



Neutral Citation No: [2021] EWHC 2688 (Fam)

Case No: FD21P00246

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

**IN THE MATTER OF K AND M (Children)**

The Royal Courts of Justice  
The Strand  
London  
Date: 14 September 2021

Before:  
**MR RICHARD HARRISON QC**  
**Sitting as a Deputy High Court Judge**

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Re K and M (Children) (Abduction: Grave risk: Intentional Car Crash)  
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Ms Anita Guha (instructed by Brethertons Solicitors) appeared on behalf of the applicant.

Ms Maggie Jones (instructed by Ben Hoare Bell solicitors) appeared on behalf of the  
respondent  
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Hearing dates: 8 and 9 September 2021

Covid-19 Protocol: This judgment was handed down by the judge remotely by email. The  
date and time for hand-down will be deemed to be 4pm on 14 September 2021  
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**Approved Judgment**

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.

## **Mr Richard Harrison QC:**

### **Introduction**

1. I am concerned with twin boys, K and M, born in 2016 and aged 5. They are the children of the applicant father and the respondent mother. The mother has two older children from her previous marriage, F (a boy aged 11) and Z (a girl aged 9).
2. It is accepted that in November 2020 the mother wrongfully removed the children from Poland, where they were habitually resident, to England. The father now invites the court to make an order for their summary return to Poland under the 1980 Hague Convention.
3. As the removal of the children is accepted to be wrongful, the court is obliged to order their return forthwith unless the mother can establish an exception under Article 13 of the Convention. The only exception she relies upon is Article 13(b): grave risk.
4. I have been greatly assisted by the helpful written and oral submissions provided to the court by Mr Guha on behalf of the father and Ms Jones on behalf of the mother.
5. I have read all of the evidence in the court bundle and heard very brief oral evidence from Ms Kay Demery of the Cafcass High Court team, who prepared a report dated 18 June 2021. After the conclusion of the submissions, I permitted the mother to adduce a further document, previously disclosed at a directions hearing, and also admitted a statement from a social worker which had been omitted from the bundle in error. I also received further brief written submissions from both sides in relation to the social worker's statement and a translation of an email from the father's criminal lawyer.
6. A large part of the evidence in the case relates to an incident on 28 July 2020 when the father drove his car into a minibus, which was travelling at approximately 35 mph and in which the mother, the maternal grandmother and all four of the children were passengers. Before coming to this incident, I shall begin by setting out some of the background.

### **Background**

7. The parties are both Polish nationals who were born in Poland.
8. The father is now aged 33. I understand that he left school at the age of 18, after which it appears that he obtained what he has described as professional qualifications as a welder, crane operator and electrician. He has worked in a variety of jobs since then, both in Poland and in Germany. In 2014 he was convicted of 'drug possession and drug driving' for which he received a suspended custodial sentence.
9. The mother is now aged 32. She is not presently working. She is a full-time carer to the four children. She was previously married to the father of the two older children, but divorced her husband prior to meeting the father.
10. The parties met in Germany in 2015. According to the father, at the time of their meeting, the mother had 'fled' from her previous husband. The mother informed the local authority [E39] that she had been involved in a relationship with her previous partner between 2008

and 2014 and gave a description of him being violent towards her (putting his hands around her throat). He had apparently cut the hands of a third party who had intervened to protect the mother, and for this offence he was sent to prison for 10 months.

11. In 2016, the twins were born in Germany. The parties had difficulties in their relationship from a very early stage. They separated for a period of time when the twins were just two months old.
12. The parties at some point reconciled following that initial separation. They married in July 2017, when the twins were aged 14 months.
13. In early 2018 the parties moved from Germany to Poland; the children have been habitually resident in that jurisdiction since that time.
14. The mother alleges that during the course of the parental relationship the father has been very violent and abusive towards her and towards the older two children. She alleges that he has been sexually violent towards her and that he has either been sexually inappropriate towards or has sexually assaulted her daughter Z. She says that his behaviour towards the older children began in 2016 following the birth of the twins.
15. The allegations which the mother makes in relation to the children, in summary, include the following:
  - (a) Requiring the older children *'to carry heavy things for lifting, tidying the garbage and lighting the fire in the log burner'*.
  - (b) Being sexually inappropriate towards and/or sexually assaulting Z, including grabbing her bottom and putting his hand under her T shirt.
  - (c) When Z was aged 5, the mother alleges that the father asked her if she wanted to see what was under his pants.
  - (d) Grabbing F's bottom and squeezing his testicles until he cried out.
  - (e) Threatening to hit the older children with his leather belt
16. The mother alleges that when she intervened to protect the children, the father would turn his anger onto her. She says that *'we were all terrified of him'*. She describes a pattern of behaviour whereby the father *'seemed to think he could do or say anything to any of us and that he was above criticism'*. She says that she would seek help from the father's parents whose interventions would lead to a temporary respite from the father's behaviour before it would restart.
17. The most serious allegations the mother makes against the father in the period leading up to July 2020 (when the car crash incident occurred, addressed separately below) relate to the violence and abuse which says was perpetrated against her. She alleges that following the birth of the twins the father raped her *'many times'*. She also alleges that on two occasions she was physically assaulted by the father, including being slapped across the face hard. She further alleges that when the father was angry he would push and shove her about. As she puts it, *'I had to do everything he demanded when he demanded'*.
18. In addition to her allegations of sexual and physical violence, the mother also alleges that the father behaved towards her in a coercive and controlling manner: if his food was not right or if she asked for money or wanted to go anywhere, he would fly into a rage and drag

her down to the basement and order her to stay there. On her case, this behaviour was witnessed by the children. The mother says that, although the basement had no lock, she would remain there as she was too scared to disobey the father. The mother also describes that the father would not allow her to take the children for a walk without his permission.

19. The mother makes other allegations indicative of a pattern of coercive and controlling behaviour. These include that the father would seek to prevent her from buying food for her older son F and that F was too scared to go to the toilet during the night as the father would shout and scream at him for getting up. On her account, both she and the children were living in a climate of fear. She alleges that the father would threaten her that, if she did not like the way things were, she could leave but without the children.
20. With the exception of the incident in July 2020 concerning the vehicle crash, the father denies the mother's allegations of abuse. He alleges that it was in fact the mother who behaved abusively towards the children and that on one occasion he threatened to take her to the police station to prevent her from hitting them.
21. On any view the relationship between the parties was volatile. The police disclosure includes a letter dated 4 September 2018 from a police force to the Chairman of the Municipal Interdisciplinary Team for Combating Family Violence. This encloses a document described as *'the "blue card" on the situation of violence in the family of [the parties]'*. Although I have limited information as to the significance of a Blue Card, it appears to encompass a procedure whereby steps can be taken by a social work authority to ensure the safety of children (and perhaps also alleged victims) in families where domestic violence is present. It is clear that the family situation had given rise to concern on the part of the relevant authorities. Another document provided with the police disclosure at [F280] suggests that the Blue Card procedure was initiated following a report by the mother in August 2018 that the father had perpetrated domestic violence against 'family members'. In a statement made, I believe, to either the police or a probation officer on 4 November 2020 [F268] the mother reported that the father had been abusing her physically and psychologically since February 2018. She said that in July 2018 she had left the family home and gone to another town, where she made a report to the police about the father's abuse; she then attempted to withdraw the report but the police had initiated the Blue Card procedure. There is a note on page F269 relating to the account given by the mother during her interview on 4 November 2020 which states as follows *'that the Blue Card procedure had been initiated in the family, but she did not want to testify because, as she stated, she was afraid of the consequences of her husband's actions'*.
22. The police letter dated 4 September 2018 was accompanied by a form (which appears to be the Blue Card itself) giving some details as to the allegations that had been made against the father. There is a chart at F248 which suggests that at that stage the mother's allegation was that the abuse had been directed mainly towards herself (with just a single allegation relating to the children). The boxes relating to physical abuse were left blank. Several sub-categories of 'mental abuse' were ticked including controlling behaviour. Also ticked was the box alleging that the father was responsible for 'Forcing someone into sexual intercourse'. At F249 on the form there is another table which describes the behaviour of the victim (i.e. the mother). The boxes relating to 'calm', 'tearful' and 'scared' were all ticked. At F253 it is suggested that the father is 'verbally aggressive towards [a] child (shouting, insulting)'. The form records that the conduct has been ongoing since May 2019 (sic) but this must be a typographical error with the correct year being 2018. It was

determined that the allegations merited ‘Periodical situation assessment’ of the father once a week.

23. On 13 September 2018 the mother again left the family home with the children (the twins were aged 2 at the time) and moved to another town. She reported that the father was violent towards her.
24. On 14 September 2018 a meeting of an Interdisciplinary Group was convened (on my understanding this occurred pursuant to the Blue Card procedure). I have seen a short note of the meeting from which it appears that the father, but not the mother, was in attendance. He said that he had never used any domestic violence; according to him, during the period in which the family had been living in Germany ‘*we argued from time to time, but there was no violence*’. He said that the mother had amassed huge debts which he was having to repay. He also said that the mother wanted to divorce ‘*but I refuse because I want to keep the family together*’. He had, however, filed a motion with the court to limit the mother’s parental authority as he wanted to ‘*bring up my children on my own*’. He said that the mother’s complaints of mental abuse against him were untrue, but made reference to there having been conflicts in the family since the previous May. It appears from the note that the Interdisciplinary Group resolved to do the following:

- (a) ‘*Informing the Court of Domestic Relations*’;
- (b) ‘*Informing the possibility of engaging psychological services on 20 September in the Emergency Centre*’;
- (c) ‘*Arranging visits of the social worker and the community policeman in the place of residence*’.

On the same day, 14 September 2018, the mother telephoned the Interdisciplinary Team to say that she and the children were residing in another location.

25. On 25 September 2018 social workers paid a visit to the family home. Neither party nor the children were present; the father was working in Germany. They spoke to the father’s grandmother (who lived at the property with the parties); she was supportive of the father and critical of the mother. The father later made contact by telephone. He said that he did not understand why the Blue Card procedure was being used and denied being violent. During a visit conducted on 28 September 2018 the grandmother reported that the father was working permanently in Germany.
26. On 3 October 2018 the father contacted the Social Welfare Centre (which I understand to have been the agency responsible for implementing the Blue Card procedure). He informed them that the mother had not returned home and had filed for divorce. He believed she had set up the Blue Card procedure as she needed it for divorce. He was critical of the mother and accused her of slandering him. He said he had made a report to the police of child abduction against her. He was informed by the Centre of the possibility of psychological and legal counselling.
27. On 28 October 2018 a worker from the Centre spoke to the father, who was in Germany at the time. He said that he and the mother had come to an agreement and decided that in the near future they would resume living together. It appears that this did indeed happen a few days thereafter.

28. On 29 November 2018 a worker from the Centre attended the family home as part of the Blue Card procedure. The mother said that the parties had been having '*minor verbal disputes*' for a long time which were related to the grandmother's interference in their life. They had decided to reconcile and started marriage therapy. The note of the visit records that '*The wife's words were confirmed by [the father]*' who therefore must have been present during the conversation. Subsequently, on 4 November 2020, the mother explained that she had returned to the father as '*I forgave my husband, who promised to improve*'.
29. On 17 December 2018 there was a further visit by a worker from the Centre. The parents were interviewed and said that they were getting along better. They had taken advantage of psychological therapy. There was a further visit on 22 December 2018 when the mother informed the social worker that she and the father got along well and that '*there are no quarrels or misunderstandings*'. A note to similar effect was prepared on 14 January 2019. It was also recorded that the parties were taking part in marital therapy and there had been no interventions concerning violence since the drawing up of the Blue Card. There was a further positive report on 18 February 2019.
30. I have not been provided with a copy of either the father's application to limit the mother's parental authority or the mother's divorce petition. I was informed by Ms Jones that her understanding was that these applications were withdrawn following the parties' reconciliation. A social work note dated 1 March 2019 [F265] records that during a visit undertaken to the home that day, the worker was informed that '*the Family Court did not limit [the parties'] parental authority*'. The psychologist whom they had been seeing had conveyed that they did not need to continue therapy.
31. On 7 March 2019 the father attended at the Welfare Centre in person. A note records that he was due shortly to take up employment. He was critical of the mother on this occasion, stating that '*[she] does not want to take care of the children. She browses her phone, does nothing and expects him to take care of his sons.*' He complained that while he had been painting the hallway his wife had brought his son to him without shoes; he said that he expected the social worker to check on the mother '*daily*'. The father was informed that if the parties could not agree custody of the children, the Centre would notify the Family Court about their situation.
32. On 25 March 2019 the Blue Card procedure was terminated. Thereafter there are no further contemporaneous notes in the bundle from independent sources until we come to the events of 28 July 2020.
33. In her account to either the police or a probation officer dated 4 November 2020 [F268], however, the mother asserted that following the resumption of cohabitation in November 2018 the father '*also used mental and physical violence against me as before*'. She said that in the Winter of 2019 the father had taken her to the basement and made her sit there. She proceeded to make various other allegations about the father's behaviour during the relationship, including that he had forced her to have sexual intercourse ('*i.e. if I didn't agree to it, there were fights, and with four children I felt tired. For the sake of peace and quiet, to avoid arguments I agreed to have intercourse*'). In her 4 November 2020 account, after giving a detailed description of the July incident (see below), the mother relayed her fear of the father in the following terms:

‘I fear for my life and health and my children after [the father] would leave custody. He is capable of anything. I am afraid of his reaction.’

I refer to this again below.

### **The crash and its aftermath**

34. On 28 July 2020 there was a serious incident in which the father crashed his car into an Opel Vivaro minibus in which the mother, the maternal grandmother and the children were travelling. His motive for acting in this way was, he says, to prevent the mother from removing the children from him without his consent.
35. The mother’s case is that by the summer of 2000 (when the twins were aged 4 and the older children will have been 10 and 8), against a background of abusive behaviour by the father, she realised that she needed to get out of the family home ‘*for all our sakes*’ even if just for a holiday. She sought help from her mother who hired a minibus with a driver and came to collect them while the father was at work. The mother says that she did not at that stage intend to leave permanently.
36. The father was alerted to the mother’s plans by his grandmother. He immediately left work and drove towards the home in his Audi car. While he was *en route*, he spotted the minibus and recognised that his family were inside it. Based upon an account given by him the day after the incident [F267], he then diverted his car via ‘*a field closed to traffic*’ (I assume this to be a grass area separating the two carriageways) and crashed his car into the minibus which was traveling in the opposite direction to him. In his account given on 29 July 2020 he maintained that his manoeuvre had been aimed at blocking the path of the minibus, not actually crashing into it (an explanation he continues to advance); he suggested that the driver of the minibus had increased his speed (an assertion not supported by any other evidence) and said that he had been acting under the influence of emotion and strong agitation as he feared losing contact with his children.
37. Included within the police disclosure is what appears to be a forensic analysis of the circumstances of the collision. It was estimated that at the time of the collision the father’s Audi was travelling at a speed of approximately 36 km/h (c.22.5 mph); the Opel minibus was travelling at a speed of approximately 54-58 km/h (c.34-36 mph). It was virtually a head-on collision. The front left part of the Audi (the driver’s side) collided with the front left part of the minibus. The minibus was caused to spin round to the right whereupon it crashed into a pillar on its other side. It sustained significant damage on both sides. The Audi, heavily damaged, spun round to the left following the collision.
38. In the immediate aftermath of the crash, the father left his vehicle and made his way towards the minibus. After unsuccessfully attempting to open a damaged door on one side of the bus, he made his way to the other side and proceeded to open the opposite door. The mother recounts (and the father has not denied this) that the father then grabbed the mother by the arms and attempted to drag her out of the minibus. The occupants of the bus were all screaming, in a state of considerable distress as a result of the father’s actions.
39. According to the father, he opened the door in the immediate aftermath of the incident as he could hear one of the children shouting ‘*Dad*’ and wanted to check that he was ok. The father accepts that having opened the door he said to the mother words to the effect of ‘*I will not let you steal my kids*’. In a witness statement provided to the police, the driver of

the minibus stated that the father was shouting at the two women in the bus; he could not hear what he was shouting as the children started to cry loudly. Another witness reported to the police that in the aftermath of the incident he spoke to the father who stated that '*he had caused the traffic incident deliberately because his wife had once again tried to take his children*'.

40. The minibus and the Audi both sustained serious damage in the incident.
41. The mother and the children suffered scratches and bruises from the crash. The mother's arms were also bruised from the father's attempts to drag her out. Z suffered a sore neck which was placed in a collar by the firefighters who attended the scene. One of the twins had bruises to his chest from the seatbelt. F had bruising under his eye and on his eye as a result of hitting the seat in front of him. The extent of F's distress was such that, according to the mother, he had to see a psychologist for therapy. The maternal grandmother had a loss of feeling in a right arm caused by the airbag opening. None of the family, however, required hospital treatment. The mother recalls being so shaken that initially she could not speak. She was given pills by a doctor to help her calm down.
42. The results of a toxicology report later revealed that the father had been under the influence of amphetamines at the time of the crash.
43. The incident led to the father's arrest and detention in prison. He was charged initially with an offence that did not include any reference to drug misuse. Following receipt of the toxicology report the charge was amended to include that as an ingredient of the offence. The full charge is set out at [F186] and is expressed in fairly lengthy terms. It includes that:

'[the father], intentionally, foreseeing the possibility of a catastrophe (sic) in land traffic and consenting to its committing, brought about a catastrophe (sic) in land traffic endangering the life and health of numerous persons...'

The charge also refers to the father having '*intentionally violated*' the traffic rules by driving under the influence of amphetamine, having caused an '*intentional collision*' with minibus and having '*intentionally damaged*' it.

44. The father remained in prison for approximately six months and was released on 21 January 2021. I have been provided with information from the father's Polish lawyer to the effect that the father sought to be convicted without a hearing but this was refused by the mother's lawyers. Accordingly, there is to be a hearing on 14 December 2021, to which relevant witnesses have been summoned to attend, following which the father will be sentenced. The father's lawyer also states that the father '*disputed that his intention was to hit the bus... he only wanted to cut their road off and stop the bus, but it failed and he hit the vehicle. He also contested that he consciously used drugs.*' Ms Guha informs me that the father has not sought to challenge the conviction and that the only issue in dispute is the appropriate sentence. Ms Jones suggests that an application to be convicted without a hearing would have involved a form of plea bargain in circumstances where the father continues to deny aspects of the offence such as his intention. Criminal procedure in Poland is obviously very different from the procedure in England and Wales, but it may well be that the December hearing is the equivalent of a *Newton* hearing aimed at establishing the circumstances of the offence before sentencing is dealt with.



45. The court bundle includes a translation of a file of papers obtained from the authorities in Poland in connection with the criminal proceedings. Included within the file are various letters from the father to the prosecutor, decisions of the criminal court to remand the father in custody and opinions prepared by a psychiatrist and a psychologist in relation to the father in December 2020. I refer to this material further below.

### **The removal of the children to England**

46. Following the 28 July 2000 incident the mother went to stay with her mother, renting a flat below hers. She remained there for a period of 4 months until she removed the children to England on 28 November 2020 while the father was in prison.

47. Following the mother's arrival in this jurisdiction the mother and the children lived in highly unsatisfactory and unstable circumstances, at least initially. She first moved to live with a new partner, P, whom she had not previously met in person. This relationship proved to be very short-lived and thereafter the mother and the children moved home several times and the children experienced more than one change of school. The family was referred to social services on 25 February 2021 and an assessment commenced on 2 March 2021. At the time of the initial referral the family had nowhere to live and they were accommodated by the local authority in a serviced apartment. Financial support was provided by the church.

48. Information provided by Ms Demery, which emanates from the children's current school, suggests that following that initial period of instability, the children have been attending school regularly and punctually. They appear well-presented, albeit their English is very limited. Each of the twins has been assessed as having significant developmental delay. The older children also appear well-presented at school; they have made friends and seem to be happy. They are each working at a level several years below their chronological age. The headteacher informed Ms Demery that the children have settled well at school and that she has no concerns about the mother's care. She has observed the mother being kind and patient with all four children.

49. The allocated social worker reported to Ms Demery that the school think that one of the twins, K, may be autistic and this is being investigated. She said that the mother and children have been integrated into the local community and that she had no concerns about the mother's care.

50. The older children were interviewed by Ms Demery and each of them made it clear that they did not wish to return to Poland. Neither of them is the subject of this application, but the four children are a close sibling group.

51. The father initiated the Hague Convention process in Poland on 2 March 2021. Proceedings were issued in this jurisdiction on 23 April 2021. Various interlocutory orders have been made since that time.

### **The law**

#### ***Overview of the 1980 Hague Convention***

52. The aims and objectives of the 1980 Convention are recorded in its preamble and in Article 1. They can be summarised as follows:

- (a) To protect children from the harmful effects of being subject to a wrongful removal or retention.
- (b) To ensure the prompt return of abducted children to the country of their habitual residence.
- (c) To respect rights of custody and rights of access held in one Contracting State in other Contracting States.

One of the ways in which the Convention is intended to secure its objectives is by deterring would-be abductors from wrongfully removing or retaining children.

53. The welfare of the child is not ‘the paramount consideration’ under the 1980 Convention. However, the preamble records the general principle that ‘*the interests of children are of paramount importance in matters relating to their custody*’. In *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 it was held by the Supreme Court that each of the following is ‘*a primary consideration*’ in Convention proceedings:

- (a) The best interests of the children subject to the proceedings;
- (b) The best interests of children generally.

54. The Supreme Court explained at paragraph 18 of that decision that a faithful application of the provisions of the Convention will ensure compliance with Article 3.1 of the United Nations Convention on the Rights of the Child (which provides that in all actions concerning children, the best interest of the child shall be a primary consideration).

55. Where (as is accepted in this case) a child is subject to a wrongful removal and an application for the return of the child is lodged within a year, Article 12 of the Convention provides that the court must order the return of the child forthwith. This has to be read in conjunction with Article 13 which provides (so far as relevant to this case) that:

‘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 -

- a) ...
- 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.’

**Article 13(b): grave risk**

56. The burden of establishing the grave risk defence lies on the respondent to an application (in this case the mother).

57. The leading authorities are *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10. In *Uhd v Mackay* [2019] EWHC 1239 (Fam) MacDonald J summarised the key principles as follows:

- i) There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.
- ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of

proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.

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

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

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

vi) Where the defence under Art 13(b) is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable, in principle, such anxieties can found the defence under Art 13(b).

58. It is relatively common in Hague Convention proceedings for allegations to be made by one party and denied by the other. As the proceedings are summary in nature and it is rare for the court to hear oral evidence, the court is usually not in a position to resolve such disputed allegations. This can give rise to difficulties where a respondent's assertion that Article 13(b) is satisfied is founded upon factual assertions which the court is unable to resolve. In this connection, the Supreme Court said the following at paragraph 36 of *Re E*:

'There is obviously 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. Mr Turner submits that there is a sensible and pragmatic solution. Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues.'

59. The court is not obliged to follow the approach suggested in paragraph 36 of *Re E* in every case. In *Re K (1980 Hague Convention: Lithuania)* [2015] EWCA Civ 720 Black LJ said the following at paragraph 53:

‘I do not accept that a judge is bound to take this approach if the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13b risk. That is what the judge did here. It was for the mother, who opposed the return, to substantiate the Article 13b exception (see *Re E* supra §32) and for the court to evaluate the evidence within the confines of the summary process.’

60. In *Re C (Children) (Abduction: Article 13(b))* [2018] EWCA Civ 2834 Moylan LJ also gave specific consideration to paragraph 36 of *Re E* holding that ‘*In my view, in adopting this proposed solution, it was not being suggested [by the Supreme Court] that no evaluative assessment of the allegations could or should be undertaken by the court.*’ He emphasised however that ‘*Of course a judge has to be careful when conducting a paper evaluation but this does not mean that there should be no assessment at all about the credibility or substance of the allegations.*’

61. In *Uhd v Mackay* MacDonald J summarised the approach to be taken as follows:

‘In the circumstances, the methodology articulated in *Re E* forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see *Re S (A Child)(Abduction: Rights of Custody)* [2012] 2 WLR 721), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. 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.’

62. Article 13(b) was again considered by the Court of Appeal in *Re A (Children) (Abduction: Article 13(b))* [2021] EWCA Civ 939. Moylan LJ provided a comprehensive summary of the relevant principles at paragraphs 84 to 89 of the judgment, which it is unnecessary for me to set out in full. At paragraph 92 he considered what had been said in *Re C* and *Re K* about the ability of the court to depart from the core guidance given by the Supreme Court in *Re E* and to undertake an evaluation of disputed allegations, emphasising that:

‘Black LJ [in *Re K*] was referring to discounting the *possibility* that the allegations would *give rise* to an Article 13(b) *risk*. She was not otherwise diverging from the approach set out in *Re E*. It is also plain that she was referring to the end of the spectrum, namely when the court was able *confidently* to discount the possibility that the allegations gave rise to an Article 13(b) risk. This is not to dance on pins but is a distinction of substance derived from the court not being in a position to determine the truth of the allegations relied on as establishing the Article 13(b) risk.’ [emphasis in the judgment]

63. Moylan LJ further held at paragraph 94:

‘In the *Guide to Good Practice*, at [40], it is suggested that the court should first "consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk" before then determining, if

they could, whether the grave risk exception is established by reference to all circumstances of the case. In analysing whether the allegations are of sufficient detail and substance, the judge will have to consider whether, to adopt what Black LJ said in *Re K*, "the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13(b) risk". In making this determination, and to explain what I meant in *Re C*, I would endorse what MacDonald J said in *Uhd v McKay (Abduction: Publicity)* [2019] 2 FLR 1159, at [7], namely that "the assumptions made by the court with respect to the *maximum level of risk* must be reasoned and reasonable assumptions" (my emphasis). If they are not "reasoned and reasonable", I would suggest that the court can confidently discount the possibility that they give rise to an Article 13(b) risk.'

He went on to emphasise, however, that a judge must be 'careful' when undertaking an evaluative exercise, because of the limitations created by it being invariably based only on an assessment of the written material. It is not permissible for a judge to discount allegations of abuse merely because he or she has doubts about their validity or cogency. On the contrary if the judge concludes that allegations would 'potentially' establish the existence of a grave risk, the court 'must' consider how the risk can be ameliorated.

64. If the court reaches the conclusion that Article 13(b) is satisfied it has a discretion as to whether a return should be ordered. In practice, however, the discretion is more theoretical than real. As the House of Lords held in *Re M (Children)* [2007] UKHL 55 at paragraph 45:

'as this House pointed out in *Re D (Abduction: Rights of Custody)* [2006] UKHL 51; [2007] 1 AC 619, para 55, "it is inconceivable that a court which reached the conclusion that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation would nevertheless return him to face that fate." It was not the policy of the Convention that children should be put at serious risk of harm or placed in intolerable situations.'

## **Submissions**

### ***Father***

65. Ms Guha submits that this is a clear case of a wrongful removal. The evidence, she submits, establishes that the mother's primary motive for coming to this jurisdiction was to start a relationship with a new partner, P, and was unrelated to the incident in July 2021 or to any fear on her part of the father. She relies in particular, in this respect, upon a note in the local authority assessment which records as follows:

'The family moved to the UK in November 2020 from Poland. Mum says that she came here for a better life with her ex-partner.'

She further supports this submission by reference to a statement provided by AW who has stated that the mother's relationship with P was ongoing prior to her arrival in this jurisdiction. Ms W has also described the family's instability following their arrival and

alleged that the mother has ill-treated the children. She is supportive of the father's application as '*I genuinely believe him to be a good father to [the children]*'

66. Additionally, Ms Guha points to the fact that the mother was able to continue living in Poland without difficulty for some four months following the July incident. She submits that there is no evidence to suggest that the father has behaved inappropriately towards the mother since the incident. She relies upon some relatively cordial email exchanges between the parties in the early part of 2021 in relation to the father's wish to have contact with the children, submitting that there is no evidence of harassment on his part in these exchanges. She further points out that during the course of these proceedings the father was having video contact for a period of several weeks without complaint on the part of the mother.
67. Ms Guha's case is that there is no basis for the court to find that Article 13(b) is established, notwithstanding the serious allegations which the mother makes. She asserts that the mother has presented a theoretical case, not based upon empirical evidence.
68. Ms Guha relies strongly upon the package of protective measures offered by the father, which include provision for housing (either by moving out of his present accommodation or paying rent of 2,000 Zloty pm plus utility bills), an offer to fund the return journey home, non-molestation undertakings, a non-prosecution undertaking and an undertaking not to separate the children from the mother. Further protection is afforded by the well-developed system in Poland for dealing with allegations of domestic abuse, which includes the Blue Card procedure. Ms Guha also points out that the mother would be entitled in Poland to claim child support. These protective measures, she submits, mitigate any risk that might otherwise exist so as to bring it below the Article 13(b) threshold.
69. Ms Guha draws attention to various inconsistencies in the evidence concerning allegations made by the mother, in particular those relating to the sexual abuse of Z and the threat or use of a belt by the father. She submits that:

'there are a number of contradictions in the mother's accounts given in her statement of evidence and to ... Social Services in respect of the allegations of abuse that she has levelled against the father in respect of his treatment of the children:

- a. The Mother told the LA that the Father was not nice to [F] and would tell him to look after his younger brothers [E26] and that he had been physically abusive by grabbing her and slapping her on 2 occasions and had told children to take out a chair and bend over it to smack their bottom when he was angry with them [E39]
- b. The Mother reported to the Polish court on 04.11.20 that the Father had been violent towards her and that he started behaving badly towards [Z] and [F] after the twins were born and would shout and scream at [F] and squeeze his testicles as if in jest and call him a '*faggot*' if he cried out in pain, and would make them undertake age inappropriate chores but did not use vulgar words towards them [F268].
- c. Within her signed statement in these proceedings, the Mother makes allegations that the Father would focus upon [Z] in an unhealthy manner and grab her bum and put his hand under her T-shirt; and asked him to look at what he had in his pants when they were 5 and living in Germany [C12 §8]. Further the Mother claims that the Father grabbed [F]'s bum and testicles and squeezed them until he cried out and humiliate him by calling him a 'lady' and a 'pussy' [C11 §9]

- d. The Mother embellished her statement in claiming that *“the applicant would control the older two children by threatening them with violence He wears a leather belt, and he would tell [Z] and [F] to lie across a chair and go to take his belt off. ...He didn’t actually have to hit them with it, the threat was enough. [Z] has said that she was hit with his belt to the Social Worker”* [C12 §12].’

70. Ms Guha submits that the court should be cautious about placing reliance upon the psychiatric and psychological opinions prepared in relation to the father as these were commissioned in connection with the criminal process. The conclusions reached in those reports are, she submits, general conclusions and do not relate to risks concerning the mother. She contends that the court is not in a position to find that the father poses a risk to the mother in the absence of a full psychiatric assessment obtained for the purposes of these proceedings.
71. Ms Guha submits that *‘the father has accepted that the impact of the July incident upon the mother and the children and other road users must have been monumental’*. She points to his expression of regret for the incident in a letter to the prosecutor at F234 in which he said *‘I have come to terms with the fact that I am to blame for everything’* and to his statement in these proceedings at C25 where says that *‘I regret deeply my very foolish action’*.
72. Ms Guha submits that even if the Article 13(b) threshold is crossed, I should exceptionally exercise my discretion so as to order a return. She submits that Poland is the most appropriate forum to deal with welfare proceedings. She emphasises that the circumstances in which the children found themselves following their wrongful removal were *‘dire and traumatic’*: they were uprooted from everything they knew, brought to an unfamiliar city, required to live with a stranger who was drunk and abusive, thrown out of his home, and subjected to changes of multiple changes of home and school. By contrast, they left behind an established support network in Poland.

### ***Mother***

73. I can summarise Ms Jones’s submissions relatively concisely (I mean no disrespect in doing so). She submits that the extent of the abuse alleged by the mother combined with the exceptionally serious incident from July 2020 means that this case crosses the Article 13(b) threshold, notwithstanding the protective measures put forward by the father.
74. Ms Jones is critical of the adequacy of those measures (for example submitting that the amount of money proposed by the father would be insufficient) but her primary case is that there are no protective measures that could be put in place to mitigate the grave risks to which the children would be exposed in the event of a return.
75. Ms Jones submits, by reference to the various communications sent by the father to the prosecutor, that despite his expressions of regret he has not genuinely accepted responsibility for what happened; still less has he shown any real appreciation of the impact which the incident will have had on the mother and the children. She places reliance upon the psychiatric and psychological reports obtained in relation to the father in the criminal proceedings as cogent evidence of the risks he poses as a result of his impulsive nature. She points to the fact of his amphetamine use (which he has been reluctant to accept in the criminal proceedings) and to his past conviction for an offence relating to this drug.

## Analysis and conclusions

76. Leaving aside the July 2020 incident, the level of abuse alleged by the mother is extremely serious. It includes allegations of rape, sexual abuse against the older girl, either threatened or actual physical abuse directed towards the older boy, and very serious coercive and controlling behaviour. I am not in a position to make any findings of fact as to whether these allegations are true or not. Equally, in my judgment, there is no basis for me to reduce the weight I give to some of the allegations on the basis that there may be some inconsistencies.
77. In any event, despite Ms Guha's submissions, I am not persuaded that there are significant inconsistencies in the accounts which the mother and the children have given at various times. The father relied, for example, on the absence of any evidence that Z had made an allegation of sexually abusive behaviour by the father as undermining the mother's assertion that she had done so. From the statement of the social worker dated 30 June 2021 (which had been omitted from the bundle in error and was not seen by either counsel until after the conclusion of oral submissions), it is in fact apparent that Z did indeed make such a disclosure.
78. The social worker met with the older children at their school on 5 May 2021, when they made a variety of allegations about their father's mistreatment of them and their mother. Her statement includes the following:

[Z] disclosed that [the father] came into her bed and kissed her but did not touch her anywhere. When asked how this made her feel, she said "he was married to Mam, so it felt ok". [Z's] body language and tone indicated that she was uncomfortable when asked about this, I therefore did not probe further. I am concerned that [the father] has got into bed with [Z] and this has clearly caused her anxiety from her presentation when asked about this.

This passage is entirely consistent with paragraph 11 of the mother's first statement, which (prior to the very late disclosure of the social worker's statement) the father accused her of having fabricated.

79. In my judgment, such inconsistencies as may exist in relation to the evidence concerning the mother's allegations are relatively minor. Indeed, there is in my view a broad consistency in the accounts which the mother has given to various professionals at different times. I repeat that I am not making any findings of fact. However, for the purposes of undertaking an evaluation of risk within the parameters set out by the Supreme Court in *Re E* and in accordance with the guidance of the Court of Appeal in *Re K*, *Re C* and, most recently, *Re A*, I do not consider that there is any basis for discounting the allegations. On the contrary, I must for these purposes evaluate the potential risks to the children on the assumption that the allegations are true. This is not a case where I can confidently discount the possibility that the allegations would give rise to an Article 13(b) grave risk.
80. One of the significant features of the background, in my view, is the vulnerability of the mother. She has a history of entering into unsatisfactory relationships with men, which have been, to varying degrees, abusive. On her account, her relationship with the father was characterised by a high degree of coercive control and punctuated by acts of serious violence including sexual violence. She found it difficult to extricate herself from the



relationship, even though it became abusive at an early stage. There were several periods of separation and reconciliation before she was finally able to separate after the father's incarceration. It is also apparent that the mother was unable to protect the older children from the father's abusive behaviour or to shield any of the children from being exposed to his abuse towards her.

81. The degree of coercive control and abuse that was a feature of the parental relationship prior to July 2020 (on the mother's case) would, in my judgment, easily cross the article 13(b) threshold without a package of stringent protective measures in place. Even with the measures put forward by the father, the case might well, in my view, have crossed the line into 13(b) territory or at least come very close to doing so. That hypothetical scenario is not, however, one which I need to determine.
82. In my judgment, the July 2020 incident (and its aftermath) considered against the background of serious abuse which preceded it, results in the mother's case satisfying Article 13(b) by some margin. I agree with Ms Jones's submission that there are no protective measures which can be put in place which will sufficiently mitigate the risks.
83. I entirely endorse Ms Demery's characterisation of the mother and the children having experienced a '*terrifying ordeal*' as a result of the incident. As Ms Demery says, it is only through good fortune that the incident did not result in serious injuries to any of the passengers. The charge which the father faces (or, on Ms Guha's case, of which he has been convicted) is that he acted intentionally, having foreseen the possibility of a catastrophe, and that by his actions he endangered the *life* and health of his children. He continues to deny that he acted intentionally, but for these purposes I must assume that this was indeed the case. It is difficult, in my view, to fathom how any father could have acted with such reckless disregard for the safety of his own children knowing (as he did) that they were travelling in the minibus at the time; indeed, notwithstanding his use of amphetamines, it is difficult to understand how he could have overcome the ordinary human instinct to press on a brake pedal and/or steer away from danger, but instead use his vehicle as a battering ram against the oncoming minibus.
84. In my judgment (assuming that the charge he faces is established in full), the father's actions in crashing into the minibus represent an act of coercive control at the top end of the scale. He was delivering a message to the mother that no matter what she attempted she could not leave his home with the children. If the father's priority had been, as he asserts, to prevent the abduction of his children he could have turned his car around and followed the mother to her destination. A desire to prevent his children from being taken to stay with his mother-in-law does not, in my view, begin to explain his actions let alone justify them. His mindset at the time is demonstrated by his reaction to the crash: he expressed no remorse and no concern for the state of health of any of the occupants of the minibus; instead he proceeded to attempt to drag the mother from the vehicle, causing her further injury, shouting at her and making a remark which, in my view, was in the nature of a threat.
85. I entirely accept Ms Demery's view that the incident has had a lasting impact upon the older children. In my judgment, it is likely also to have had a lasting impact upon the other occupants of the vehicle including the mother and the two younger children (one of whom sustained a seatbelt injury).

86. While I am prepared to accept Ms Guha's submission that the father has expressed 'regret' for his actions, I do not consider that he has shown any genuine remorse, still less any appreciation of the impact which the incident will have had upon the mother and the children. For example, in his letter to the prosecutor dated 15 December 2020 [F185] the father, having by then been in custody for some months, does express regret but his regret relates to his personal situation, not to the harm he has caused others. On the contrary, much of the letter is devoted to attributing blame towards, and making allegations against, the mother. In another letter at [F224] which is undated, the father sought to attribute blame for his actions to the mother, stating that she had attempted to abduct the children and had cheated upon him. At [F226] the father said in a letter to the prosecutor '*As before, I fully support the fact that I wished to pull over the road to prevent the abduction of the children – after all, I am a father and have rights and duties regarding my children*'. Below that, he appeared to attribute responsibility to the mother for not having answered her telephone prior to the crash.
87. I accept that in the emails exchanged in 2021 in connection with the father's wish to have contact with the children he did not communicate in a way that involved harassing the mother and that the emails were relatively cordial. However, the emails contain no acknowledgement by the father that he was to blame for what had occurred, still less any form of apology. His email sent at 21.55 on 4 February 2021 includes the following sentence '*I do not intend to go into what happened and why it happened I do not intend to argue, offend and blame each other for what happened **because we both know why it happened and what was the reason** so please let me have contact with the children*' (my emphasis). This suggests to me that the father continued blame the mother, to a significant degree at least, for his actions.
88. The father's witness statements in these proceedings contain an expression of regret but no real acknowledgment of the extent of his culpability and certainly no recognition of the devastating impact which the incident must have had upon the mother and the children. At [C25] he describes his actions as having been '*very foolish*' which, in my view, minimises his responsibility for what took place. Although he says that he is '*ashamed*' of his actions, in the same sentence he appears to regard it as relevant to point out that it was his car which suffered the most damage (his focus on the damage to the vehicles is a demonstration of his lack of insight, in my view). He also speaks about having pleaded guilty to the offence and says that he did not object to his prison sentence. It now transpires that this is misleading, as he continues to dispute elements of the offence and sentencing has yet to be carried out.
89. Contrary to the submissions of Ms Guha, I do consider that I am entitled to take into account the psychiatric and psychological assessments that were carried out in relation to the father while he was in custody.
90. The psychological opinion was prepared on 6 December 2020 following an interview on 1 December 2020. The father said that he had used cannabis a few times since the age of 21; he asserted that the last time he had used amphetamines was 2014 and that he had no idea how it had got into his system at the time of the crash. He described having had suicidal thoughts as a result of the actions of the mother. He provided a history of the marriage which was critical of the mother, denying allegations she had made against him. The psychologist's analysis begins at the bottom of F274. Under the sub-heading 'Personality assessment' the following is recorded:

‘Socially extroverted. Needs to talk to other people, sociable. Needs external excitement, often acts under the influence of the situation he is in at the time. Impulsive. Likes change, likes to be on the move. Likes to engage in practical activities. Always has an answer ready for comments directed at him. Stubborn. He wants to carry out his wishes and needs, regardless of the consequences. He wants recognition, respect and esteem, and reacts with resentment when these needs are not met as expected. Reacts more severely to daily stress and copes less well with it. Has an increased tendency to experience jealousy. Lack of insight, self-criticism, self-reflection. He presents reduced stress resistance. Tends to be moody. Sensitive and explosive. Can experience an anxiety disorder. Emotionally unstable. He presents himself as a person without any disadvantages, and he is not responsible for any problems that occurred in his marriage’.

91. The psychiatric opinion was prepared following an examination on 18 December 2020. The psychiatrist concluded that the father was not suffering from a mental illness either on that occasion or at the time of the offence. There is a reference to him having a ‘*Disturbed personality, without features of psychotic disintegration*’. The report also notes that the father first tried amphetamine in 2013 and that he ‘*took it several times*’.

92. I also have regard to the two decisions of the criminal court in Poland to remand the father in custody made on 30 July 2020 and 21 October 2020 (the latter being a decision to extend the period of remand from an initial three months). Explaining the decision to extend the period of remand, the court held on 21 October 2020 as follows:

‘In justification of the [original] decision, a real fear of procedural obstruction on the part of the suspect was indicated, as well as the severity of the punishment which might induce him to flee or go into hiding. Additionally, the real fear that the suspect, being at large, might commit an offence against his wife’s life or health was referred to.

...

In the court’s opinion, the reasons [for the original detention] have not changed and continue to exist. There is still a real fear of procedural obstruction on the part of the suspect (influencing the testimony of witnesses, including [the mother]), fear of escape or hiding due to the threatened custodial sentence and there is still a real fear that the suspect, being at large, will commit a crime against the life or health of the wronged [mother].’

I do not know the basis upon which the father was released from custody on 21 January 2021. The mother was no longer in Poland at the time.

93. I do not accept Ms Guha’s submission that the mother’s ‘*primary motive*’ for the removal of the children was to pursue an affair with P and that it was essentially unrelated to the July incident, although I do accept that this relationship may well have been part of her motivation. In my judgment, her state of mind in November 2020 is well-evidenced by the account she gave to the authorities on 4 November 2020 (referred to above) when she spoke of her fear of the father upon his release from custody and the fact that he was capable of doing anything. The sentence from the local authority assessment relied upon by Ms Guha needs to be read in the context of the passage which follows it, where it is stated that:

‘Mum says that she left Poland because she was having a lot of trouble with the father of the twins, he crashed into their car with the children present, Mum also reports quite severe physical domestic abuse in the relationship’.

These notes do not, in any event, purport to be a transcript of a conversation. They are a social worker’s summary of information that may have been gathered from the mother on more than one occasion. The assessment commenced at the beginning of March 2021 and is dated 4 May 2021.

94. My evaluation of risk must relate to the circumstances which the children will face upon a return, as opposed to those which existed prior to the removal of the children. I acknowledge that upon a return, the parties would be living separately and that this would reduce the risks to some extent. I do not consider, for example, that there would be any significant risk that the father would perpetrate sexual abuse against Z for so long as parties were living apart.
95. The risks to the children, in my judgment, stem from the fact that (assuming the mother’s allegations to be true) the father is a highly abusive person who presents a danger to the mother and the children. He has not acknowledged his abusive behaviour (save minimally in relation to the July 2020 incident) or recognised its impact on the mother and the children. These risks are magnified by the fact that the mother is a very vulnerable person. She does have a support network in Poland, but this has not in the past prevented her from being subjected to the father’s coercive and controlling behaviour. She was unsuccessful in the past in breaking free from her abusive relationship with him and would, in my view, be vulnerable to his controlling influence were she to return to Poland. I note, for example, that in the email exchanges that took place in early 2021, when the mother was at a very low ebb in this jurisdiction, there are hints on her part that even after everything that had happened she remained open to the possibility of reconciliation (*‘tell [your grandmother] that if we were to be back together, she has nothing to do with it!’*). The mother’s vulnerability will be increased by the fact that upon a return to Poland she would have no independent means of supporting herself and would be dependent upon the father for the provision of accommodation and maintenance.
96. There is a very strong incentive on the part of the father to seek to persuade the mother to reconcile or alternatively to support him in the criminal proceedings, given that in December 2020 he faces the prospect of a severe prison sentence. There is, in my judgment, a high risk that he will seek to do one or both of those things.
97. The father has demonstrated a capacity to act in a reckless fashion which put his children at risk in order to get his own way. He has spoken of having suicidal thoughts. I consider there to be a high risk that he might again act in a way which would cause serious physical harm to the mother and, potentially, the children, if she did not acquiesce in any demands which he might make of her, which might include reconciliation, supporting him in the criminal proceedings or affording him contact with the children on his own terms. Even if the father did not act so as to cause direct harm to the children, there is a high risk that they would suffer from being exposed to any abuse perpetrated against the mother. The risks are especially high in the run up to the criminal hearing in December when the father faces the prospect of a lengthy prison sentence and a consequential loss of contact with the children for a prolonged period of time. Although the father maintains his denial that he acted intentionally in crashing into the minibus, the evidence that he did so is, in my view,

strong (albeit it is not for me to make a finding about this). The father must appreciate that there is a significant likelihood that this will be found to be the case, which will inevitably increase the length of any sentence imposed upon him. There is also, in my view, strong evidence that he had intentionally taken amphetamine at the time of the offence, despite his denial that this was the case. It is difficult to understand how he might have ingested amphetamine other than deliberately, and – so far as I am aware – no explanation has been offered for how this could have come about.

98. If the mother did end up yet again living with the father, the children would once again find themselves living in a household in which they would be exposed to a climate of abuse.
99. The risks posed by the father are increased, in my view, by his potential drug misuse. Despite the toxicology report, he has denied using amphetamines since 2014 and therefore this is not an issue which has been adequately addressed through, for example, drug counselling.
100. In my judgment, a person who acted in way father did on 28 July 2020 and who has his personality traits is unlikely to be deterred from behaving recklessly and abusively towards the mother or even the children by any undertakings given to this court (whether or not these were registered in Poland) or by any remedies the mother might have through the criminal or civil courts. It is of note in this context that the use of the Blue Card procedure for a period of some six months in 2018/19 did not (on the mother's account) prevent the father from continuing to perpetrate his abusive conduct following the resumption of cohabitation in November 2018; nor did it deter him from acting as he did on 28 July 2020.
101. In addition to the risks that the father would perpetrate physical and psychological harm against the mother and the children (which I have described above), requiring the children to return to Poland at this juncture would, in my judgment, be highly destabilising for the family. I accept the mother's description of the father as '*a dangerous man who feels entitled to do just what he wants*', on the assumption that her account of events is true. I consider that the fears she expressed on 4 November 2020, prior to her departure from Poland, were justified and that were she now to return - in the run up to the December hearing - she would once again, be consumed by fear which she would be unable to conceal from the children. As Ms Demery has noted, for F, returning to Poland would mean "*I would have to go back to the country where I have endured so much and experienced so much because of my stepfather*". Both of the older children have memories of the abuse they suffered in Poland; I agree with Ms Demery that F's reasons for wanting to remain in England are '*cogent*'. The July incident, Ms Demery notes, has had a lasting impact upon the older children and in my view the same is likely to be true for the mother and the younger children. In my judgment it would be intolerable for the children to have to return to Poland in circumstances where the family would be living in a state of fear for their safety. The children are very vulnerable and have had disrupted upbringings in which they have been exposed to abuse on multiple occasions. They should not now be expected to tolerate being required to return to Poland in the circumstances I have described.
102. In all the circumstances, I have reached the conclusion that magnitude of the risks which the children would face upon a return coupled with the potential consequences for them were those risks to materialise are of such severity that they can be characterised as '*grave*' within the meaning of Article 13(b). In my judgment, there is a grave risk that they

would be exposed to both physical and psychological harm and that they would be placed in an intolerable situation.

103. I recognise that the mother may herself be required to go to Poland to give evidence at the criminal hearing in December (although it may be possible for her to give evidence by video link). I do not consider this undermines my assessment of the risk which the children would face. I would assume that any return to attend court would mean that she was in Poland for only a minimal period of time (potentially just the day) and that, as the principal witness to a criminal prosecution, steps would be taken by the authorities to ensure her safety for the short period she was there.

104. For completeness, I reject Ms Guha's submission that I should exercise my discretion in favour of ordering a return. Even it were permissible for me to depart from the guidance in *Re M*, the magnitude of the risks to which the children would be exposed upon a return would make it inappropriate to do so.

105. I therefore dismiss the father's application.