Neutral Citation Number: [2022] EWHC 3427 (Fam)

Case No: FD22P00480

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2022

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between :

F	**Applicant**
- and -	
M	**Respondent**

- -

Re L (Article 13: Protective Measures)(No.1)

- -

Mark Jarman (instructed by **Oliver Fisher Solicitors**) for the **Applicant**
Andrew Tidbury (instructed by **A&N Care Solicitors**) for the **Respondent**

Hearing dates: 12 December 2022

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

Introduction

1. The application before the court, dated 5 July 2022, is brought under the Child Abduction and Custody Act 1985 (incorporating, by Schedule 1, the 1980 Hague Convention on the Civil Aspects of International Child Abduction: the "1980 Hague Convention"). The application concerns one child ("L") who is now 16 months old. The Applicant is his father ("the father"), the Respondent is his mother ("the mother").

2. For the purposes of resolving this application, I read the extensive bundle of documents, and heard submissions from counsel. The hearing had to be conducted over a number of short half-days. On the first half-day (14 November 2022) I heard brief oral evidence from the mother on the sole issue of whether the father had consented to the removal of L from Belgium (see also *Preliminary Issue* below). For reasons more fully explained in this judgment, following the mother's evidence this argument was not pursued. The focus then switched to the mother's contention that there is a grave risk that a return to Belgium would expose L to 'physical and psychological harm' or otherwise place him in an intolerable situation. After the second half-day, and when it became apparent that further evidence was required to be filed on both sides on the issue of protective measures, I adjourned the hearing for a short time to allow the lawyers to obtain the evidence. A further adjournment (on 23 November) was, regrettably, necessary when that evidence was not, in a timely way, available.

3. I am conscious of the timeframe imperative directed by Article 11 of the 1980 Hague Convention and of para.2.14 of PD12F of the Family Procedure Rules 2010 but am also conscious of the need to arrive at a just decision in these summary proceedings. This was all the more important given that within the evidence obtained part-way through the process a letter was filed from the father's Belgian lawyer in which she asserted that the mother had, prior to her departure with L, been in Belgium "illegally", an assertion which warranted further investigation given its potential significance to the relief sought (but which, in fact, proved to be wrong).

Preliminary issue

4. A preliminary issue had been raised at a pre-trial review: namely whether I could or should hear oral evidence from the Applicant father and/or supporting witnesses (on both sides) by video-link from Belgium. Counsel referred me to the decision of Lane J sitting in UTIAC of *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 00286 (IAC), and to FPR 2010, PD22A Annex 3 §5. I was also referred to the *Presidential Guidance* for the *Employment Tribunal judiciary* prepared by the Chamber Presidents of that Tribunal in Scotland and England & Wales, respectively Judge Shona Simon and Judge Barry Clarke (27 April 2022).

5. In relation to this application, I was provided (unsolicited) on the first morning of the hearing with a helpful witness statement from the Applicant's solicitor which revealed the following:

    i) Enquiries had been made of the 'Taking of Evidence Unit' at the Foreign & Commonwealth Office; the solicitor had received an automated response which

had advised her to expect a "minimum of 8 weeks" before a response could be assured from a host country;

ii) The Belgian Embassy in London had been contacted, but the official at the |Embassy had confirmed that there was no one who could answer a query on what were essentially 'judicial matters';

iii) The case worker at the Belgian Central Authority, who had been responsible for this case initially, informed the solicitor that she was unaware of any prohibition on Belgian citizens giving evidence by video-link across borders, and "we can see no particular difficulty" in them doing so; she added "…indeed child abduction cases should be hindered by formalities as little as possible, in the interests of the minor and in order to obtain a swift decision";

iv) A representative from the Slovak Embassy (the maternal family is Slovakian) confirmed that the Slovakian authorities would not have any difficulty with a Slovak national giving evidence from abroad;

v) A representative of the Foreign Process Department at the Royal Courts of Justice had indicated that the range of response times to requests for permission for evidence to be taken by video from abroad varies enormously; reference was made to one country (neither Belgium nor Slovakia) from which the officials took approximately 9 months to respond to a simple enquiry.

6. Neither counsel could point me to any provision in Belgian law which would prohibit the giving of evidence from that country by video-link either under their criminal law, or as a violation of any civil code.

7. In the absence of any evidence which would contra-indicate the giving of evidence from Belgium, and having regard to the overriding objective contained within rule 1.1(2) of the FPR 2010 and the duty to manage cases (rule 1.4), together with the expectation that Hague Convention cases are heard "expeditiously" and within 6 weeks (see Article 11 of the 1980 Hague Convention and PD12F para.2.14) I did not consider it appropriate to delay the hearing of this case for further enquiries to be undertaken in this regard.

8. As it happens, after the mother's evidence had been given, Mr Tidbury, counsel for the mother, advised the court that the mother would be abandoning her defence of this application based on 'consent', and it was in the end unnecessary for me to hear evidence by video-link from abroad.

The issues

9. It is agreed between the parties that L was habitually resident in Belgium at the point at which he was removed from that country. Although the parents are unmarried, it is accepted that the father not only had rights of custody, but that he was also exercising them at the time. As indicated above, the mother initially sought to defend the application on the basis that the father had consented to her removing L from Belgium and bringing him to England. In fact, her oral evidence, taken at its highest, did not support that conclusion (having regard to the dicta in *Re P-J (children)* [2009] EWCA 588 Civ, see especially §48(1), (7), (8), (9): the mother in the end accepting that she

could not discharge the burden on her to demonstrate "clear and unequivocal" consent) and the point was abandoned.

10. Issue remained joined between the parties on the issue of whether a return order would expose L to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation. On this issue, I was asked to consider a range of possible protective measures, and (if appropriate) consider what discretionary factors would be relevant.

Background

11. The father is Belgian, and he continues to live in Belgium; he is Slovakian by birth and comes from a Roma family. He is currently living with his own parents. The mother is Slovakian, although she spent most of her childhood living in England; she is also from a Roma family. The father is 25 years old, and the mother is 20. Neither parent currently works, and neither has a source of income; they are both reliant on state benefits. The father has a catering qualification and was a chef when the parties were together; he now hopes to become a taxi driver and is taking steps to advance this career. The mother is apparently currently undertaking vocational training in the field of hospitality in England.

12. The parents met via Facebook in 2019. At that time, the mother was living in Germany, but moved to Belgium to live with the father in or about October 2020. The parties lived together briefly, and L was born in Belgium in the summer of 2021.

13. The relationship was, on both parents' account, turbulent; Mr Tidbury described it as 'disastrous' and 'doomed' from the start, and as I later indicate, he may well be right. Both make allegations against the other of abusive behaviour; it is the mother's case that the father was often physically and emotionally abusive to her; she alleges controlling behaviour on the part of the father. She asserts that the corroborative evidence of this (in WhatsApp and other messages) has been wiped from her phone by the father who has hacked into her account. She alleges that the father suffered with mental ill-health, including paranoia and depression; she describes how he experienced panic attacks both when he was alone and when he was with his family members. The father asserts that it was the mother who had mental health issues, overlaying a dysfunctional and unhappy upbringing. I have seen a very short letter from the father's doctor which raises no apparent concern about the father's current mental health.

14. On occasions, the police were called to the home which the parents shared in Belgium. The contemporary records shine a revealing light on the state of the relationship. It is of note that a police attendance note of 21 October 2021 contains the following:

> "[The mother] would furthermore also like to end the relationship with [the father]. She emphasised that she is not mistreated or abused by [the father] and there had been no physical aggression between any of the parties that night".

The mother accepts that this is what is recorded, but asserts that this did not reflect the true position; she was not speaking in her first language, and there may have been some misunderstanding.

15. In November 2021, the mother complained to the police that she had been assaulted by the father. He denies this. The mother was apparently asked to provide medical evidence but did not do so. The file note reads:

> "On concluding the present document, we have not yet received any medical certificate. On 25/11/2021, during our second intervention, [the mother] stated not to have visited any doctor".

16. By March 2022, it is apparent that the parties were living separately, at least for part of the time; the father was staying with his mother, while the mother and L remained in the parties' rented flat.

17. It is the father's case that when he and the mother argued (which they did often) the mother would threaten to remove L to England. The mother and father had a serious argument on or about 20 March 2022; it was during this argument that the mother had asserted that the father had 'consented' to the mother removing L from Belgium. Following the argument, the father stayed with his mother, i.e., the paternal grandmother. The mother initially went to stay with the maternal grandfather, before travelling briefly to Slovakia (to obtain a passport for L[1]) and then to England, arriving here in May 2022.

18. The father spoke to the mother in June 2022, she told him that she was in England with L and that she was staying with her sister in Peterborough.

19. In the meantime, on 27 May 2022, the father had applied for and obtained an order in the Family Court in Belgium, by which he was granted exclusive parental authority and an order that L's primary residence shall be with the father ("the Belgian Family Court order"). The father then applied through the Belgian Central Authority for assistance in securing L's return to Belgium. English lawyers were instructed.

20. On 5 July the father's application for summary return came before the High Court, without notice to the mother (her precise whereabouts were then unknown); tipstaff orders were made. The mother was located on 14 July, and at a subsequent hearing, directions were given for trial. As it happens, this has been the third such attempt at a final hearing, as previous scheduled listings were ineffective. Even at this hearing, we have encountered delays through the unavailability of interpreters and the lack of relevant evidence.

21. At one point in July 2022, the mother and father communicated with each other directly; the mother indicated her intention to return to Belgium. There was a dispute about how she would travel and how the passports would be returned to her and how she would travel, and this plan for return came to nought. It is further accepted that the mother corresponded with the father's solicitors and negotiations took place for her to make a consensual return to Belgium; again, this came to nought.

22. The father relies on a draft e-mail which he says the mother prepared to send to the Court on 3 August 2022 in these terms: "I wrongly removed [L] away from his father

[1] It is common ground that the father opposed the mother obtaining a Slovakian passport for L; this was obviously inconsistent with the mother's original case that he had allegedly agreed for the mother to remove L from Belgium and travelling with him to England.

I apologise and accept that I have made a mistake and would like to try and fix this problem by going back." The mother denies drafting such an e-mail, and asserts that the father hacked into her account and prepared it. It has not been possible to verify the authenticity of the draft e-mail in the time provided.

23. In the period in which this case has been before the court, enquiries have been made of the prosecution authorities in Belgium, and an e-mail has been received from Katrien Hanoulle from the 'Openbaar Ministrie'. She says:-

    i) There *is* an ongoing investigation in relation to the mother for child abduction. The mother has not yet been summoned to the criminal court, but this is possible;

    ii) There is no arrest warrant in relation to the mother. No arrest warrant has been requested, and the prosecutor has no intention to issue one. When/if the mother returns to Belgium, she will be required to make a statement at the police station "but I do not have the intention to have her in custody";

    iii) There are no other ongoing criminal investigations or proceedings of the mother (there are no investigations in relation to any alleged assault on the child – an issue which arose from the documents in the Belgian domestic family proceedings);

    iv) The decision to summon the mother is made autonomously by the public prosecutor, regardless of the intentions or commitments by the father.

The mother's case

24. The mother's case on Article 13(b) is put thus:

> "The [mother] has been the subject of violent attacks by the father in the presence of [L] and [L] himself has suffered when the father has been angry and aggressive towards [L] when in a rage... Their return would put [L] in an intolerable [situation] as the mother and child have no home to which they can return and the financial position is very precarious as the father does not work. The mother was unable to receive benefits and is not able to obtain employment as she does not speak the language. Further the father has obtained a sole custody order giving false information to the Belgium court which would mean that he would take the child from the mother who has always been the prime carer".

25. In the event that the court is considering a return of L the mother seeks undertakings from the father and protective measures.

The father's case

26. The father disputes that there is a grave risk that L's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

27. He goes on to argue that in the event that the court is of the view that a *prima facie* case is made out on this basis, he would offer a range of suitable protective measures. It was

primarily in relation to this issue that I adjourned the hearing on 15 November to allow both parties to seek to fill the gaps in the evidence.

28. The father's proposed protective measures have been the subject of reasonably intensive further evidence-gathering. Specifically, the father now proposes:

i) That he will undertake not to seek to support, instigate, or prosecute any civil or criminal proceedings against the mother in any jurisdiction in relation to the wrongful removal of L from Belgium in March 2022; whether by arrest, fine or imprisonment [this is offered without limit of time];

ii) Not to separate L from his mother on their arrival in Belgium save for agreed or court-ordered contact pending the first *inter partes* hearing before the Family Court of the Court of First Instance in Leuven, at which both parties are present and/or represented;

iii) To pay for the airfares for the mother and L to return;

iv) Not to attend at the airport when the mother and L arrive, nor will he arrange for anyone to do so on his behalf;

v) To arrange (to coincide with L's return with the mother) for a furnished 1-bedroom property in or around Leuven for the mother and L to live in alone; he has identified one for which he has provided particulars for which the monthly rent is €880. The father agrees that he will pay the deposit and first three months rent (to include the utilities) with the assistance of the benefits agency, and in the event that the benefits agency cannot assist, the applicant's parents will assist with the necessary payments;

vi) To use his best endeavours to obtain an early *inter partes* hearing following the return of the mother and L to Belgium in the proceeding in the Family Court of the Court of First Instance in Leuven and in any event within 3 months.

vii) Without prejudice and without admission to any allegations raised by the mother, not to assault, threaten, intimidate, harass or pester the respondent mother;

viii) Not to execute or enforce the Belgian Family Court order (27 May 2022) which he has obtained; and not to execute or enforce the financial penalty which is provided for in the order[2];

ix) To agree and enter into a settlement agreement in relation to an application by the mother to apply for the joint parental authority in respect of L;

x) To share his unemployment benefit of €1300 per month equally with the mother until such time.as the mother is able to obtain her own benefits in relation to housing, unemployment and child benefit. Child benefit will be allocated to the parent caring for L.

[2] The father's case (on advice from his lawyer) is that he cannot now himself vary or discharge that order while the mother is out of the jurisdiction;

xi) To assist and support the mother in relation to any application to the Belgian benefits agency in respect of state benefits for herself and for L.

The Law

29. The legal principles engaged in this case are well-established. They were extensively discussed in *Re A (Children) (Abduction: Article 13b)* [2021] EWCA Civ 939, ("*Re A*"). In his judgment in that case Moylan LJ drew from the Supreme Court decisions of *In re E (Children) (Abduction Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144 ("*Re E*") and *Re S (Abduction: Article 13(b) Defence)* [2012] 2 AC 257 ("*Re S*"). I have also found particularly useful the judgment of Baker LJ in *Re IG (Child Abduction: Habitual Residence: Article 13(b))* [2021] EWCA Civ 1123, and Moylan LJ in *Re C (Article 13(b))* [2021] EWCA Civ 1354.

30. The following principles emerge from these authorities:

i) *Article 13(b)* is, by its very terms, of restricted application: [§31: *Re E (Children)*]; the defence has a high threshold;

ii) The focus must be on the child, and the risk to the child in the event of a return;

iii) The burden of proof lies with the person, institution or other body which opposes the child's return. The standard of proof is the ordinary balance of probabilities, subject to the summary nature of the Hague Convention process: [§32: *Re E (Children)*];

iv) The risk to the child must be "grave" and, although that characterises the risk rather than the harm, "there is in ordinary language a link between the two": [§33: *Re E (Children)*];

v) "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. Amongst these are physical or psychological abuse or neglect of the child: [§34: *Re E (Children)*];

vi) *Article 13(b)* is looking to the future, namely the situation as it would be if the child were to be returned forthwith to his home country: [§35: *Re E (Children)*].

vii) In a case 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 against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison Judges are so helpful." [§36]: *Re E (Children)* (Emphasis by italics added).

viii) The court must examine in concrete terms the situation in which the child would be on a return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do;

ix) 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. Thus:

> "… the clearer the need for protection, the more effective the measures will have to be" [§52: *Re E (Children)*]

31. Moylan LJ in *Re C* [2021] (citation above) emphasised that the risk to the child must be a *future* risk (§49-50). He cited from the Good Practice Guide to emphasise that:

> "… forward-looking does not mean that past behaviours and incidents cannot be relevant to the assessment of a grave risk upon the return of the child to the State of habitual residence. For example, past incidents of domestic or family violence may, depending on the particular circumstances, be probative on the issue of whether such a grave risk exists. That said, past behaviours and incidents are not per se determinative of the fact that effective protective measures are not available to protect the child from the grave risk". (§50)

32. Thus, an assessment needs to be made of the

> "… circumstances as they would be if the child were to be returned forthwith. The examination of the grave risk exception should then also include, if considered necessary and appropriate, consideration of the availability of adequate and effective measures of protection in the State of habitual residence" (§50).

He added:

> "It is also axiomatic that the risk arising from the child's return must be *grave*. Again quoting from *Re E*, at [33]: "It must have reached such a level of seriousness as to be characterised as 'grave'". As set out in *Re A*, at [99], this requires an analysis "of the nature and degree of the risk(s)" in order to determine whether the required grave risk is established" (emphasis in the original).

33. I am clear that my role is not to engage in a fact-finding exercise, but as Moylan LJ went on to observe:

> "… unless the court properly analyses the nature and severity of the potential risk which it is said will arise if the child is returned to the requesting State, the court will not be in a

> position properly to assess whether the available protective measures will sufficiently address or ameliorate *that* risk such that the grave risk required by *Article 13(b)* will not have been established. As set out in *Re E*, at [36], the question the court is considering is "how the child can be protected against *the* risk" (my emphasis). The whole analysis is contextual and forms part of the court's process of reasoning, as referred to by me in *Re A*, at [97], adopting this expression from *Re S (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257, at [22]". (§58)

34. In his judgment, Moylan LJ took the opportunity to emphasise the importance of adherence to *Practice Guidance: Case Management and Mediation of International Child Abduction Proceedings* issued by Sir James Munby P on 13 March 2018, and to the point that protective measures include not only those offered by the left-behind parent but also those available ordinarily in the state of habitual residence and their adequacy and effectiveness (§60). The *Practice Guidance* emphasises the importance of both parties addressing the issue of protective measures at the earliest stage of the process (§3.6: "The applicant's initial statement of evidence must however, include the applicant's evidence establishing the necessary requirements for a return, a *description of any protective measures (including orders that may be subject to a declaration of enforceability or registration under Art 11 of the 1996 Hague Convention or, where appropriate, undertakings) the applicant is prepared, without prejudice to his or her case, to offer* for the purpose of securing the child's return").

35. Should I reach the point in this process in which I could be invited to exercise my 'discretion' whether to order a return, I would have regard to the speeches in the case of *Re M (Abduction: Zimbabwe)* [2007] UKHL 55 at §43, as to which I highlight:

> "… in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare."

And at §48

> "… the policy of the Convention does not yield identical results in all cases, and has to be weighed together with the circumstances which produced the exception and such pointers as there are towards the welfare of the particular child. The Convention itself contains a simple, sensible and carefully thought out balance between various considerations, all aimed at serving the interests of children by deterring and where appropriate remedying international child abduction".

36. I would further consider the judgment of Peter Jackson LJ in *Re G (Abduction: Consent/Discretion)* [2021] EWCA Civ 139 at §41:

> "…the exercise of the discretion under the Convention is acutely case-specific within a framework of policy and welfare considerations. In reaching a decision, the court will consider the weight to be attached to all relevant factors, including: the desirability of a swift restorative return of abducted children; the benefits of decisions about children being made in their home country; comity between member states; deterrence of abduction generally; the reasons why the court has a discretion in the individual case; and considerations relating to the child's welfare."

Findings; Conclusions

37. The burden is on the mother to demonstrate that one of the exceptions to an order for summary return has been established. Drawing together the various strands of the mother's case, her argument that L would be exposed to a 'grave risk' of physical or psychological harm is founded upon:

    i) The risks associated in returning to the same town as the father, given the nature of their previous relationship, which she describes as abusive;

    ii) The lack of adequate accommodation for her and L;

    iii) The lack of adequate financial support in Belgium;

    iv) The risk that the mother will be arrested and/or prosecuted for child abduction;

    v) The risk that the mother will lose the day-to-day care of L as a result of the court order made in the Belgian Family Court in May 2022;

    vi) Separation from L in the event that she decides not to return.

38. *Return to Belgium: Domestic abuse*: On the evidence before me, it seems likely that this young couple had a turbulent relationship, which was characterised by heated arguments. There is evidence which has been filed by the mother that the father was physically and emotionally abusive and controlling. While making no findings, I have little doubt on all that I have read that the relationship was a very unsatisfactory one for both of them. It may be that it was, as Mr Tidbury argued, a 'doomed' relationship. Insofar as domestic abuse may have occurred, it seems that both parents were capable of calling the police to intervene in their disputes; although the mother complains that the police were ineffective, it appears that she herself did not follow through with requests for obtaining medical evidence to support her complaints. The mother has failed, on the evidence before me, to demonstrate that the father suffered materially from mental health difficulties of such an order as put her at risk (or at all).

39. The risk – in this regard – to L of being returned to Belgium has to be seen in the context that:

    i) The mother apparently freely entered into negotiations with the father and the father's solicitor in August 2022 to return to Belgium, those negotiations only coming to nought as they could not agree how the passports would be returned

to her and how the mother and L should return (the mother preferring to travel by Eurostar, the father's solicitor insisting on a flight) (see §21 above); this is inconsistent with her stated fear now. I note that the mother now says that she was under pressure from the father to return, and *not* acting of her own freewill, but there is no evidence of any coercion or control, and I am not satisfied that, even if her WhatsApp media account was hacked, that this was hacked by the father, and/or that it would have yielded the evidence which the mother claimed;

ii) The father offers an undertaking as to his behaviour (see §28(vii) above) not to assault, threaten, intimidate, harass or pester the mother which can be registered or declared enforceable under the regime of *1996 Hague Convention*;

iii) There is no suggestion that the parties would be living under the same roof on L's return.

40. Overall, I am satisfied that any such risk as there may be from domestic abuse is not such that L's return to Belgium would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

41. *Accommodation*: The parents no longer have a shared home in Belgium; the tenancy has been surrendered. As earlier mentioned, the father is currently living with his parents. It is essential in my judgment that reasonable furnished accommodation is provided for L and his mother on return; indeed, I will indicate (see below) that any return is conditional upon proof being provided of adequate furnished accommodation for a period of no less than 3 months.

42. After a certain amount of discussion in court, and further researches conducted during the adjournments, at the hearing on 12 December the father finally produced property particulars of rented furnished duplex apartment which he proposes for the mother; he tells me (in his recently filed statement) that he has viewed it, and is in touch with the landlord. The property proposed in my judgment appears suitable. The father has further given a commitment (see §28(v) above) to pay the deposit and first three months rent (to include the utilities) with the assistance of the benefits agency, and in the event that the benefits agency cannot assist, I am told that the father's parents will assist with the necessary payments. If, by the time the obligation to secure a property arises, that particular apartment is not available, a substitute of similar standard would be acceptable.

43. *Lack of Financial Support:* It transpires that the mother could in fact return to and remain in Belgium legally as she is an EU citizen; she could register her status in Belgium, as she did previously, and this will entitle her to a short term 'stay permit'. In this way, the mother will in due course be eligible for reasonable state benefits in Belgium even if it will "take some time" for these to come through. She already has a national registration number in Belgium, and this has not expired; the process of her claiming longer-term benefits should therefore be more straightforward. The mother can, apparently, make an appointment with a social worker as soon as she returns to assist her to complete the necessary forms; she may well be entitled to apply for benefits for 'necessary expenses'[3] straight away. The couple had previously supported

[3] Medical costs, costs for the home, and exceptional utility bills.

themselves; the father would be able to claim child benefits in Belgium and is now in the process of applying for a permit to be a taxi driver.

44. In the meantime, the father has proposed to share equally his income (from benefits) (see §28(x) above), and to support her in making her benefits claim (§28(xi)). It may be that the mother will have to call upon her own family again to assist her in the short term financially and emotionally (as she did when she was fleeing Belgium, when they seemed more than willing to help her).

45. *Arrest / prosecution*: Parents who abduct their children across borders must face the consequences. It cannot be right that the risk of prosecution automatically creates a 'grave risk' of psychological harm to the child, should the child be returned. In this case, on the evidence filed (see §23 above), I am satisfied that the mother would not be arrested on her arrival back in Belgium, and although there is a risk that the mother will be prosecuted for child abduction, this process has reached no further than the prosecutor making a decision whether to summon her or not. For what it is worth, the father has told me, and I accept, that he has no intention to support any prosecution. If the mother has to face the consequences of her actions, I regret that must be so. In this regard I share the views expressed by MacDonald J in in *EH v K and Others (Abduction: Undertakings)* [2018] 1 FLR 700 [2017] EWHC 1141 (Fam) (§ 55-57):

> "… a parent who chooses to abduct a child from one jurisdiction to another must expect to be the subject of arrest and prosecution. That is simply one of the proper consequences of a parent unwisely taking the law into his or her own hands rather than seeking relief through the courts. It sits ill in the mouth of a parent who has abducted a child to complain about the consequent risk of arrest and prosecution".

46. *Family Court Order*: The father has agreed not to separate mother and child on their return pending a hearing in the Belgian Court, and not to enforce the Belgian Family Court Order until there has been an *inter partes* hearing in the Belgian Court, at which time the mother can make her representations (§28(viii) above). He further agrees to enter into a settlement agreement in relation to an application by the mother to apply for the joint parental authority in respect of L (§28(ix)).

47. The mother is vulnerable to a fine as a result of her alleged breach of the existing order (there is a prospect – on the evidence filed – of a civil penalty of up to €50,000 in accordance with the existing order); however, I consider it reasonable to assume that there would be some judicial evaluation of her means, either (a) at the point of the quantification (should this arise) of any such penalty/fine, and/or (b) on the question of enforcement. The mother has access to the Family Court system in Belgium; the Belgian lawyer instructed by the mother (Ms Karin Verbist) advises that the existing proceedings would or could be re-instated within 15 days of her return. The father offers his undertaking to support the listing of an early hearing date (see §28(vi)).

48. *Mother not returning with L*: When the mother gave evidence before me on the first day of this final hearing, she told me that she would return with L if I ordered L to be returned. On the final day of the hearing, after an adjournment, the mother (through counsel) had possibly changed her tune; Mr Tidbury told me that the mother was now

considering not returning with L. She told me (again through counsel) that when she had earlier given direct evidence of her intention to return with L, should I order his return, she had not really thought that L would be sent back. The situation had now 'sunk in'.

49. I gave Mr Tidbury opportunity to take further instructions on the issue; having done so, I was told that the mother was unable or unwilling to say whether she would go back or not. She was too upset to say.

50. I accept that the mother is a vulnerable young woman; she is not yet 21. A return of L to Belgium in reality means either *her* return to Belgium too, or a return of L to Belgium to be in the care of his paternal family. I find that it is extremely unlikely that the mother would not return with L; I accept that she is reluctant to return, but I find that she *will* return with him. I cannot see her staying in England and sending L to live – even temporarily – with the father and/or the father's family.

51. *Generally*: Mr Tidbury has argued in his final submissions that "it is not easy" for a mother as young as this in circumstances such as these to contemplate a return to Belgium, a country which she left more than seven months ago. I am sure that he is right. But that is a far cry from establishing (and the burden is on her in this regard) that there is a risk of psychological or physical harm to L which would be characterised as "grave" should I order his return. The Article 13(b) exception is of very restricted application (see §30(i) above), and although I recognise the inconvenience, the anxiety, and uncertainties for the mother in a return to Belgium, the situation which L will face is not in my judgment close to exposing him to a grave risk of harm.

52. I therefore grant the father's application for a summary return. But that order will be subject to the father providing to the court:

    i) proof that he has secured adequate furnished accommodation for the mother and L, with the deposit and three months' rent paid;

    ii) signed confirmation of the father's commitment to the protective measures (undertakings where appropriate) listed above in §28 so that they can be registered, or declared enforceable, or homologated in the Belgian Court as suggested by the Belgian lawyer, Ms Verbist;

    iii) confirmation from the father that he has deposited into the mother's nominated bank account a relevant sum in €s by way of contribution to the mother and the child's living expenses (as outlined above), with such payment to be deposited into the trust account of the mother's solicitor by not later than 3 clear days before the child leaves the U.K.; and be released by the mother's solicitor and paid to the mother, into a bank account nominated by the mother in Belgium by not later than 12 hours after the departure from U.K. of the mother and the child.

    Given the imminence of the Christmas break, which may affect the father's ability to progress action on these requirements, I propose to give the father until 13 January 2023 to put these steps into place; I shall list the matter for a 1-hour hearing in the week of 16 January 2023 to address any issues which arise in relation to the practicalities. If there are no issues, then the hearing can be vacated, and counsel can submit an agreed

order. The parties should make arrangements for L's return flight to Belgium on a date shortly after the proposed date of the hearing.

53. That is my judgment.