous primary carer. She discharged this role without complaint on the part of the father, at least in terms of her capacity to provide essential parenting during the child's first two years. I am satisfied that she would 'make the best' of her situation in providing an acceptable and familiar home for the child, with M, even if the same is relatively limited in terms of space.

121. It therefore follows that I am once again not satisfied that this limb of the father's case comes close to persuading the court as to grave risk of harm to the child.

122. Accordingly, if I am wrong in my determination in relation to the child's habitual residence and acquiescence following any wrongful retention of the child in England, the father's harm exception or defence would therefore fail and, in those circumstances alone, I would have ordered the summary return of the child to Czech Republic.

CONTACT

123. The mother seeks permission for the child to travel to Czech Republic for contact there in conjunction with maternal family birthday celebrations for the maternal grandfather. Whilst the father has agreed other direct contact for the mother in England, he seeks to resist the child travelling to Czech Republic at this time. He fears, not least in view of the commencement of litigation in Czech Republic in relation to the child, and the immediacy of any judgment by this court in his favour, that the mother may react adversely and not immediately return the child to this jurisdiction at the end of contact.

124. Whilst it is likely that the child will, as a minimum, be permitted to spend periods of time in Czech Republic in the future, in my judgment, there is merit in the father's reservations at this time. The mother's feelings in response to

this judgment are likely to be somewhat raw in the immediate aftermath. I have also found that the mother, in terms of her planning in relation to the child, can be fluid and prone to change. Put bluntly, I am satisfied that, in all the circumstances, the 'dust needs to settle' before any visit by the child to Czech Republic may be permitted.

CONCLUDING REMARKS

125. I finally record in closing my gratitude for the parties' unfailing courtesy to the court during the hearing and the invaluable assistance provided to the court by their counsel.

End of judgment

Paul Hopkins QC
29 July 2022

AGREED NOTE OF THE LAW
FOR FINAL HEARING ON 21-22 JULY 2022

Habitual Residence

1. The issue of habitual residence has been before the UK Supreme Court on 5 different occasions:- ***A v A (Children: Habitual Residence) [2013] UKSC 60, [2014] AC 1***; ***In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening) [2013] UKSC 75, sub nom Re KL (A Child) (Abduction: Habitual Residence: Inherent Jurisdiction) [2014] 1 FLR 772***; ***In re LC (Children) (Reunite International Child Abduction Centre intervening) [2014] UKSC 1 sub nom Re LC (Children) (Abduction: Habitual Residence: State of Mind of Child) [2014] AC 1038***; ***In re R (Children) (Reunite International Child Abduction Centre and others intervening) [2015] UKSC 35, sub nom Re AR v RN (Habitual Residence) [2015] 2 FLR 503*** and ***Re B (A Child) (Habitual Residence: Inherent Jurisdiction) [2016] UKSC 4; [2016] A.C 606***.

2. In ***Re B (A Child)(Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam), [2016] 4 W.L.R. 156***, *paragraph 17* Mr Justice Hayden summarized the leading authorities to date on habitual residence (emphasis added):-

   i) The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A v A, adopting the European test).

   ii) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasized that the factual inquiry must be centered throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, In re L).

   iii) In common with the other rules of jurisdiction in Council Regulation (EC) No 2201/2003 ("Brussels IIA") its meaning is "shaped in the light of the best interests of the child, in particular on the criterion of proximity". Proximity in this context means "the practical connection between the child and the country concerned": A v A, para 80(ii); In re B, para 42, applying Mercredi v Chaffe (Case C-497/10PPU) EU:C:2010:829; [2012] Fam 22, para 46 .

   iv) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (In re R).

   v) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In re LC). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence, which is in question and, it follows the child's integration which is under consideration.

   vi) Parental intention is relevant to the assessment, but not determinative (In re L, In re R and In re B).

   vii) It will be highly unusual for a child to have no habitual residence. Usually a child loses a pre-existing habitual residence at the same time as gaining a new one (In re B).

viii) In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (In re B —see in particular the guidance at para 46).

ix) It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (In re R and earlier in In re L and Mercredi).

x) The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child to be fully integrated before becoming habitually resident (In re R) (emphasis added).

xi) The requisite degree of integration can, in certain circumstances, develop quite quickly (article 9 of Brussels IIA envisages within three months). It is possible to acquire a new habitual residence in a single day (A v A ; In re B). In the latter case Lord Wilson JSC referred (para 45) to those "first roots " which represent the requisite degree of integration and which a child will " probably " put down " quite quickly " following a move.

xii) Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (In re R).

xiii) The structure of Brussels IIA, and particularly recital (12) to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (In re B supra).

3. In the case of ***Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention) 2020 EWCA Civ 1105*** Moylan LJ endorsed this summary but suggested that bullet point (viii) should be omitted as it might distract the court from the essential task of analysing the situation of the child.

4. In the Supreme Court case of ***Re C and Another (Children) (International Centre for Family Law, Policy and Practice Intervening) [2018] UKSC 8; [2018] 1 FLR 861*** Lord Hughes said at paras 11 & 12:

> ***[11]*** *In the simple paradigm case of wrongful removal, one parent will have taken the child from the State where s/he is habitually resident to a destination State. Similarly, in the simple paradigm case of wrongful retention, one parent will have travelled with the child from the State of habitual residence to the destination State, for example for an agreed fortnight's holiday (and thus*

without the removal being wrongful), but will then wrongfully have refused to return. In each of those paradigm cases, the child will have remained habitually resident in the home State. An application under the Abduction Convention will be made in the destination (or 'requested') State for the return of the child to the State of habitual residence. The return will be a summary one, without investigation of the merits of any dispute between the parents as to custody, access or any other issue relating to the upbringing of the child (Art 16). Such merits decisions are for the courts of the State of the child's habitual residence.

[12] *In some cases, however, it is possible that by the time of the act relied upon as a wrongful removal or retention, the child may have acquired habitual residence in the destination State. It is perhaps improbable in the case of removal, but it is not in the case of retention. It may particularly happen if the stay in the destination State is more than just a holiday and lasts long enough for the child to become integrated into the destination State. It is the more likely to happen if the travelling parent determines, however improperly, to stay, and takes steps to integrate the child in the destination State. Even in the case of wrongful removal, it may be possible to imagine such a situation if, for example, there had been successive periods of residence in the destination State, followed by a removal from the State of origin which infringed the rights of custody of the left-behind parent.*

Consent/acquiescence

5. The leading case in relation to consent is ***Re P-J (Children) [2009] EWCA Civ 588***. The court is respectfully referred paragraph 48:

"48. In my judgment the following principles should be deduced from these authorities.

(1) Consent to the removal of the child must be clear and unequivocal.

(2) Consent can be given to the removal at some future but unspecified time or upon the happening of some future event.

(3) Such advance consent must, however, still be operative and in force at the time of the actual removal.

(4) The happening of the future event must be reasonably capable of ascertainment. The condition must not have been expressed in terms which are too vague or uncertain for both parties to know whether the condition will be fulfilled. Fulfilment of the condition must not depend on the subjective determination of one party, for example, "Whatever you may think, I have concluded that the marriage has broken down and so I am free to leave with the child." The event must be objectively verifiable.

(5) Consent, or the lack of it, must be viewed in the context of the realities of family life, or more precisely, in the context of the realities of the disintegration of family life. It is not to be viewed in the context of nor governed by the law of contract.

(6) Consequently consent can be withdrawn at any time before actual removal. If it is, the proper course is for any dispute about removal to be resolved by the courts of the country of habitual residence before the child is removed.

(7) The burden of proving the consent rests on him or her who asserts it.

(8) The enquiry is inevitably fact specific and the facts and circumstances will vary infinitely from case to case.

(9) The ultimate question is a simple one even if a multitude of facts bear upon the answer. It is simply this: had the other parent clearly and unequivocally consented to the removal?"

6. The leading case on the meaning of consent or acquiescence remains the House of Lords authority of ***Re H (Abduction: Acquiescence) [1998] AC 72, [1997] 1 FLR 872*** *at* ***para 884:*** The following principles can be extracted from **Re H**:

    a. The burden of proof whether the wronged parent had consented lies on the abducting parent (¶D – page 82 & ¶F – page 90)
    b. The court is looking to the subjective state of mind of the wronged parent, to ask whether he has in fact consented to the continued presence of the child in the jurisdiction to which the child has been abducted (¶G – page 87). Acquiescence is a question of the actual subjective intention of the wronged parent, not of the outside world's perception of his intentions (¶D – page 88). The question whether the wronged parent has acquiesced in the removal or retention of the child depends upon his actual state of mind (¶E - page 90)
    c. In the ordinary case the court has to determine whether in all the circumstances of the case the wronged parent has, in fact, gone along with the wrongful abduction (¶D – 88)
    d. The only exception to "the ordinary case" is "where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his rights to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced" (¶G - page 90).

7. In the 2017 Court of Appeal case of ***L-S (A child) [2017] EWCA Civ 2177***, Lord Justice MacFarlane had this to say:

    40. In relation to acquiescence, both parties, in common with the judge, acknowledge that the leading authority remains that of Re H and, in particular, the leading judgment of Lord Browne-Wilkinson who (at page 88d) described the position that applies in all cases, save for the one "exception" that he went on to identify, on the following basis:

    "In my judgment, therefore, in the ordinary case the court has to determine whether in all the circumstances of the case the wronged parent has, in fact, gone along with the wrongful abduction. Acquiescence is a question of the actual subjective intention of the wronged parent, not of the outside world's perception of his intentions."

    41. Lord Browne-Wilkinson then went on to describe "the exception" (at page 89):

    "It is a feature of all developed systems of law that there are circumstances in which one party, A, has so conducted himself as to mislead the other party, B, as to the true state of the facts. In such a case A is not allowed subsequently to

assert the true facts as against B. In English law, this is typically represented by the law of estoppel but I am not suggesting that the rules of English law as to estoppel should be imported into the Convention. What is important is the general principle to be found in all developed systems of law.

It follows that there may be cases in which the wronged parent has so conducted himself as to lead the abducting parent to believe that the wronged parent is not going to insist on the summary return of the child. Thus the wronged parent may sign a formal agreement that the child is to remain in the country to which he has been abducted. Again, he may take an active part in proceedings in the country to which the child has been abducted to determine the long-term future of the child. No developed system of justice would permit the wronged parent in such circumstances to go back on the stance which he has, to the knowledge of the other parent, unequivocally adopted: to do so would be unjust.

Therefore in my judgment there are cases (of which In re A.Z. (a Minor) (Abduction: Acquiescence) [1993] 1 FLR 682 is one) in which the wronged parent, knowing of his rights, has so conducted himself vis-à-vis the other parent and the children that he cannot be heard to go back on what he has done and seek to persuade the judge that, all along, he has secretly intended to claim the summary return of the children. However, in my judgment these will be strictly exceptional cases. In the ordinary case behaviour of that kind will be likely to lead the judge to a finding that the actual intention of the wronged parent was indeed to acquiesce in the wrongful removal. It is only in cases where the judge is satisfied that the wronged parent did not, in fact, acquiesce but his outward behaviour demonstrated the contrary that this exceptional case arises.

My Lords, in my judgment these exceptional circumstances can only arise where the words or actions of the wronged party show clearly and unequivocally that the wronged parent is not insisting on the summary return of the child: they must be wholly inconsistent with a request for the summary return of the child. Such clear and unequivocal conduct is not normally to be found in passing remarks or letters written by a parent who has recently suffered the trauma of the removal of his children. Still less is it to be found in a request for access showing the wronged parent's desire to preserve contact with the child, in negotiations for the voluntary return of the child, or in the parent pursuing the dictates of his religious beliefs."

Later, when setting out his conclusions in summary form, Lord Browne-Wilkinson said:

"(4) There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the

summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced."

8. In the Court of Appeal case of ***P v P (Abduction: Acquiescence) [1998] 2 FLR 835*** ***Ward LJ*** stated:

> *"I deal with two live issues. First consent. The parties agree that the onus is on the mother to establish this, that it should be shown in a manner similar to that which is required now for acquiescence in light of the House of Lords decision in Re H (Abduction: Acquiescence) [1998] AC 72…… The task of the court is to find as a fact whether the father subjectively intended to and did give unconditional consent to the removal of the child*."

9. Pauffley J in **Re D (A Child) (FD) [2016] 937** at 948 ¶55 summarised the law on consent:

> "*When I consider the issue of "consent" I remind myself of the key passages from Re P-J (Children) (Abduction: Consent) [2009] EWCA Civ 588, sub nom Re P-J (Abduction: Habitual Residence: Consent) [2009] 2 FLR 1051. As relevant here, they might be summarized as follows. Consent to the removal of the child must be clear and unequivocal. The burden of proving the consent rests on him or her who asserts it. The inquiry is inevitably fact-specific and the facts and circumstances will vary infinitely from case to case. The ultimate question is a simple one even if a multitude of facts bear upon the answer. It is simply this – had the other parents clearly and unequivocally consented to the removal?*"

Article 13(b)

10. The leading authorities on this "exception" are the two Supreme Court decisions of ***In re E (Children: Custody Appeal)*** **[2011] UKSC 27, [2012] 1 AC 144** and ***Re S (A Child) (Abduction: Rights of Custody)*** **[2012] UKSC 10, [2012] 2 FLR 442**.

11. In ***Re S (A Child)*** the Supreme Court repeated and stressed the approach taken in ***Re E***: the terms of Art 13(b) are plain, require neither elaboration nor gloss and by themselves demonstrate the restricted availability of the defence and where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation; if so, the court must then ask how the child can be protected from that risk; if the evaluation of the protective measures fails to meet the identified grave risk, the court may have to do the best it can to resolve the disputed issues of fact.

12. The relevant test has been summarised by Mr Justice Macdonald in ***MB v TB [2019] EWHC 1019 (Fam)*** wherein from paragraph 31 he states:

> *[31] The law in respect of the defence of harm or intolerability under Art 13(b) was examined and clarified by the Supreme Court in Re E*

(Children)(Abduction: Custody Appeal) [2011] UKSC 27, [2012] 1 AC 144. The applicable principles may be summarised as follows:

i. *There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.*

ii. *The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.*

iii. *The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two.*

iv. *The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation'. 'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'.*

v. *Art 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.*

vi. *Where the defence under Art 13(b) is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable the court will look very critically at such an assertion and will, among other things, ask if it can be dispelled. However, in principle, such anxieties can found the defence under Art 13(b).*

[32] The Supreme Court made clear that the approach to be adopted in respect of the harm defence is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as ground the defence under Art 13(b). Rather, the court should assume the risk of harm at its highest on the evidence available to the court and then, if that risk meets the test in Art 13(b), go on to consider whether protective measures sufficient to mitigate harm are identified. It follows that if, having considered the risk of harm at its highest on the available evidence, the court

considers that it does not meet the imperatives of Art 13(b), the court is not obliged to go on to consider the question of protective measures.

As I have noted above, the burden of proof rests upon the mother to make out her case and establish the particulars of that part of the Art 13 exception she relies upon.

13. Moylan LJ subsequently has stated in ***Re A (Children) (Abduction Article 13(b)) 2021 EWCA Civ 939, 2021 4.W.L.R. 99***:

> *94. In the Guide to Good Practice , at para 40, it is suggested that the court should first "consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk" before then determining, if they could, whether the grave risk exception is established by reference to all circumstances of the case. In analysing whether the allegations are of sufficient detail and substance, the judge will have to consider whether, to adopt what Black LJ said in In re K , "the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an article 13(b) risk". In making this determination, and to explain what I meant in In re C , I would endorse what MacDonald J said in Uhd v McKay [2019] EWHC 1239 (Fam); [2019] 2 FLR 1159, para 7 , namely that "the assumptions made by the court with respect to the maximum level of risk must be reasoned and reasonable assumptions" (my emphasis). If they are not "reasoned and reasonable", I would suggest that the court can confidently discount the possibility that they give rise to an article 13(b) risk.*

14. The court is referred to the HHCH guide to Article 13(b)which provides:
    - "*Specific protective measures should only be put in place where necessary strictly and directly to address the grave risk. They are not to be imposed as a matter of course and should be of a time limited nature that ends when the state of habitual residence of the child is able to determine what, if any, protective measures are appropriate for the child"* [para 44].
    - "*The court is not to embark on a comparison between the living conditions that each parent (or each State) may offer. This may be relevant in a subsequent custody case but has no relevance to an Article 13(1)(b) analysis. More modest living conditions and / or more limited developmental support in the State of habitual residence are therefore not sufficient to establish the grave risk exception. If the taking parent claims to be unable to return with the child to the State of habitual residence because of their difficult or untenable economic situation, e.g., because his / her living standard would be lower, he / she is unable to find employment in that State, or is otherwise in dire circumstances, this will usually not be sufficient to issue a non-return order*" [para 60].

Discretion

15. In the event that the father establishes a defence pursuant to Article 13(b) in this case then the Court's discretion arises in relation to whether to, nonetheless, order the child's return. The House of Lords decision in ***Re M and Another (Children) (Abduction: Rights of Custody) [2007] UKHL 55, [2008] AC 1288***, is the

authoritative statement of the law relating to exercise of discretion in Convention cases when exceptions under Art 12 or 13 have been established. The leading opinion of Baroness Hale held that earlier decisions which sought to import an additional gloss into the Convention by requiring a test of exceptionality to be met, in addition to finding that one of the Art 12 or 13 exceptions applies, were wrong. In Hague Convention cases general policy considerations may be weighed against the interests of the child.

Credibility in oral evidence

16. In ***Re A, B and C (Children) [2021] EWCA Civ 451*** the Court of Appeal held:

> 54. *"That a witness's dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments, and with respect to the Recorder as we see in her judgment at [40], in formulaic terms: "that people lie for all sorts of reasons, including shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and / or that they have lied about everything". But this formulation leaves open the question: how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact? In my view, the answer is provided by the terms of the entire 'Lucas' direction as given, when necessary, in criminal trials.*
>
> 55. *Chapter 16-3, paragraphs 1 and 2 of the December 2020 Crown Court Compendium, provides a useful legal summary:*
> *"1. A defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that: (1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake; (2) it relates to a significant issue; (3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt.*
>
> *2. The direction should be tailored to the circumstances of the case, but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case, but that the lie itself cannot prove guilt. …"*
>
> 56. *In Re H-C (Children) [2016] EWCA Civ 136 @ [99], McFarlane LJ, as he then was said:*
> *"99 In the Family Court in an appropriate case a judge will not infrequently directly refer to the authority of Lucas in giving a judicial self-direction as to the approach to be taken to an apparent lie. Where the "lie" has a prominent or central relevance to the case such a self-direction is plainly sensible and good practice.*

100 … In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt."

57. *To be clear, and as I indicate above, a 'Lucas direction' will not be called for in every family case in which a party or intervenor is challenging the factual case alleged against them and, in my opinion, should not be included in the judgment as a tick box exercise. If the issue for the tribunal to decide is whether to believe X or Y on the central issue/s, and the evidence is clearly one way then there will be no need to address credibility in general. However, if the tribunal looks to find support for their view, it must caution itself against treating what it finds to be an established propensity to dishonesty as determinative of guilt …Conversely, an established propensity to honesty will not always equate with the witness's reliability of recall on a particular issue."*

58. *That a tribunal's Lucas self-direction is formulaic, and incomplete is unlikely to determine an appeal, but the danger lies in its potential to distract from the proper application of its principles. In these circumstances, I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis , or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."*

17. In respect of demeanour, Hayden J in ***PS v BP [2018] EWHC 1987*** stated: *"[18]…Whilst the impression a witness makes upon the Judge will always be important and signals the inestimable advantage the first instance Judge has, in assessing the evidence, it is not a substitute for a detailed analysis of those features of the evidence which reinforce the reliability of the allegation."* *The Court of Appeal* ***in SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391*** held:

"[36] Generally speaking, it is no longer considered that inability to assess the demeanour of witnesses puts appellate judges "in a permanent position of disadvantage as against the trial judge". That is because it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth.

"[40] This is not to say that judges (or jurors) lack the ability to tell whether witnesses are lying. Still less does it follow that there is no value in oral evidence. But research confirms that people do not in fact generally rely on demeanour to detect deception but on the fact that liars are more likely to tell

stories that are illogical, implausible, internally inconsistent and contain fewer details than persons telling the truth: see Minzner, "Detecting Lies Using Demeanor, Bias and Context" (2008) 29 Cardozo LR 2557. One of the main potential benefits of cross-examination is that skilful questioning can expose inconsistencies in false stories.

[41] No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the way it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts."

18. As stated in ***V (A Child) [2015] EWCA Civ 274*:**

"[15] … Where oral evidence has been given by the key players it will often, if not always, be important to give a short appraisal of the witness' credibility and, where the testimony of one is preferred over another, a short statement of the reasons why that is so. …

[16] In summary, the well established approach of an appellate court in cases such as this is that a basic, short but clear description of the factors considered and the reasoning that underpins any conclusion is all that is required. But it is nevertheless required…"