



Neutral Citation Number: [2023] EWHC 699 (Fam)

Case No: FD23P00006

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2023

Before:

Kate Grange KC (sitting as a Deputy Judge of the High Court)

A v B (Abduction: Article 13(b) and Child Objections)

Between:

A
- and -
B

Applicant

Respondent

Clare Renton (instructed by **Charles Strachan Solicitors**) for the Applicant
The Respondent appearing **in person**

Hearing dates: 20 and 21 March 2023

Approved Judgment

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KATE GRANGE KC

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.

Kate Grange KC sitting as a Deputy Judge of the High Court:

Introduction

1. The application before the court, dated 4 January 2023, 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 four children: X (aged 13), Y (aged 11), W (aged 9) and Z (aged 4). The Applicant is the children’s father (“the father”), the Respondent is their mother (“the mother”).
2. For the purposes of resolving the application I have read the extensive bundle of documents, and heard submissions from the father’s counsel, Ms Clare Renton, and from the mother who appeared in person. I have considered a report from a Cafcass officer, Ms Emma Huntingdon, dated 9 March 2023. I have also read three further written statements from the mother, the last being her “opening statement/skeleton argument”, together with 12 supporting exhibits, which she brought to the hearing on 20 March 2021. Ms Renton did not object to these being adduced in evidence once she had been given the opportunity to review them. On the first afternoon I was invited by the mother to watch a short 40 second video. The hearing was conducted over 20 and 21 March 2023.
3. At the outset of the hearing and given that the mother appeared in person I explored with her whether there were any particular measures which were necessary to ensure her effective participation in the hearing. I was mindful of Practice Directions 3A, 3AA and 12J in circumstances where the mother was claiming to be a victim of abuse. The mother explained that she was being supported by a McKenzie friend, and was content to make submissions with that support. It was agreed that for the mother’s benefit Ms Renton, counsel for the father, would open the case fully and we took regular breaks and pauses to ensure that the mother was able to follow the father’s submissions, including the legal tests which arose for consideration.
4. Having explored with the parties the necessity for any oral evidence from the Cafcass officer, Ms Huntingdon, I permitted some very brief questions to be put by the mother to her on one paragraph (paragraph 65) of her report. These questions were by way of clarification of the Cafcass officer’s views, as explained further at §46(i) below.

The issues

5. It is agreed that the children were habitually resident in Spain at the point at which they were removed from that country by the mother. It is also accepted that the father was exercising rights of custody within the meaning of the 1980 Hague Convention at the time, pursuant to a Spanish court order dated 29 November 2021. It is accepted that the removal of the children from Spain was wrongful; it was in breach of rights of custody of the father which were being exercised.
6. The issues between the parties which I have to decide are:
 - i) Whether a return order would expose the children to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation contrary to Article 13(b) of the 1980 Hague Convention. On this issue I was asked to

consider a range of possible protective measures, and (if appropriate) consider what discretionary factors would be relevant;

- ii) Whether any of the children object to a return to Spain, whether they have attained and age and degree of maturity at which it is appropriate to take into account their views and, if those gateway conditions are satisfied, whether I should exercise my discretion not to return (Article 13, Hague Convention 1980).

Background

7. I have set out the relevant factual background below. I have sought to do this as neutrally as possible, and to indicate where there are any disagreements between the parties.
8. The mother and father are both British citizens. They began a relationship in the UK in 2006 and married in 2008. They had three sons together: X, born in 2009; Y, born in 2011; and W born in 2013.
9. After W was born they agreed to relocate permanently to Spain. That move took place in August 2014, and they went on to have a daughter, Z, born in Spain in 2018. At that time the husband was a managing director of a business. After the move to Spain his work sometimes required him to come back to the UK. The mother worked for a time in Spain, but has not worked there since.
10. The couple rented a property for the first year they were in Spain and then in July 2015 purchased a large villa in the province of Alicante in Valencia, set in an acre of land and with its own swimming pool ('the family villa').
11. In September 2019 the couple separated. They carried on living in separate wings of the villa until November 2020 when the father moved out. The mother filed for divorce in Spain in September 2019, and later filed for divorce in the UK in October 2020. I am told by the mother that a hearing relating to the divorce is due to take place in the family court in September 2023.
12. During the Covid 19 pandemic the father spent a lot of time in the UK because he was caught in a lockdown in the UK while on a business trip. That meant that he remained in the UK between March and July 2020. During this time the mother was in Spain with the children. When the father returned to Spain on 5 July 2020 the father says that he discovered that the family villa was abandoned and social services had become involved with the family.
13. A number of reports from Spanish Children's Services in Spain have been provided to me in the bundle (referred to hereinafter as 'Spanish social services'). According to a report dated 4 March 2021 prepared by a Social Worker and Social Educator, in April 2020 the mother applied to Spanish social services for food vouchers, saying that she had no income and could not feed her children; this is what prompted their involvement with the family. Thereafter, in July 2020, the father asked Spanish social services to help locate the mother and children after he had discovered the family villa to be abandoned. At that time it was discovered that the mother and children were living at a house of a relative (the mother has since confirmed that this was her uncle's apartment

in Spain). The family villa was seen by the social workers and was found to be in a very poor condition. It was dirty and messy and appeared to have been abandoned for some time. I should record that it is the mother's assertion that the father deliberately made the villa look this way at that time. But, whatever the position about that, it is clear that social services in Spain decided to monitor the family's situation thereafter.

14. At some point in 2020 the mother and children moved back to the family villa. On 2 November 2020 an incident occurred at the villa between the mother and father. The mother's evidence is that the father pushed her hard against the wall as a result of which her arms and legs were bruised. The mother asserts that all three boys were present when this occurred. The father asserts that he was in his bedroom talking to X when the mother tried to enter the room and was shouting abuse at him. He says he attempted to push the door back while her foot was in the door and he denies physically assaulting the mother.
15. Thereafter the mother reported the matter to the police and the matter was heard by the 'Court for Domestic Violence Against Women' on 6 November 2020, some four days later. X (then aged 11) attended court and gave evidence about what he had witnessed. The father's position is that he was informed at that time that he would be sentenced for assault and restrained by court order from going within 300 metres of the mother or from communicating directly with her by phone, email or digital messaging for 18 months. It is his evidence that he was advised that if he accepted the assault charge, his sentence would be reduced. Otherwise, if he continued to deny the assault, he was told the matter would be considered by a higher court at which time X would again have to give evidence and the sentence might be increased. In the event he accepted that he "pushed the bedroom door shut" during the incident and was given a Restraining Order for 12 months.
16. Following the incident the father was living with friends, but continued to rent accommodation in order to have the children to stay with him at weekends.
17. In October 2021 Spanish social services became concerned about X's mental health. X has neuro-developmental delay and has emotional and psychosocial needs. On 26 October 2021 social services wrote a report detailing an intervention with X which they had undertaken. In the report the Social Worker and Social Educator recounted an interview they had had with X in June 2021 in which X was saying that the separation of his parents was affecting him a lot and, in particular, that he had been affected by having to go to court to testify during the restraining order proceedings. At this time X was reported to have said to them that the only time he is calm is when he is with his father. Concerns were also expressed by the social workers that X was being interrogated by his mother after their sessions with him and therefore it was agreed that their interviews would only take place with X when he was due to return to his father's care. Having met with X on three occasions in June 2021 the social workers were concerned that X was experiencing unsettling events including changes in his school setting as he grew older and he was also anxious about his younger brother Y who had been diagnosed with a neurodevelopmental hip disease. There was a concern on the part of social services that the mother was prioritising Y's care over X's needs at this time. In an interview with the social workers on 22 October 2022 X had expressed a desire to commit suicide and told them that he had the idea of throwing himself off a mountain. He also admitted having felt suicidal on two previous occasions. The social workers concluded the report by requesting that the father be granted exclusive custody

of X at this time and it would appear that this report was submitted to a court in Spain (as per the Chronology of Interventions Report dated 9 February 2023 from local social services).

18. The mother's evidence is that she was not told that X was suicidal at this time and thought that X wanted to stay with his father so he could see his cousin. It appears to be accepted that X spent some time staying with his father at this point.
19. The mother contends that the father was in breach of the restraining order on numerous occasions. This included coming within 300 metres of her, in particular when he rented a flat very close to the children's school. These breaches are denied by the father who states that the mother was trying to deliberately compromise his restrictions. On 21 October 2021 it appears that there was a hearing again in the Court of Violence in, in which the mother was alleging violation of the restraining order on three occasions on his approaching and communicating with her. The 'legal reasons' within the order record that an investigation was carried out, including the obtaining of witness statements. From the results of all the investigative measures carried out the court concluded that there was no evidence to support the allegations of breach of the order and the proceedings were dismissed.
20. On 29 November 2021 the parties came to an agreement about the children's living arrangements and the interim financial position. Both parties were represented by lawyers at this time. The order of the Court of Violence in of that date records that both parties should have parental authority over the children; that the children would not be able to leave Spain without the consent of both parties; that the use and enjoyment of the family villa would be held by the mother and children; that the guardianship and custody of the children would be held by the mother, with a visitation regime in favour of the father consisting of alternate weekends (Friday to Monday) and two overnight stays in the week (Mondays and Tuesdays with overnight stays both days); that Christmas, Easter and summer holidays would be divided equally between the parents; that the father should pay 300 Euros monthly per child (1200 Euros in total per month) to the mother and that the father would be responsible for expenses of the private school attended by the children together with other named expenses.
21. The father has said that each party was also responsible for paying 50% of the mortgage on the family villa and the mother was responsible for paying the utility bills for that property.
22. It appears to be accepted that, until the mother came with the children to the UK in December 2022, the parents were sharing the care of the children broadly in line with the November 2021 agreement.
23. In April 2022 X was diagnosed with 'Autism Spectrum Disorder' following a psychological assessment undertaken in Spain.
24. On 18 May 2022 a further report was prepared by Spanish social services. In that report they recorded that they had received several referrals from the children's private international school reporting that Z had persistent head lice. It was said that the mother was denying there was a problem and had been accompanied by her lawyer at a meeting with social services. They said that the attitude of the father was "diametrically opposed" to that of the mother and that he had been accepting of the problem and

responsive. The report also recorded that Y had undergone a major surgical operation in early April 2022 following a diagnosis of “Legg-Calve-Perthes” which is a rare condition in which the ball-shaped head of the thighbone temporarily loses its blood supply. It was noted in the report that, after the operation, Y had stayed with his mother and the other three children had stayed with the father to give Y time to recuperate. It was also stated that on 19 April 2022 the father had raised concerns about Y’s lack of sensation on defecation and Y was admitted back to hospital for a short period. On 4 May 2022 a nurse was said to have been denied access to the mother’s house to see Y on the basis that the mother had given an order not to permit entry to the house. Nursing professionals were said to have reported other problems including with medical visits, together with poor hygiene and sanitation in the mother’s home. These concerns appear to relate to the state of the family villa. The report also stated that Y had had to be admitted to hospital again on 12 May 2022 when he was found to be suffering from a wound infection. It was stated that as a result of the infection the hospital had to advance the removal of the iron fixations in his bones. On 17 May 2022 the social workers had spoken to a social worker at the hospital who said that the mother was defensive and had rejected social services and had no willingness to collaborate with the same, but had been advised that she should co-operate for the good of the children.

25. In August 2021 Spanish social services decided that Y would benefit from some private one to one sessions with J, the Social Educator (as recorded in the Chronology of Interventions report dated 9 February 2023 from social services).
26. I should record at this point that it is the mother’s position in these proceedings that social services in Spain were biased against her and were always in favour of the father. She said that X “couldn’t bear” J, the Social Educator. She said that she was so upset by their interventions that she often left their office in tears. She felt that they were insulting and dismissive of her. As a result she said that she took no notice of social services in Spain because “they were a pain in my life”.
27. In May 2022 the mother and children moved out of the family villa and into a flat in the central part of the town. That flat was rented for a year and was funded by the maternal grandmother who lives in Hampshire in the UK. It is the father’s case that while Y was recuperating from his operation with his mother, X, W and Z lived with him for three months, visiting the mother for three weekends at this time. He also asserts that around this time the mother refused to allow him to see Y for a number of months so he went to the court in June 2022 which ordered that Y should resume his contact with his father as per the previously agreed arrangement.
28. On 1 July 2022 a further report was prepared by Spanish social services. In that report they addressed the “health situation” of Y. They reported that concerns had been expressed by health professionals about an inability to make contact with Y and the mother after his surgery. The mother was not answering their calls. It appears that these health professionals were not aware that the mother had moved out of the family villa and into an apartment. The social workers also recorded the father making contact with them to report that Y had apparently fallen and hurt his foot, as reported to him by X, and the father was concerned that he should be checked by a health professional. On 19 June 2022 a house visit to the mother’s apartment by a paediatrician was carried out and no concerns were noted, with hygienic conditions reported in the house. The paediatrician advised the mother to take Y to the Health Centre for his minor foot injury and also for an ear complaint. It was stated in the report that the mother had not taken

Y to the Health Centre in the following days. The purpose of the report was said to be so that all the information was evaluated.

29. It is the father's position that he was struggling financially by this time. The Covid pandemic had impacted on his business and it is his evidence that the private school fees were unaffordable. His parents paid the school fees for the school year 2021 to 2022, but were unable to afford the school fees for the academic school year commencing September 2022. It is the father's case that he informed the mother that they could no longer afford the school fees in March and April 2022 and that a meeting occurred at the mother's lawyer's office to discuss plans for the children in the academic year 2022/2023. The father states that he enrolled the children on the public register in Spain on 27 April 2022 and he initiated court proceedings to register the children into state school. He states that a court hearing took place on 3 November 2022 at which time the mother had submitted a counter-application to have the children attend private school and that the father must pay for it. That court hearing is referred to in the Spanish social services records. According to the father, at that hearing the court concluded that it was not the competent authority to decide the matter and referred the matter to the Public Prosecutor and social services. The father says that his lawyer asked for assistance from social services with the registration process for the state school as the Public Prosecutor was pursuing the mother for obstructing the children from going to school.
30. It appears that the children did not attend school in Spain between June 2022 and late November/December 2022 while there was a dispute between the parents about where they should be educated. On 24 November 2022 Y, W and Z began attending a nearby state school. On 1 December 2022 X started at a secondary centre at the School nearby. I have been provided with documents which show that the three official languages for state schools in the area are Spanish, Valenciano and English.
31. An 'evaluation report' from the School dated 22 December 2022 provides some information on X's progress in the Spanish state school system when he attended for the first two weeks of December 2022. This stated that X had adapted well to the school environment and had integrated well with his classmates. He had also shown an interest in the subjects taught.
32. The mother's case is that the father removed the children from the private international school with no discussion or permission from the Spanish court. She states that she was extremely unhappy about the children attending the Spanish state school and was concerned that there would be no proper assistance for X's special needs. She also disputes the father's contention that he was struggling financially and could not afford the private school fees. She asserts that he has significant business interests, particularly in the UK and lives an extravagant lifestyle.
33. On 14 December 2022 the mother removed the children from Spain, driving with them for several days and arriving in the UK on around 18/19 December 2022. This was shortly before the father was due to have the children for the Christmas holidays. It is accepted that that removal was without any notice to or consent by the father.
34. The mother attended Guildford Police Station on 19 December 2023 at which time she reported a longstanding pattern of abusive behaviour by the father towards her and she stated that the father was violent, manipulative and aggressive. She stated that he had

breached a restraining order because he would turn up at the school gates knowing she would be there and he was controlling of her and the children. She also said the father had been neglectful of the children on some occasions. She said she was concerned about further violence and abuse. She also complained about the father forcing the children to attend state school. The interview with the police appears to have been conducted in front of the children as they appear at times on the transcript I have been provided with.

35. In a message to the father on 19 December 2022 the mother informed him that she had returned to the UK and would be staying at her mother's house until further accommodation became available. She stated that the children would be registered for school after Christmas in an English school "which was where they should be". She also said this:

"When you removed them from school and everything they know you took away everything and traumatized them I am not going to allow you to make our children suffer any more than you already have by restricting finances and putting them in schools they were not prepared for and do not have sufficient Spanish to be able to have any benefit from being there apart from keeping mum out of trouble as the law says they have to be in school. Your idea of keeping us in Spain with no money and no home, your bullying behaviour must stop. As you are unable to provide for the children in Spain then it is my responsibility to provide for them, and I can only do that in the UK where our divorce will take place and where we have assets and income unlike in Spain where we only have Debts and no income!!! "

36. Her message continued by referring to extravagant spending on the part of the father and him refusing to pay for school dinner lunches for the children or school equipment.
37. On 4 January 2023 the father made his application for summary return of the children under the 1980 Hague Convention. At a hearing before Mr Alex Verdan KC sitting as a Deputy Judge of the High Court on 19 January 2023 the standard protective orders were made and directions were given for the case management of the matter with the final hearing to take place on 20 and 21 March 2023. An officer of Cafcass was asked to provide a report on various matters including the children's views, wishes and feelings in respect of returning to Spain and their maturity.
38. Since they arrived in the UK the mother and children have been living with the maternal grandmother. The children were enrolled in schools in Hampshire and have been attending up to the present time.
39. In accordance with orders made by Mr Verdan KC the children have had contact with their father over Facetime for alternate evenings. Over February half term the mother agreed to allow daytime face-to-face contact in the UK between the father and the children. This took place for 9 hours on Saturday 11 February, 8 hours on the days of Sunday 12, Monday 13, Tuesday 14 and Wednesday 15 of February and 7 ½ hours on Thursday 16 February. The mother said that she would not agree to overnight contact at that time because of "serious safeguarding issues". She confirmed to me that her concern about overnight stays was that she had discovered that, since birth, Z had sometimes slept in her cot in the same bedroom as her aunt, the father's sister, and her partner and the mother was unhappy with that arrangement.

40. I also understand that in January 2023 the father was permitted a two hour face to face visit with the children.
41. On 8 February 2023 Hampshire Social Services prepared a report on the family. This report was triggered following a report from the father that the children had been abducted from Spain and he was concerned for their welfare. The report was prepared following interviews with the parents and also interviews with the children at the maternal grandparent's home. Detailed reports of the interviews with the children were set out. A number of voice recordings and videos were annexed to the report and I have been provided with transcripts of those recordings and one of the videos which are said to be relevant to matters before me. In the report it was noted that the parents' relationship had turned significantly sour and that the children were carrying a heavy burden of knowing their parents hated each other. The social worker noted that the emotional harm that children can experience where parents are engaged in conflict could be quite profound. The social worker hoped that the report would ensure the parents reflected on both of them needing to change for the wellbeing of the children in the future. Both parents were advised to stop having inappropriate adult-related conversations with the children because there was evidence that both parents had been speaking to the children about their troubled relationship in a way which was harmful to the children.
42. On 9 February 2023 Spanish social services provided a report which identified all of the interventions which they had carried out with the family. Much of that report summarised the earlier reports I have referred to. In the conclusions section of the report, a number of concerns were expressed about the mother's care of the children and her lack of engagement with their work. The father was said always to be accessible and had been proactive in taking decisions in the children's interests. All four children were said to have a strong bond with the father who was described as having been an "element of protection" to them. The report stated in terms that there had never been any suggestion that the father was a danger or would cause harm to the children.
43. On 25 January 2023 the father applied for custody of the children in Spain with visitation rights to be agreed with the mother depending on her place of residence. Those proceedings in Spain remain outstanding.
44. On 17 March 2023 the Deputy Headteacher of the School in Hampshire provided a letter to the court. In that letter it was recorded that on 10 March 2023 X had not been in a good place and was angry. The letter stated that "*Dad has been speaking to X. Apparently, Dad has told X 'That if he doesn't return to Spain, he won't have a Dad anymore.' All X wanted to do today was stay at Home with mum. This is the first time that he didn't want to come to school.*"

Overview of the conflict between the parents

45. Overall it is clear that the relationship between the mother and father has been very difficult for some time and is extremely acrimonious. Both parties have submitted detailed evidence to that effect. In summary, the father accuses the mother of being neglectful of the children, of drug use, of constantly belittling him and falsely accusing him of things. The mother states that following the incident of physical abuse at the hands of the father in November 2020 she was the victim of ongoing emotional and financial abuse by him. She also accuses the father of being neglectful of the children.

Both of them accuse the other of involving the children in adult conflict, thereby causing the children emotional harm. It is clear, not least from the Cafcass and Hampshire social services report before me, that the parents have allowed the children to become involved in the high-level parent conflict between them and, as a result, the children are considered to be experiencing emotional harm.

The Cafcass evidence

46. In her report dated 9 March 2023 Ms Huntingdon, the Cafcass officer, explored the views, wishes and feelings of each of the children about a return to Spain and provided an assessment of their maturity. Her views were as follows:
- i) X (age 13) was most conflicted in his position about a return to Spain. He demonstrated significant attachment to the Spanish town and the family villa, considering it to be home where he felt settled, comfortable and where he had made strides making friends. However it was evident from his account that his positive experiences had been undermined by the significant impact of the parental conflict upon him in which he had become directly involved. While she was clear that X would wish to return to Spain, in that he told her that he would be “perfectly fine” with a return to Spain, viewing it as a return “home”, he clearly articulated having a much better experience in the English education system so far and his wish for his improved ability to access education to continue. When questioned about X’s views by the mother at the hearing Ms Huntingdon was clear that X was very conflicted. He wanted to stay in the English education system, but his attachment to Spain went beyond just the family villa and was also about the town and wanting to return to the place which had been his home for 10 years.
 - ii) Y (age 11) appeared to associate Spain with his experience of parental divorce, conflict and disruption to his schooling, although this was balanced against a positive description of aspects of his life in the small town in Spain. Y showed some preference to remain in England but did not score his strength of feeling particularly high. However he articulated his concern in the event of a return as being related to his negative experience of the Spanish school and a fear it would result in separation from his mother.
 - iii) W (age 9) expressed a worry for a potential return to Spain and for him this appeared to be related to his account of the father’s “mean” behaviour towards him and his negative experiences of attending Spanish school. His scaling of his strength of feeling against a return was “highly negative”. However his depiction of his life appeared “broadly positive” but as having been marred by the parental separation and change of schools.
 - iv) Z (age 4) presented with a very confused account and while she initially displayed some ambivalence to her father, she later contradicted herself. She did not immediately give a view about a return to Spain which Ms Huntingdon thought might suggest a lack of concrete position. Given her young age, Ms Huntingdon thought that her primary concern would be that she remains with the person whom she considers to be her primary carer. However, when given options she indicated that she would view a return to Spain as not such a good thing and spoke to her negative experience of Spanish school, like her brothers.

47. Ms Huntingdon also reported that Z had said that she gets angry with her daddy, because he “smacks me in the face” and later Z said that describing her daddy made her feel bad “because he hurts me, smacks me in the face with a shoe”. W also told her that, on an occasion when he was unwell, his father had told him to “fuck off” while on a call. W described the father as someone who was preoccupied with telephone calls and who rarely spent time with them when they were home. He also spoke of an occasion when Z was crying in the corner for 5 hours, having been left by the father who was on a call. W said that his father was really “mean” to him and by “mean” he said the father had slapped Z’s bottom when she cried and shouted at the boys. However, the two older boys did not report any physical chastisement by the father. Although Y described his father as “violent” he clarified that the father had hurt the children’s feelings and had not hurt them physically, but that he had pushed their mother, causing her bruising. Y also said his father had once told him to “fuck off”.
48. Ms Huntingdon considered that it was important that the children’s wishes and feelings were viewed within the context of the potential for them to have been influenced. She explained that Y, in particular, appeared to have a list of things he was trying to remember to tell her and she was concerned that he might have been coached to convey issues to her. There were also concerns that the children had been coached based on events surrounding the Hampshire social services report.
49. While Ms Huntingdon broadly assessed the children’s maturity to be in line with their chronological ages, she considered that the adverse experiences of the parental hostility, repeated disruption to their care arrangements and schooling rendered them vulnerable children, whose emotional maturity and levels of resilience might be affected. She also said that while she had concerns about the impact of parental conflict in inhibiting the children’s ability to express themselves fully and the potential for the mother’s antipathy towards the father to influence them, there were indicators that the older children, in particular, were more able to maintain some independence of views.
50. In her report Ms Huntingdon provided the following further information:
 - i) The mother had shared the Hampshire social services assessment with the children which the Hampshire social worker considered deeply inappropriate.
 - ii) A police check on the father had shown a trace in relation to an incident of battery involving the father’s previous wife from 2008, the circumstances of which bore similarities to the common assault of the mother.
 - iii) Ms Huntingdon had been in telephone contact with J, the Social Educator from social services in Spain. J had noted her concern for X’s emotional wellbeing and reported that he had felt suicidal in October 2021 at which time he expressed a wish to be with his father as he felt ‘safe and calm’ there. X’s bond with his father was said to have been evident and Y was also observed to have a close relationship with his father. J told Ms Huntingdon that in her experience of the parents, the father was the more responsive and protective carer and had been the more accessible parent who acknowledged concerns and had taken action to address them. Comparatively J said it was difficult to contact the mother and she had failed to acknowledge or take responsibility for the concerns raised, deflecting responsibility onto the father.

- iv) Should the children be ordered to return to Spain Ms Huntingdon asked for permission for her report to be disclosed in any proceedings before the Spanish court.
- v) Ms Huntingdon also noted the report by the younger children of physical harm by their father and her assessment was that they were experiencing emotional harm owing to their degree of involvement in the high-level parental conflict. She considered that a further referral should be made to Spanish social services. While she noted the report from Spanish social services that adequate provision was in place for the children in their transition to Spanish school, given the children's reported negative experiences and particularly in the context of X's difficulties in accessing learning, there might need to be the consideration of further support.

The parties' positions

51. Each of the parties made detailed submissions to me both orally and in writing. I have borne in mind all of the arguments which they have made. What follows is a summary of the main points raised by each of them.

The mother's case

52. Many of the points made by the mother in her statements and submissions were directed at establishing that the children's welfare was better served by being in the UK than in Spain. I explained to her on a number of occasions the essence of the legal tests which arise for consideration under the Article 13(b) and child objections defences, including the "grave risk" of harm test. Based on the material she has submitted to me, I understand her case on Article 13(b) to be that:
- i) There is a grave risk of harm due to the exposure of the children to the harmful effects of seeing and hearing the father's physical and psychological abuse of the mother;
 - ii) There is a grave risk of harm as a result of the father physically harming the children and being neglectful of them when they are in his sole care;
 - iii) The return of the children would cause a grave risk of harm and/or put them in an intolerable position as a result of having to attend local state schools in Spain which they are ill-suited and ill-prepared to attend. The mother's concern was particularly acute for X who needed additional support for his special educational needs which she said was lacking in the Spanish state system;
 - iv) The return of the children would put them in an intolerable situation due to a lack of available accommodation and financial support in Spain.
53. The mother also asserted that all of the children objected to a return to Spain; that the children were mature enough to express those wishes and that I should exercise my discretion not to return them to Spain on the basis of their objections.

54. During the hearing I asked the mother whether she would return to Spain if I ordered the return of the children and she said that she would. In those circumstances, no issue arises about the potential separation of the mother from the children.

The father's case

55. The father disputes that there is a grave risk that the children's return would expose them to physical or psychological harm or otherwise place them in an intolerable position. He denies that he is abusive towards the mother and he asserts that he is able to care for the children properly. He believes that the children are not safe in the mother's care because they are neglected and exposed to emotional abuse by her.
56. He goes on to argue that, in the event that the court is of the view that a prima facie case of a grave risk is made out, he would offer a range of suitable protective measures. These protective measures have been the subject of reasonably intensive further evidence-gathering. Specifically, the father now proposes:
- a) Not to institute or voluntarily support any proceedings, whether criminal or civil, for the punishment of the mother arising out of the removal of the children to England and Wales on 18th December 2022 and the subsequent retention of the children in England and Wales since 19th December to date;
 - b) Not to harass, molest, pester, use or threaten to use violence against the mother, on a without admissions basis, pending the first *inter partes* hearing in a Family Court in Spain seized of welfare issues relating to the children;
 - c) Not to attend at the airport of arrival of the children save by consent;
 - d) To not make any applications without notice to the mother, pending the first *inter partes* hearing in a Family Court in Spain seized of welfare issues relating to the children;
 - e) To support any application for benefits which the mother makes in Spain;
 - f) To continue to pay 1200 euros per month to the mother for the children in accordance with the order of the local Family Court dated 29 November 2021;
 - g) To pay to an account in the name of the mother the sum of 200 euros monthly for 3 months in advance for utilities and internet on a home she will reside in from the date of return with the children;
 - h) To pay to an account in the name of the mother for property rental the sum of 850 euros monthly for 2 months in advance from 30 April 2023 (when the lease on the current accommodation expires) or in the alternative, the sum of 1100 euros in the event that the mother and children remain living in the flat currently rented in the mother's sole name.

- i) To pay to an account in the name of the mother the sum of 850 euros by way of deposit in the event that the mother rents another property for herself and the children from 30th April 2023 (when the lease on the current accommodation expires);
 - j) To pay the sum of 2300 euros into an account in the name of the mother 48 hours prior to departure on account of the said sums (2 months rent for May and June and 3 months utilities);
 - k) To bring the matter before the Spanish family court as soon as practicable on at least 14 days notice.
57. On the child objections issue, it is the father's position that the children have not said to him that they object to a return to Spain and that they were happy in Spain, save that their school situation was "not ideal". He relies on the fact that the children had only been in the Spanish state education system for 2-3 weeks before they were removed from the country which was not enough time for them to settle. He also relies on the report of the Cafcass officer to the effect that X, Y and Z are not objecting to a return to Spain. While Ms Renton, on the father's behalf, accepts that W is objecting and that he has reached a maturity at which it is appropriate to take into account his views, she asserts that in exercising my discretion I should conclude that there are powerful factors in support of a return to Spain for the child given policy considerations relevant to Hague proceedings and factors relevant to his welfare including the need to keep the family unit together.

The Law

The Hague Convention 1980

58. The objective of the Hague Convention 1980 is set out in the preamble:

"Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,"

59. As explained by Baroness Hale and Lord Wilson in *Re E (Children) (Abduction: Custody Appeal)* [2012] 1 AC 144:

"[14] ... This objective is, of course, also for the benefit of children generally: the aim of the Convention is as much to deter people from wrongfully abducting children as it is to serve the best interests of the children who have been abducted. But it also aims to serve the best interests of the individual child. It does so by making certain rebuttable assumptions about what will best achieve this: see the Explanatory Report of Professor Perez-Vera, at para 25."

60. Article 12 of the 1980 Convention provides:

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith."

61. Article 13 provides, so far as material:

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

...b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views."

Harm and Article 13(b): the law

62. The mother relies on the harm exception set out in Article 13(b) of the Hague Convention 1980. The law in respect of the defence of harm or intolerability under Article 13(b) was considered by the Supreme Court in *Re E* (citation above). In *E v D (Return Order)* [2022] EWHC 1216 (Fam) MacDonald J helpfully summarised the applicable principles arising from that decision as follows at §§29-30:

“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, in principle, such anxieties can found the defence under Art 13(b).

30. In *Re E*, the Supreme Court made clear that in examining whether the exception in Art 13(b) has been made out, the court is required to evaluate the evidence against the civil standard of proof, namely the ordinary balance of probabilities whilst being mindful of the limitations involved in the summary nature of the Convention process. Within the context of this tension between the need to evaluate the evidence against the civil standard of proof and the summary nature of the proceedings, the Supreme Court further 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 grounding the defence under Art 13(b). Rather, the court should assume the risk of harm at its highest and then, if that risk meets the test in Art 13(b), go on to consider whether protective measures sufficient to mitigate harm can be identified."

63. Moylan LJ in *Re C* [2021] EWCA Civ 1354 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."

64. 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* [[2021] EWCA Civ 939], 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). ”

65. In *Re S (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257 Lord Wilson held that the methodology articulated in *Re E* formed “part of the court’s general process of reasoning in its appraisal of a defence under the article” (at §22), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. It follows that when evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Hague Convention process. There is a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true (see *Re E* at §32 and §36).
66. As a result, in a case where allegations of domestic abuse are made, the courts have adopted a pragmatic solution which is first to ask whether, if the allegations are true, they would potentially establish the existence of a grave risk within the scope of Article 13(b) and, if so, the court must then ask how the child can be protected against the risk (*Re E* at §36, *Re A* [2021] EWCA Civ 939 at §96, *Re C* (citation above) at §63, *Re AM (A Child) (1980 Hague Convention)* [2021] EWCA Civ 998 at §32 and see also the Guide to Good Practice Part IV, Article 13(b) dated 2020 at §§40-41).
67. If a potential grave risk is made out at the first stage, the court then determines whether the grave risk exception is established by reference to all the circumstances of the case (see Guide to Good Practice at §41 and *Re A* (citation above) at §94). This second stage requires a proper evaluation of the sufficiency and efficacy of any protective measures with a view to determining whether the nature and extent of those measures addresses or sufficiently ameliorates the risk(s) which the allegations potentially create (*Re. B (Children)* [2022] EWCA Civ 1171 at §§71-72).
68. Although it is not necessary, it is preferable for the judge to adopt this two stage process under Article 13(b), as emphasised by the Court of Appeal in *Re. B* (citation above) at §71. As Moylan LJ stated in *Re C* (citation above) at §58:

“...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.”

69. As made clear by Lady Hale and Lord Wilson in *Re E* at §52 “The clearer the need for protection, the more effective the measures will have to be.”
70. If a number of different allegations are made, the judge should consider the cumulative effect of the allegations as a whole, not individually, before evaluating the nature and level of risk. While there may be distinct strands which have to be analysed separately the court must not overlook the cumulative effect of the allegations for the purpose of evaluating the nature and level of any grave risk(s) that might potentially be established as well as the protective measures to address such risks (*Re. B* (citation above) at §70).
71. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention (see *Uhd v McKay* [2019] 2 FLR 1159 at §70, as approved by the Court of Appeal in *Re A* (citation above) at §94 and *Re AM* (citation above) at §34). While the judge should be careful when conducting a paper evaluation, and should not, for example, discount allegations of physical or emotional abuse merely because they have doubts about their validity or cogency (*Re A* (citation above) at §95) it does not mean that there should be no assessment of the credibility or substance of the allegations (*Re C (Children) (Abduction: Article 13(b))* [2018] EWCA Civ 2834 per Moylan LJ at §39 relying on *Re K (1980 Hague Convention: Lithuania)* [2015] EWCA Civ 720 at §§52-53).
72. It follows that when conducting the analysis at the first stage the Judge will have to consider whether ‘the evidence before the court enables [them] confidently to discount the possibility that the allegations give rise to an article 13(b) risk’ (see *Re. K* (citation above) at §§52-53; *Re A* (citation above) at §94 and *Re AM* (citation above) at §33). If that assessment can be made then a grave risk will not be established and the defence will not have been made out.
73. In his judgment in *E v D* (citation above) at §32 MacDonald J helpfully identified the following principles in determining whether protective measures, including those available in the requesting State beyond the protective measures proposed by one or both parties, can meet the level of risk reasonably assumed to exist on the evidence. These principles can be drawn from the Court of Appeal decisions concerning protective measures in *Re P (A Child) (Abduction: Consideration of Evidence)* [2018] 4 WLR 16, *Re C (Children) (Abduction: Article 13(b))* [2019] 1 FLR 1045 and *Re S (A Child) (Hague Convention 1980: Return to Third State)* [2019] 2 FLR 194:
 - “i) The court must examine in concrete terms the situation that would face a child on a return being ordered. If the court considers that it has insufficient information to answer these questions, it should adjourn the hearing to enable more detailed evidence to be obtained.
 - ii) In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent

to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance.

iii) The issue is the effectiveness of the undertaking in question as a protective measure, which issue is not confined solely to the enforceability of the undertaking.

iv) There is a need for caution when relying on undertakings as a protective measure and there should not be a too ready acceptance of undertakings which are not enforceable in the courts of the requesting State.

v) There is a distinction to be drawn between the practical arrangements for the child's return and measures designed or relied on to protect the children from an Art 13(b) risk. The efficacy of the latter will need to be addressed with care.

vi) The more weight placed by the court on the protective nature of the measures in question when determining the application, the greater the scrutiny required in respect of their efficacy.

33. With respect to undertakings, what is therefore required is not simply an indication of what undertakings are offered by the left behind parent as protective measures, but sufficient evidence as to extent to which those undertakings will be effective in providing the protection they are offered up to provide.”

74. In *Re C* (citation above) Moylan LJ emphasised 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). He endorsed what MacDonald J said in *G v D (Absence of Protective Measures)* [2020] EWHC 1476 (Fam) at §39, namely:

“Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example *Re H (Abduction: Grave Risk)* [2003] EWCA Civ 355, [2003] 2 FLR 141, *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and *Re L (Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433). In this context I note that Lowe et al observe in *International Movement of Children: Law, Practice and Procedure (Family Law, 2nd edn)*, at para 24.55 that: 'Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or,

even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases.”

75. If a potential grave risk is identified which cannot be negated by any protective measures, then the Supreme Court in *Re E* held that a court must do ‘the best it can’ to resolve the disputed allegations (see §36).
76. If a point is reached at which I have to exercise my ‘discretion’ whether to order a return, I will 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”.

77. The guidance in *Re G (Abduction: Consent/Discretion)* [2021] EWCA Civ 139 at §41 is also helpful and provides:

“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.”

Child's Objections: the law

78. In the recent decision of *V v C (A Child) (Wrongful Retention: Child's Objections: Discretionary Return)* [2023] EWHC 560 (Fam) Richard Harrison KC sitting as a

Deputy Judge of the High Court, helpfully summarised the principles to be applied when the court is considering the defence of child objections. At §§76-82 he stated:

“76. The leading authority on the child’s objections exception - at least so far as the so called ‘gateway’ stage is concerned - is *Re M (Republic of Ireland) (Child’s Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26. As to discretion, the leading authority is *Re M (Children) (Abduction: Rights of Custody)* [2007] UKHL 55.

77. In *Re Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490 (Fam) at paragraph 50, Williams J summarised the relevant principles to be derived from both of the *Re M* cases as well as the later decision of *Re F (Child’s Objections)* [2015] EWCA Civ 1022 as follows:

i) The gateway stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.

ii) Whether a child objects is a question of fact. The child’s views have to amount to an objection before Article 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.

iii) The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child’s views are one factor to take into account at the discretion stage.

iv) There is a relatively low threshold requirement in relation to the objections defence, the obligation on the court is to ‘take account’ of the child’s views, nothing more.

v) At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times bear in mind that the Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.

vi) Once the discretion comes into play, the court may have to consider the nature and strength of the child’s objections, the extent to which they are authentically the child’s own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which

are relevant to the child's welfare, as well as the general Convention considerations.

The same summary appears in the judgment of MacDonald J in *B v P* [2017] EWHC 3577 (Fam).

78. As Williams J also pointed out at paragraph 51 of *Re Q & V*, in some cases an objection to a return to one parent may be indistinguishable from a return to a country.

79. Although in *Re M (Republic of Ireland)* the Court of Appeal distinguished an objection from a preference or wish, they did not set out a positive definition of the term. No such definition is to be found in the 1980 Hague Convention or in the Explanatory Report. The French language version of the Convention uses the reflexive verb '*s'opposer*' in this context, a verb which can be translated as either 'to object' or 'to oppose'.

80. At paragraph 77 of *Re M (Republic of Ireland)* Black LJ offered the following guidance:

"I am hesitant about saying more lest what I say should be turned into a new test or taken as some sort of compulsory checklist. I hope that it is abundantly clear that I do not intend this and that I discourage an over-prescriptive or over-intellectualised approach to what, if it is to work with proper despatch, has got to be a straightforward and robust process. I risk the following few examples of how things may play out at the gateway stage, trusting that they will be taken as just that, examples offered to illustrate possible practical applications of the principles. So, one can envisage a situation, for example, where it is apparent that the child is merely parroting the views of a parent and does not personally object at all; in such a case, a relevant objection will not be established. Sometimes, for instance because of age or stage of development, the child will have nowhere near the sort of understanding that would be looked for before reaching a conclusion that the child has a degree of maturity at which it is appropriate to take account of his or her views. Sometimes, the objection may not be an objection to the right thing. Sometimes, it may not be an objection at all, but rather a wish or a preference.

81. *Re F (Child's Objections)* [2015] EWCA Civ 1022 the Court of Appeal was critical of the introduction of glosses to the meaning of the word 'objection' including the introduction of the concept of 'a Convention objection' or the suggestion that for these purposes what needs to be established is 'a wholesale objection'. Black LJ made clear that:

"Whether a child objects is a question of fact, and the word "objects" is sufficient on its own to convey to a judge hearing a Hague Convention case what has to be established; further

definition may be more likely to mislead or to generate debate than to assist.”

82. So far as the exercise of discretion is concerned, in *Re M (Children) (Abduction: Rights of Custody)* Baroness Hale emphasised that once the gateway is crossed, discretion is ‘at large’: it is not the case that a return can only be refused in exceptional cases. At paragraph 43 she said:

“... 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.”

At paragraph 46 she added:

“In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.”

Findings: Conclusions

Harm and Article 13(b)

79. The burden is on the mother to demonstrate that one of the exceptions to an order for summary return has been established. As I have explained at §59 above, there are distinct strands to the mother's case which I consider need to be analysed separately. I have addressed each of these below.

i) Domestic abuse of mother and impact on children

80. On the evidence before me it is clear that the mother and father have had a very acrimonious relationship for some time. Whatever the father's explanation for what occurred, in November 2020 an incident of violence by the father to the mother was admitted by the father in Spanish proceedings and a Restraining Order was imposed for 12 months. Since that time, although there have been no further physical assaults, it is the mother's case that she has suffered emotional and financial abuse by the father and continued bullying by him.
81. It is also clear that both parents have continued to expose the children to the conflict between them and that this has rendered the children vulnerable. I note that the children are said to be carrying a "heavy burden" of knowing their parents hate each other and that the emotional harm which children can experience in this situation can be quite profound (as explained by reference to these children in the Hampshire social services assessment). X in particular has been drawn into the parental conflict in a way which has caused him acute upset and distress, including when he had to give evidence during the restraining order proceedings in Spain. Given his documented mental health problems and neurological profile, it appears that he has been particularly affected by the abuse which he has witnessed to date.
82. While I have some doubts about the validity and cogency of the mother's assertions of recent and ongoing emotional and financial abuse by the father, particularly given the information contained in the Spanish social services reports, I consider that, taking the evidence cumulatively, the allegations do establish the potential existence of a grave risk within the scope of Article 13(b). I therefore propose to move on to the second stage of the analysis and consider how the children can be protected against that risk.
83. Before I do that, however, I want to be clear as to what the nature and level of risk is to the children taking the mother's case at its highest. Given the toxicity of the relationship between the parents to date and the fact that the high-level conflict between them remains ongoing, if the mother and children return to Spain there is a risk that the children will witness further conflict between the parents. On the basis of the allegations made by the mother I consider that there is a significant risk that such conflict will escalate again, particularly while their divorce remains ongoing, and that that risk carries with it further risk that the children will be drawn into seeing verbal abuse of the mother by the father, and possibly also physical abuse. Given the harm which has already been caused to the children due to being exposed to the conflict between their parents, any such escalation has the potential to cause them psychological harm. That is particularly the case with X for reasons I have already explained.
84. As to the protective measures which might address the risks I have identified, the following matters are relevant:
- i) The father and mother will not be living under the same roof when they return to Spain;
 - ii) The judicial authorities of Spain have legal remedies available to protect women against domestic abuse;
 - iii) Those legal remedies proved effective in this case when the mother was able to come before the Court of Violence in Spain within 4 days of the assault which

occurred in November 2020 and she successfully obtained a Restraining Order against the father;

- iv) While the mother complains that the father was in breach of the Restraining Order because there were times when he came within 300m of her, it is apparent that she was able to bring that complaint to the Court of Violence and that the court considered evidence relating to it, including witness statements. The fact that the particular complaint raised was dismissed on the evidence before the court does not, in my view, undermine the overall accessibility and effectiveness of the legal process;
- v) The mother said in oral submissions that “in Spain they take violence very seriously”;
- vi) As is apparent from the detailed reports I have referred to earlier in this judgment, Spanish social services were working with the family for over 2 years prior to the wrongful removal of the children and the children are well known to them. Their reports suggest they were responsive and proactive in response to problems encountered by the family, including when X was suicidal and when Y was recuperating from his operation and further medical attention was required;
- vii) There has been contact between Cafcass and Spanish social services and a further referral is to be made to Spanish social services given the Cafcass assessment that the children are experiencing emotional harm owing to their degree of involvement in the high-level parental conflict. On that basis, Spanish social services will be fully appraised of the risks which may arise and I have no doubt that they will continue to work with the family for the protection of the mother and children as appropriate;
- viii) The father offers an undertaking as to his behaviour (see §56(b) above) not to assault, threaten, intimidate, harass or pester the mother which can be registered or declared enforceable under the regime of the 1996 Hague Convention.

85. Overall, taking into account these protective measures, I am satisfied that the risks on return to the children arising from abuse by the father to the mother can be addressed and sufficiently ameliorated so that the children will not be exposed to a grave risk within the scope of Article 13(b).

ii) Abuse/neglect by father to children when in his sole care

86. In her oral submissions and in some passages in her latest written submissions the mother makes allegations that the father was neglectful of the children when they were in his sole care. These allegations were that the father once threw a shoe at Y; that Z was once drowning in a swimming pool and the father asked the other children to rescue her; that in October 2020 the father fell asleep when he was looking after Z when she was 14 months old with doors open to the swimming pool (I was shown a 40 second video of the father asleep on the sofa with Z watching a cartoon on TV); that the father made Y go for “rugged walks” after his operation; that the father sometimes let X roam the streets while playing a Pokemon game and that the father once dropped the children several hundred metres away from the house (because of the Restraining Order) when

Y was in a wheelchair. The mother also relied on some of what the children had reported in the Cafcass report, including the father telling W to “fuck off” once when the father was on the phone; the father leaving Z crying for 5 hours when he was on a call, together with some of the generally negative comments made by the children about their father in the Cafcass and Hampshire social services interviews. She asserted that the children were scared of their father and did not want to spend time with him.

87. In her oral submissions the mother also relied upon Z reporting to the Cafcass officer that the father had smacked her in the face and smacked her in the face with a shoe. The mother referred me to a short transcript which was apparently recorded on 30 August 2022 (when Z would have been just 4 years old) in which Z was heard to say “My dad wacked me”. The mother also relied on the Cafcass officer reporting that W had said the father slapped Z’s bottom which she cried and shouted at the boys.
88. The mother also said that she was worried about the father’s level of alcohol consumption.
89. I have considered the mother’s allegations of neglect and direct physical abuse by the father against the children carefully. But when evaluating the evidence before me and when making a reasoned and reasonable assessment of the risk taken at its highest, I consider that I must also take into account the following:
 - i) The Cafcass officer was concerned that the children may have been influenced (see §48 above) and there were also concerns about possible coaching by the mother at the time of preparation of the Hampshire social services report (the mother asserted that the social worker had omitted to include that Y had reported his father throwing a shoe at him);
 - ii) Neither of the older children – X or Y - reported any physical abuse of the children by the father to Cafcass. Y told Ms Huntingdon that the father had hurt the children’s feelings and had not hurt them physically.
 - iii) No reports of abuse or neglect were made by the children to the social worker at Hampshire social services when they were interviewed in January 2023. The most that was said by the children was that their father was sometimes bad tempered and/or dismissive of them while he was working and that he was “always in a mood” and “aggressive” because he “sends us to our rooms and doesn’t let us play outside or go to the beach” (see the interviews with Y and W);
 - iv) There was no mention of any direct abuse or neglect of the children by the father in the mother’s first witness statement in these proceedings filed on 30 January 2023;
 - v) The mother’s core complaint which led to her coming to the UK was about the children’s schooling and them being taken out of private school. That is evident from the message she sent on arrival in the UK (see §35 above), her first witness statement and her written opening statement.
 - vi) There is glancing reference at best to any concerns about the children’s safety while with the father in the mother’s written statements;

- vii) Despite close involvement of Spanish social services with the family for over 2 years prior to their removal to the UK, they never expressed any concerns about the father's level of care. Their assessment dated February 2023 was that the father had a strong bond with the four children, especially X and they stated that there had never been any suggestion that the father was a danger or would cause harm to the children; if anything the father had been "an element of protection for all four children";
 - viii) Specific examples are given in the Spanish social services reports of the father referring welfare concerns about the children on to them, including concerns about Y's health and recovery after his operation. It is also recorded that X went to stay with his father in October 2021 at a time when he was suicidal because he felt "safe, understood and 'calm'" around the father;
 - ix) In November 2021 the mother, when represented by lawyers, agreed the living arrangements for the children as reflected in the 29 November 2021 court order which included the father having the children on two weekdays and alternate weekends and half the holidays. Had the mother been concerned about the father's ability to care for the children safely I would have expected her to raise her concerns at that stage and to resist such extensive contact with the children;
 - x) There have been periods when the father has had sole care of the children for longer than what was agreed in November 2021. It is clear that there was a time in around October 2021 when X came to stay with him when X was suicidal and Z, W and X also stayed with him in April 2022 while Y was recovering from his operation and was staying with the mother. Again, had the mother been concerned about the father's care of the children, I would have expected that to have been raised at the time and there is no evidence it was;
 - xi) With the mother's agreement the father has been able to spend long days with his children during the recent February half term and in accordance with the order of Mr Verdan KC dated 19 January 2023.
90. Taking all of the above into account, my reasoned and reasonable assessment of the evidence before me about any risks to the children when in the sole care of the father is that I can confidently discount the possibility that these allegations give rise to an Article 13(b) risk. In my assessment, the evidence taken at its highest establishes at most that the father may at times be irritable and/or dismissive of the children, particularly when he is working and on work calls. That comes nowhere near the grave risk threshold.
91. Further and in any event, even if the risk was higher such that a potential grave risk arose in this manner, I would have concluded that there are protective measures which could mitigate and ameliorate any grave risk given the extensive involvement of Spanish social services in this case (which I fully expect to continue – as discussed in detail at §§84(vi) and (vii) above) and given the protections afforded by the Spanish judicial system. The children are also not returning to the exclusive care of the father; the Spanish court order provides for the care to be shared, and I would expect that any concerns about the father's care of the children would be swiftly identified by the mother, their schools and Spanish social services.

92. For the avoidance of doubt the mother's case that the father's level of alcohol consumption is dangerous to the children is entirely unsupported by her exhibit 3 which she relies on.

iii) Having to attend Spanish school

93. As I have identified above, the principal reason why the mother came to the UK with the children was because the children had been enrolled in Spanish state schools contrary to her wishes. It is her position that they are ill-suited and ill-prepared to attend these schools and that expecting them to do so upon return to Spain would give rise to a grave risk of harm and otherwise put them in an intolerable position. She also asserts that there would be a lack of special educational needs provision for X.

94. I am able to confidently discount the possibility that this would give rise to a grave risk of harm or otherwise place the children in an intolerable position for the following reasons:

- i) The children have lived in Spain for many years. According to the father (which evidence is not contested by the mother) X, Y and W all at least have a good understanding of Spanish and I have seen evidence supporting the fact that the three official languages in the area are Spanish, Valenciano and English;
- ii) The children had only been attending the state Spanish schools for 2-3 weeks before they were brought to the UK and, prior to that, they had been absent from school since June 2022. In those circumstances it is unsurprising that they would require time to settle into the schools, but they had not been given the opportunity to do that before they were removed from Spain;
- iii) There is evidence from X's secondary school in Spain which suggests he had settled in well in December 2022 in the two weeks he had been at Spanish school;
- iv) The father has explained that X's new school recognised his special educational needs and had assigned him a special needs tutor to deliver lessons to X and another child one-to-two. This is supported by information from Spanish social services in their report dated February 2023;
- v) In any event the Cafcass report will be shared with Spanish social services which highlights the need for consideration of further support for X given the gaps in X's learning which have been identified while he has been in the UK. Given the proactivity shown by social services in Spain to date, I have no doubt that they will take that suggestion seriously and ensure that such additional provision as X needs will be put in place.
- vi) There is evidence that the children's school places remain open for them.

95. Looking at the evidence in the round, while it may be difficult for the children to integrate into Spanish schools given the history of their education to date, it is not a situation which these particular children could not be expected to tolerate. As stated by Baroness Hale and Lord Wilson at §34 of *Re E* "Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up."

Accordingly, I can confidently discount the possibility that the children will suffer the risks of harm or face an intolerable situation in the manner contemplated by Article 13(b).

iv) Accommodation

96. The mother's case is that it would be unacceptable to return the children to the family villa in circumstances where it was considered uninhabitable as recently as January 2023 by an architect who she instructed to assess the property. It transpires however that the mother still has just over one month to go on the lease of the apartment which she rented in the port of the town in May 2022; the lease does not run out until the end of April 2023. While the mother says that this accommodation is unsuitable because it has no outside space and is small, I note that she chose the property for herself and the children in May 2022 and lived there with them until she left for the UK in December 2022.
97. The father has also agreed to fund a further two months' rent after that, either for the same apartment if the mother can extend the lease, or he has undertaken to pay a further two months' rent at a level which is consistent with properties currently being advertised for rent in the same area. Property particulars have been provided for three-bedroomed apartments which support the undertakings he has given.
98. While maintenance obligations fall outside the scope of the 1996 Hague Convention, I am satisfied that the father's undertakings will be complied with, not least because I have seen evidence of maintenance payments being made regularly by the father to the mother between February 2022 and January 2023. I have also seen evidence that the father has been making regular mortgage payments on the family villa. While the mother asserts that the father is sometimes late with maintenance payments or sometimes pays these from different accounts, she has not produced any evidence that he is financially unreliable in the way she generally contended.
99. In those circumstances I am satisfied that the mother and children will have suitable accommodation available to them in Spain upon return and no risks within the meaning of Article 13(b) arise.

(v) Lack of financial support

100. Both the mother and the father now accept that the family villa needs to be sold. The father's consent to the sale was evidenced in documentation before me and the mother accepted during the hearing that she would have to consent to the sale of the property so that funds could be available in the future for further property rental or living expenses. The property has recently been valued which indicates that it could be sold off as two plots worth 550,000 and 880,000 Euros respectively. The estate agents have said that there is a buoyant property market at present although the long term forecast is not very optimistic and therefore their strong recommendation is to get the property on the market sooner rather than later. Although the mother asserts that some of this property is part-owned by her mother, she did not dispute that the sale would provide her and the father with sums which would assist with living expenses and/or further property purchase/rental.

101. In addition, as I have indicated above, there is no evidence that the father has not been making regular maintenance payments to the mother, as agreed and reflected in the November 2021 court order and he has given undertakings that those will continue, which I fully expect he will comply with. The father has also committed to paying sums for utilities and will be paying a significant sum to the mother (2300 Euros) on account 48 hours prior to the children's departure.
102. I also accept the father's contention that there is evidence that the mother is financially supported by the maternal grandmother. The mother states in her third statement (which responds to the statement of the father) that her mother has supported her financially for the last 3 years "and continues to do so". The maternal grandmother also rented the apartment in the port of the town for the mother in May 2022. It may be that the mother may have to call on her mother to assist her financially in the short term.

Conclusion: Article 13(b)

103. In my judgment the mother has not discharged the burden of establishing that there is a grave risk that the return of the children to Spain will expose them to physical or psychological harm or otherwise place them in an intolerable situation.

Child Objections: The gateway stage

104. The most reliable source of evidence before me about the children's views, wishes and feelings is the Cafcass report. Beyond that and for her part the mother simply asserts that all of the children object to a return. For the father, Ms Renton concedes that, on the basis of the Cafcass report, W is objecting to a return and has also attained an age and maturity (age 9) at which it is appropriate to take into account his views. But she submits that the other three children are not objecting and therefore the child objections defence fails at the gateway stage for them.
105. Turning to the Cafcass report, the evidence suggests as follows:
- i) X is not objecting to a return and specifically said in terms that he would be "perfectly fine" with it;
 - ii) Y showed some preference to remain in England but did not score his strength of feeling particularly high. His concern in the event of a return related to his negative experience of Spanish school, not a return to the country. Accordingly, on a straightforward and robust analysis of his evidence, he is not objecting to a return to Spain;
 - iii) Z did not immediately give a view about a return to Spain which Ms Huntingdon thought might suggest a lack of concrete position. When given options, she indicated that she would view a return to Spain as not such a good thing and spoke about her negative experiences of Spanish school. While I am not persuaded that this evidence demonstrates that Z is objecting, even if that hurdle was crossed, I do not consider she has attained an age and stage of development at which it is appropriate to take into account her views. She is young, only 4 years old, and Ms Huntingdon indicated that these were vulnerable children whose emotional maturity and levels of resilience may have been affected by their experiences to date.

106. In those circumstances, I have concluded that the child objections defence does not get beyond the gateway stage for X, Y and Z.

Discretion: W

107. So far as the exercise of my discretion is concerned, the following factors are particularly important in W's case:

- i) The policy of the Convention carries significant weight in a case such as this and in circumstances where the children were wrongfully removed from their place of habitual residence in breach of the father's custody rights and with no notice whatsoever to the father. I bear in mind that the Convention only works if, in general, children who have been wrongfully removed in such circumstances are returned promptly;
- ii) It is also significant that the removal was in breach of the Spanish court order dated 21 November 2021 which provided that the children would not be able to leave the territory of Spain without the consent of both parents and the mother took no steps to vary that order;
- iii) As to whether, given his age and maturity (age 9) W's objections should carry weight, I take into account that it was doubted by the Cafcass officer whether his views were authentically his own. I also bear in mind that the Cafcass officer considered these to be vulnerable children whose emotional maturity and levels of resilience might have been affected by their experiences including their adverse experiences of parental hostility;
- iv) On the other hand, I consider that it is rational and understandable that he would have worries about a potential return to Spain particularly given the schooling situation which no doubt will be difficult and disruptive for him and I have therefore given some weight to his objections despite the factors at (iii) above;
- v) W was said by social services in Spain to have a strong bond with his father. When interviewed by Cafcass, despite expressing some negative feelings about his father, he agreed that he would want to be able to have a relationship with each parent and for it not to be problematic. He also told Hampshire social services in January 2023 that his relationship with his father was "ok". I consider that it is important that he should be able to resume his close relationship with his father which is important particularly for his long-term wellbeing;
- vi) The prospect of splitting the children up is a wholly unpalatable one. They have always lived together and they should remain as a unit;
- vii) In his interview with Cafcass W spoke about missing his friends in Spain and his sadness at not having been able to say goodbye to them. He also spoke about his enjoyment of parkour (which he had not found in England) and the freedom he enjoyed spending time outdoors in Spain;
- viii) While starting again at Spanish school will be difficult and daunting for W I consider that there is every prospect that he will successfully integrate once

given the time to do that. That is particularly so in circumstances where social services in Spain are highly likely to remain involved with the family and will be monitoring their re-integration.

108. Taking into account all of these factors I have come to the clear conclusion that the balance falls down in favour of ordering a return. In my judgment the policy considerations in favour of a return combined with other welfare factors significantly outweigh W's objections.

Conclusion

109. As the mother has failed to establish either of her defences to a return, I will make an order that the children are returned to Spain swiftly. In particular I order that the children should arrive back in Spain no later than 7.00pm on the evening of Tuesday 11 April 2023, which gives them a reasonable period to prepare for a return.
110. I wish to conclude by stating that it is of paramount importance in the future that the parents put aside any animosity which they hold towards each other and focus on working collaboratively in the best interests of the children. This judgment and the reports by Cafcass and Hampshire social services should be a sobering wake up call to them that they need to stop involving their children in their own conflict and focus on supporting them through their childhood.