



Neutral Citation Number: [2024] EWHC 1296 (Fam)

Case No: FD23P00517

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London
Date: 6 March 2024

Before:

MR RICHARD HARRISON KC
Sitting as a Deputy High Court Judge

Re X (Children) (Abduction: Grave Risk: Children's Objections)

BETWEEN:

A Father Applicant

and

A Mother Respondent

Ms C Renton, (instructed by **Birmingham Legal Ltd**) appeared on behalf of the **Applicant**.
Mr H Langford (instructed by **Bindmans LLP**) appeared on behalf of the **Respondent**.

Hearing dates: 13, 14, and 15 December 2023

Approved Judgment

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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 KC:

Introduction

1. This is a perfected and anonymised version of a judgment I handed down on 15 December 2023. I am concerned with three children: A, a boy (13); B, a girl (nearly 11); and C, a boy (9).
2. The children’s father applies for their summary return to the jurisdiction of Hong Kong, under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (“the 1980 Hague Convention”).
3. The application is opposed by the mother. She does not dispute that the children have been subject to a wrongful removal for the purposes of the 1980 Hague Convention, but contends that:
 - (a) there is a grave risk that a return to Hong Kong would expose the children to physical or psychological harm; and
 - (b) the children object to returning and have attained an age and degree of maturity at which it is appropriate for the court to take account of their views.

She invites the court to exercise its discretion to refuse a return.

4. The parties are represented by Ms Clare Renton and Mr Harry Langford of counsel. I am grateful to both of them and to their respective solicitors for the assistance they have provided to me.
5. I had a brief meeting with the children remotely together with the Cafcass Officer, Mrs Demery, on the evening of 13 December 2023. All three of them struck me as being charming and well-mannered. They were keen to tell me that they did not wish to return to Hong Kong but given the narrow parameters for meetings between judges and children in this context, it is not an issue I explored with them. I made clear to the three of them that my role as a judge was to listen to what various people had to say, including their parents, Mrs Demery and themselves, and to find a solution which I considered best for them.

Background

6. The father is aged 47 and the mother is 45.
7. Both parties were born in Hong Kong and grew up in that jurisdiction. Each of them has members of their extended family who live in Hong Kong. The maternal grandmother and the mother’s younger brother both live there (sadly, her older brother has died). The maternal grandmother has a terminal illness.
8. The parties are Hong Kong nationals. Each of them holds British Nationality Overseas status which entitles them to reside in the United Kingdom and, in due course, to apply for British nationality.
9. The parties met in 2009 and were married in 2010.
10. All three of the children were born in Hong Kong. They lived there for all of their lives until they were brought to England by the mother in the summer of 2023.

11. A and C have each been diagnosed in Hong Kong with autism and attention deficit hyperactivity disorder. A also has a diagnosis of oppositional defiant disorder. The boys are prescribed medication in Hong Kong for these conditions. Features of the boys' conditions are described by the mother at paragraphs 20 and 21 of her statement in the following terms:

“Both A and C are restless at home. They can be quite disruptive and need to have things a certain way. A cannot stay in the same place for too long. If he does, he will yell or become antagonising of others. C similarly can't wait for things. He has to have things right away or will become angry/upset. C also has to wear certain clothing. If C does not get to choose the clothing that he wants to wear or wear certain colours, he can become distressed. Similarly, the boys fixate on aspects of our day, such as what method of public transport we will travel on. If we don't travel on that particular form of transport, they will have meltdowns.

In particular, A and C aren't able to read and adapt to social situations. They can't read social cues and will repeat things they hear or read, even if they don't believe they are true. Due to C's diagnosis of ODD, he will purposely engage in negative and disruptive behaviours. [C] will be antisocial and aggressive towards those in authoritative positions. As a result of A's ODD he may say things that [he does not] necessarily mean, but more to be spiteful or vindictive. A has in the past deliberately said provocative things at school just to invoke a reaction.”

12. The information I have suggests that the parties were not wealthy. The father earns approximately £2,000 per month. The mother, before leaving Hong Kong, was earning approximately £4,000 per month. The children had a nanny whose salary was funded by the mother. She describes finances as having been 'tight'. The family lived in a three bedroomed property owned by the paternal grandfather who had agreed to move out of his home and into a smaller flat owned by the mother.
13. The children attended three different schools in Hong Kong. I have seen reports which suggest that all three of them were doing well at school. The mother says that although A and C's schools were aware of their needs, special educational needs provision in Hong Kong is less comprehensive than it is in England. The children did receive some limited support from social services in Hong Kong.
14. The children also attended a tutorial centre after school. The parties differ as to the extent to which they attended the centre. Ms Renton told me on behalf of the father that since 2021 A has been attending twice a week for 2 ½ hours (increasing to 3 hours Monday to Friday in the week before examinations); before 2022 he was attending Monday to Friday for 3 hours a day; B and C were attending every day from Monday to Friday for 3-4 hours (with additional time on Saturday mornings when there were special assessments). Mr Langford on behalf of the mother did not differ substantially from this timetable save that the mother's case is that the children's attendance was for up to 5 hours and that during examination times they would also attend on Saturdays and Sundays; additionally, B was given significant homework by the centre on Fridays. On any view the regime of out of school tuition for the children was intensive. Mrs Demery 'absolutely' agreed with the proposition that four hours a day additional tuition is onerous for any child. I also agree.

15. In 2022 the mother issued divorce proceedings against the father in Hong Kong. Within those proceedings she sought an order for custody of the children and financial provision from the father.
16. The mother's case is that in December 2022 the parties discussed, not for the first time, the possibility of moving to England and agreed to come here to explore what it would be like. In January 2023 the family as a whole, acting on that plan, travelled to England, where they visited friends. The mother's evidence is that the father seemed '*forthcoming*' during the trip and she felt optimistic that he might agree to a relocation. She says that the children were '*thrilled that [he] was finally contemplating living here*'. This suggests to me that the idea of moving to England is something which the mother had been promoting to the children for some time; the children obviously perceived that the father's objections were standing in the way of the move.
17. The mother eventually withdrew her divorce petition in 2023. She says that the father had not engaged in the proceedings and continuing to pursue them was a waste of money.
18. On the mother's case, after withdrawing the divorce proceedings she informed the father that she and the children were going to move permanently to England. He asked for time to consider the idea, but she made clear that they would be going '*with or without him*'.
19. Thereafter, the mother obtained visas for the children to come to England. In June 2023, without telling the father, she booked flights and made arrangements for schooling and accommodation in England.
20. In July 2023 the mother brought the children to England without the knowledge or consent of the father. The family were living together at the time of the removal. The mother left Hong Kong while the father was at work. According to the mother the children had been begging her to take them to England and, in the end, '*they asked for us to go without [the father]*'. This had not been made known to the father; the mother must therefore have impressed upon the children the need for secrecy, thus involving them as conspirators in her plans.
21. It is common ground that this was a wrongful removal for the purposes of Article 3 of the 1980 Hague Convention.
22. Before leaving Hong Kong, the mother left the father a letter. She explained that she had long aspired for the children to study abroad; she had made various proposals to him at different times which he had rejected. As she put it '*If I think it is the right thing to do, I will move heaven and earth to get it done*'. She said that she had no intention of severing the father's ties with the children and would make time to talk to him by video to let him know how they were doing. She expressed the hope that the children would have the opportunity to learn and live in the United Kingdom '*with more possibilities available for growth than in the tough and stressful environment in*' Hong Kong
23. The mother had no family connections with England. Following her arrival here, she and the children went to live in the North West of England in a town with which she had no previous ties save that she had a friend who lived there. They moved into a three-bedroom house and the mother has been able to obtain a part-time job working in her friend's tea shop for which she is paid £400 to £500 per month. She supplements her income by living

off savings, essentially a pension which she encashed before leaving Hong Kong. I was told that her savings are in the region of £120,000.

24. The children have been enrolled at three different schools where they appear to be doing well. They started at their English schools in September 2023.
25. On 12 October 2023 the father issued an application for the return of the children under the 1980 Hague Convention. At that stage he did not know the children's address, the mother having refused to provide it to him. On 13 October 2023 orders were made without notice, including a location order and a disclosure order directed to one of the children's schools. The mother and the children were duly located, following which the matter returned to court on 25 October 2023 when further directions were given. These included a direction for a Cafcass report to be prepared addressing, amongst other matters, the children's views, wishes and feelings in respect of returning to Hong Kong and their maturity.
26. Another direction made on 25 October 2023 was for the relevant local authority to file documents relating to any special educational needs assessments of A and C. On 22 November 2023 the council responded that no such assessments had been undertaken, essentially for internal administrative reasons. This led the mother to make a Part 25 application for the instruction of an educational psychologist. On 30 November 2023 Morgan J refused the application but gave the mother liberty to restore the application following receipt of the Cafcass report. So far as I am aware the application was not restored.

The Cafcass evidence

27. Mrs Kay Demery of Cafcass prepared a report dated 1 December 2023 pursuant to the direction made on 25 October 2023. In order to do so she met the children at the Cafcass offices in London on 13 November 2023. Her meetings with A and B each lasted for approximately one and a quarter hours; her meeting with C lasted for approximately 45 minutes. She was assisted by an interpreter, although she made clear that the children were able to speak and understand English well despite it not being their first language.
28. A made good eye contact and was polite and co-operative throughout his meeting with Mrs Demery. He described his English school as 'ok' identifying maths and PE as his favourite subjects. He considered the teachers to be better than those at the Hong Kong school: in Hong Kong the teachers did not help A understand the subject whereas in the United Kingdom they make sure that he does so. A prefers the weather in England to Hong Kong, considering the latter to be *'too hot'*. He also expressed a preference for English food. There was nothing about Hong Kong he considered *'better'* in comparison to England.
29. A identified various paternal and maternal relatives in Hong Kong and said that he misses his maternal grandmother and maternal uncle the most. He thought that his father and grandmother would be missing them the most.
30. A told Mrs Demery that he speaks to his father every day. He had told the father that he wants to stay in England whereas the father has made it clear that he wants the children back in Hong Kong.

31. A relayed that the father had told the children that the mother would commit suicide and the only way to prevent this was if they all returned to Hong Kong. I have seen the text message in which this was conveyed to the children. Mrs Demery described it in her oral evidence as a *'bleak message'* for the children to receive and considered that it placed them under *'undue pressure'*. I agree. In my view, it was a selfish and wholly inappropriate attempt by the father to manipulate the children. It suggests that he lacks sensitivity and insight into the children's needs. As Mrs Demery put it, receiving such a message will have been *'incredibly upsetting'* for them. Equally, Ms Demery accepted that the mother's actions in bringing the children to England and not allowing them for a period to speak to their father will have put them in an incredibly difficult position. She acknowledged that both parents had put pressure on the children and commented that *'neither parent has handled the situation at all well'*.
32. A elaborated on why he had been unhappy in Hong Kong, describing life there has having been *'very hard'*. He complained about the tutorial centre he was required to attend every day after school to complete their required homework, saying that they struggled to do so in the allotted time. A described the tutors as harsh and also said that the father was hard on the children. A would be punished at the tutorial centre and then by the father. A had nothing positive to say about the father.
33. A explained that he is upset and worried at the prospect of returning to Hong Kong. Although A would not have to live with the father, he would be worried about everyone's safety because of the father's violence. A said that the father had beaten all three of the children as well as the mother. He described being hit with a clothes hanger and a rattan stick on his legs and bottom. By contrast, A did not have to worry about safety in England. Free of the constraints of the tutorial centre he is able to play sport here after school.
34. A told Mrs Demery that he would be willing to visit his father in Hong Kong but visibly shuddered when she suggested that the father could come to the United Kingdom to visit the children.
35. B wanted A to be present during her meeting with Mrs Demery and Mrs Demery permitted this. She made clear in her oral evidence that A did not seek to prompt B or interfere with the conduct of the meeting.
36. B told Ms Demery that she enjoys school in the United Kingdom, one reason being that there is less homework. She said that there are more opportunities for learning in the English classroom and that she has made lots of friends.
37. By contrast, B said that in Hong Kong there would be far too much homework on a Friday. The children had to attend the tutorial centre on Saturdays which left little time for leisure. B relayed that the father had given permission to the tutorial teacher to hit B with a ruler if B did not complete her work on time and recounted that *"the tutor used a paper clip on my ear. They bit my right hand, and I am right-handed. My mum said it is not allowed and we left the centre"*. B had mentioned this to the father, but according to B, this had led to an argument in which the father shouted at the mother and told B to shut up.
38. B told Mrs Demery that, in common with A, she misses the maternal grandmother. B also misses the housekeeper with whom she shared a bedroom. B thought that her grandmother and the housekeeper would also be missing her. B has video calls with both of them. B

speaks daily to her father but said that she does not enjoy doing so. The father '*keeps talking ... about Hong Kong*'.

39. B said that the mother had given up her job in Hong Kong to come to the United Kingdom '*for their better future*'. B also said that the father frightens her. B described an incident when the father allegedly became angry about an argument B had with A. She went to her bedroom and locked the door. The father punched the door. B said that the father was able to open the door with another key; he came into her room and hit B on the bottom with a coat hanger. Mrs Demery describes B as having been '*visibly distressed*' when recounting this incident. In her oral evidence she said that B was close to tears. From the mother's evidence it would appear that this incident took place when B was aged 7 years old.
40. B also told Mrs Demery about another occasion when the father had been abusive towards the mother suggesting that she would become a prostitute if she came to the United Kingdom.
41. B made clear that she does not want to return to Hong Kong. Aside from the father's mistreatment, B said that she found the timetable at the tutorial centre onerous. The children did not arrive home until 9pm each evening and had no time to relax and rest. Nor were they given time to reflect on and digest what they had learned. By contrast, in the United Kingdom the teachers ensure that they understand. At this point B added that the culture in Hong Kong is for children to spend lots of time at the tutorial centre rather than at home.
42. In common with A, B expressed that she prefers the weather and food in the United Kingdom to Hong Kong. She did not identify anything positive about Hong Kong. B spoke about enjoying shopping and going to the park with friends in the town where she has been living since coming to England. B made clear that she would be upset if they had to return to Hong Kong as she would lose her UK friends and have no playtime. She did not want to go to Hong Kong even to have contact with the father.
43. A was also present during Ms Demery's meeting with C.
44. C told Ms Demery that he wants to remain in England. He prefers school in the United Kingdom where he does not have to work so hard. He said that he has made lots of friends in England, more than he had in Hong Kong
45. In common with A and B, C said that he misses the maternal grandmother. C thought the father might be missing him but said that he does not miss the father or like talking to him on the phone. He too could find nothing nice to say about the father. C said that the mother is kind and likes listening to music. He found it more difficult to describe the father, saying that he and his siblings did not spend much time with him. C gets on well with A and B.
46. C contrasted life in England, where he can play in the park, with Hong Kong where he had to do '*very hard work from school and then tutoring*'. He identified that a positive aspect of Hong Kong was that there was '*lots of food*'. At this point A commented that it is expensive in Hong Kong.
47. C too said that when the father speaks on the telephone, he always tells him to come back to Hong Kong. C, however, tells the father that England is better and the schools are less

hard. C then told Mrs Demery that they had something to say: *'I don't want to return to Hong Kong because my dad assaulted me. He will hit me on the hand for not answering his question... even sharing ice cream just for small things. Shouting at me for dropping a chopstick or rice. I don't want to go to school in Hong Kong - someone hit me'*. Mrs Demery's evidence is that C was speaking rapidly when telling her this. C added that if ordered to return, he would *'cry, I'd be so unhappy, and I wouldn't want to go to school'*. He thought A and B would feel the same as there was too much homework. He said that if he remained in England he would visit the father during school holidays.

48. All three of the children had written letters to the judge, which they gave to Ms Demery to pass on to me. Ms Demery commented that the letters are *'beautifully written and well thought out'*. She added in her report:

“It is of course possible that the children wanted to ensure that there were no mistakes and took a great deal of care when they wrote them. The language and words which B, in particular, used seemed to be those of a much older child. [B's] letter also referred to the impact of the court proceedings on [the] mother's time. Aside from that latter observation the content of the children's letters very much mirrored what the children said to me during their respective meetings with me.”

Ms Demery was asked about this during her oral evidence. She suggested that some of the language used by B in her letter in particular seemed adult in nature (for example use of the word *'filial'*). The letters, in her view, were unusually long; children in this context tend to write letters which are just a page in length. Her instinct was that the children had been helped to write them.

49. In her report Ms Demery summarised the views of the children in the following terms:

“All three children present as intelligent and articulate, the special needs of A and C notwithstanding. They have each expressed a strong wish to remain in the United Kingdom. They have presented similar and cogent reasons for this.

The children have nothing positive to say, sadly, about their father or their lives in Hong Kong where they had previously lived for the whole of their lives. If their father has behaved in the way the children have portrayed, their expressed wishes and feelings are unsurprising.”

50. Ms Demery considered that each of the children had a cognitive maturity commensurate with their respective chronological ages; *'at least'* so in B's case.

51. During her oral evidence Ms Demery accepted the proposition that if the mother had fuelled the children's anxieties this would be likely to have an impact on their views. She also acknowledged the general proposition that if children have a wish to remain in a country, they will sometimes over-exaggerate reasons not to have to return and may find nothing positive to say about the left-behind parent or the other country. As she put it, these children will have known the significance of the meeting with her. She also acknowledged that in some cases, children will be influenced to say things by the parent with whom they are living.

52. Ms Demery's view was that these children have expressed a strong preference to remain in England. The information from their English schools suggests that they have adjusted well and this may be a part of their wishes and feelings. She suggested that their current schools are *'perhaps not as strict and focussed as what they experienced in Hong Kong'*.
53. Ms Demery commented that the father's agreement that upon a return to Hong Kong the children would not have to attend the tutorial centre goes some way towards meeting the concerns which the children have about Hong Kong. The children felt they had not been treated fairly at the centre.
54. Mrs Demery accepted a proposition put to her by Mr Langford that A had assumed a protective big brother role in relation to his siblings. She felt that A's presence during their interviews was intended to be supportive. She did consider that it was a big burden for A to feel the need to protect B and C.
55. I directed Mrs Demery's attention to paragraph 21 of the mother's statement (which I have cited above). She very frankly said that, although she had read it, she had not been as alive to it as she could have been when conducting her interviews with the children. She said she had rarely come across a situation where she has been told by an adult that you cannot always trust what a child is saying. She said that it always worries her when a child has nothing positive to say about one of their parents, although if their only experience of that parent is them being abusive it is perhaps not surprising. Her worry, however, was that having nothing positive to say could mean that the children had been overly influenced by the other parent or that a lot of adult information had been shared with them.
56. I sensed that Mrs Demery was hesitant about coming to conclusion as to whether these children's expressed views were the product of undue influence or inappropriate sharing. Ultimately, however, she stated that it had been her impression that things said by the children reflected their *'lived experience'*. In particular, she pointed to the fact that B, who does not share the same challenges as A and C, had made similar complaints to them about her experiences in Hong Kong.

The law

Overview of the 1980 Hague Convention

57. The aims and objectives of the 1980 Hague 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.

58. The welfare of the child is not 'the paramount consideration' under the 1980 Hague 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.
59. The Supreme Court explained at paragraph 18 of that decision that a faithful application of the provisions of the 1980 Hague 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).
60. 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 1980 Hague 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.

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..."

61. The burden of establishing an exception under Article 13 lies on the respondent to the application. Once established, the court has a discretion as to whether to order a return, although it is almost inconceivable that a return would be ordered if the exception under Article 13(b) is established.

Article 13(b) grave risk

62. The relevant principles were clearly set out by Ms Kate Grange KC sitting as a Deputy High Court Judge in *A v B (Abduction: Article 13(b) and Child's Objections)* [2023] EWHC 699 (Fam). I gratefully adopt her summary of the law at paragraphs 68 to 81 below.
63. 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."

64. 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."

65. 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). "

66. 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 1980 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).
67. 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).
68. 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).
69. 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."

70. 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."
71. 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).
72. 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).
73. 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.
74. In his judgment in *E v D* (citation above) at §32 and §33 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."

75. 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."

76. 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).

Child's Objections

77. 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.

78. 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).

79. 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.

80. 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'.

81. 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.

82. In *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."

83. 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."

84. 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."

Analysis and conclusions

Grave risk of harm

85. Mr Langford in his oral submissions set out that there are three aspects to the mother's case on Article 13(b) which he summarised as follows:

- (a) Domestic abuse against the mother and the children themselves;
- (b) Harm arising from the diagnoses of A and C; and
- (c) [deleted].

86. The mother's case on domestic abuse is encapsulated concisely in paragraphs 10, 11 and 12 of her statement:

10. We remained living with my mum until [B] was born. Shortly after [A's] birth, my husband really changed. Gone was the polite and courteous man I knew. In his place was an angry, aggressive man. He completely gave up any pretence of helping around the house. My mum and I were the primary carers of [A and B]. He would give denigrating opinions about our care of the children. He would shout at my mum and say derogatory things to her and me. He used to be horrible to the children, and my

mum would get annoyed at him for this. When she mentioned this, he would get angry and direct his insults to the both of us. In the end, my mum moved out because it was too much for her to cope with.

11. Without my mum as a safeguard, my husband's behaviour towards me really deteriorated. It became physically, emotionally and psychologically abusive. He would constantly call me a bitch, stupid and a pig. If there was someone on the TV, like a homeless person or prostitute, he would tell the children I was like that person. he would often tell me he would be better off if I just died. If I ever talked back to him he would become physically violent to me. On 24 December 2018, I had arranged for the children and I to have an ice cream fondue. The children argued about the flavour they wanted, and Felix shouted at them. At that point I tried to leave the house to get some air. My husband stopped me in the doorway. He told me I couldn't leave. He grabbed both my arms and made me stand there for 30 minutes. It caused bruising. There is now produced and shown to me at 'JL-1' photographs of the bruising with date stamps.

12. The father was also abusive to the children. He would often physically chastise them. If the children misbehaved or did something that he didn't like, he would slap them. As the children grew, he became more violent. When [A] was around seven years old, the father chased him around the house with a rattan type stick and hit him with it. When [B] was of a similar age, he hit her with a coat hanger. This was because [B] had accidentally slammed [a] door after having an argument with [A and C].

87. The mother's case is corroborated by photographs and also by what the children themselves have said to Mrs Demery. I also consider some of the messages sent by the father following the removal of the children to be troubling in this context. In one message, for example, he addressed the mother in imperative terms: '*You have made many mistakes in front of the children, they must be corrected*'. He then set out what reads like a list of principles which need to be followed, one of which is that '*One must be punished for their wrongdoings*'. In another message he said that returning the children to Hong Kong was not '*a revenge*' but '*It is for the kids to learn a valuable lesson. One needs to bear the consequences of their mistake*'. These messages are not evidence that the father is a perpetrator of physical abuse, but they do tend to suggest that he is strict, thinks in rigid terms, seeks to dictate to the mother and lacks sensitivity towards the children.

88. Ms Renton submits that, in circumstances where the burden is on the mother to establish the Article 13(b) exception, it is significant that her allegations of abuse are in the main expressed in generalised terms. The specific examples of abuse she has identified are fairly historic. The allegation at paragraph 11 of her statement is five years old. The specific allegations that the father hit A and B are six and four years old respectively. It is notable that it was these two incidents that the children themselves alighted upon in particular in their discussions with Mrs Demery. Ms Renton further points to the holiday in England in January 2023 as evidence that this was a functioning family unit at that time. Photographs taken during the trip show the children smiling in the company of their parents. The fact that the children were '*thrilled*' at the prospect of the whole family moving to England is, Ms Renton submits, inconsistent with the notion that the father was abusive in the manner that is alleged. Ms Renton further relies upon the willingness of A and C to travel to Hong Kong to visit the father as being difficult to reconcile with the notion that this is a father who assaults them and of whom they are afraid.

89. Although I consider that Ms Renton's submissions have some validity, I am mindful of the fact that these are summary proceedings. I do not consider that this falls into the exceptional category of cases where the court can '*confidently discount*' the possibility that allegations give risk to an Article 13(b) risk. In those circumstances, it is necessary for the court to proceed cautiously, bearing in mind that in the absence of oral evidence I am not in a position to make findings as to what is alleged. I must be careful not to downgrade the allegations merely because I might have doubts as to their validity or cogency.
90. The second strand of the mother's Article 13(b) case is that by virtue of A and C's diagnoses, they react badly to change. Being required to return to Hong Kong in the face of their opposition is likely to provoke a strong negative reaction from them of such severity as to cross the Article 13(b) threshold.
91. [deleted]
92. I make the following reasoned and reasonable assumptions as to the maximum level of risk faced by the children upon a return. Absent any protective measures, the children would be returning to the family home where they would live with both parents. They would be exposed to domestic abuse, both physical and verbal, against their mother. They would also be living in a household with a strict disciplinarian father who on occasions has inflicted physical chastisement upon them. They would be required to attend a regime of after school tuition so onerous as to place them under intolerable pressure, with limited opportunities for play. The regime at the tuition centre is also strict and the children would be exposed to physical discipline. Faced with the prospect of returning to such an environment, the children would react negatively, particularly when they have come to experience a less pressured form of education which they clearly enjoy and which affords them opportunities to enjoy ordinary play. Absent appropriate protective measures, I consider that a return in those circumstances would give rise to a grave risk within the meaning of Article 13(b).
93. That, however, is not the form of return proposed by the father. He has, albeit belatedly, offered to give various undertakings to the court including:
- (a) To leave the family home for the sole use of the mother and the children,
 - (b) To pay the outgoings on the family home,
 - (c) To pay for 2 months for food and basics,
 - (d) To pay for flights,
 - (e) Not to be present at the airport upon the children's return,
 - (f) Not to separate the children from the mother,
 - (g) Not to require the children to attend a Tutorial centre unless the mother agrees in writing,
 - (h) To consider alternative schools in Hong Kong if the mother so requests,
 - (i) Without prejudice to his denials, not to assault harass or pester the mother or the children,
 - (j) To co-operate in bringing the matter before the Hong Kong court,
 - (k) If (only if) required by this court, to obtain a mirror order setting out the above terms.
94. Mr Langford submits that in circumstances where Hong Kong is not a contracting party to the 1996 Hague Convention any undertakings offered would not automatically be

recognised under that Convention. I agree with that submission. There is no evidence as to the approach taken to undertakings in Hong Kong. In my judgment, in order to ensure that the protective measures designed to alleviate a potential Article 13(b) risk are effective, it is necessary in this case for the father to obtain an order from the courts in Hong Kong prior to any return order being in force. Such an order would need to incorporate the following provisions:

- (a) The father must not use or threaten to use violence against the mother or the children;
- (b) The father must not molest, harass or pester the mother or the children;
- (c) The father must vacate the family home prior to the mother and the children returning to Hong Kong. Having vacated the property, he must thereafter not enter, attempt to enter or come within 100 yards of the property;
- (d) The father must not remove the children from the care of the mother save for the purposes of any contact which is agreed in writing by the parties;
- (e) The father must not attend at the airport on the day of the children's return to Hong Kong;
- (f) The father must not cause the children to attend any after school tuition classes without the consent in writing of the mother.

The orders at (a) to (c) must last until a hearing convened on notice to both parties at which the court in Hong Kong is able to make a substantive decision as to the need for the mother and the children to have ongoing protection in the form of such injunctions. The orders at (d) and (f) must last until the court in Hong Kong is able to make a substantive welfare determination in relation to the questions of the children's education and contact with their father at a hearing convened on notice to both parties.

95. In addition the father must give undertakings to this court:

- (a) to co-operate with the mother in considering and, if appropriate, enrolling the children at any new schools in Hong Kong, should she so request,
- (b) to co-operate in bringing the matter before the court in Hong Kong, and
- (c) to pay the outgoings on the family home.

Undertaking (a) will be expressed to be subject to any determination which Hong Kong court may make in relation to schools at a hearing convened on notice to both parties. Undertaking (c) will operate until the conclusion of financial proceedings between the parties. The father must also swear an affidavit which records his commitment to abide by these undertakings and lodge that affidavit with the court in Hong Kong before the return order takes effect.

96. The family home is owned by the paternal grandfather. I do not know whether this means that the paternal grandfather is legally entitled to evict the mother from the property, notwithstanding any undertaking which the father may give. Prior to the return order taking effect, the father must therefore obtain a sworn affidavit from his father which records his agreement to the mother and the children residing at his property until the conclusion of divorce and financial proceedings between the parties in Hong Kong. That affidavit must also be lodged with the court in Hong Kong.

97. The father has agreed to pay for the return flights and to provide the mother with the sum of £1000 for her general living expenses. In circumstances where the mother has savings of £120,000 I do not require the father to provide any additional financial assistance. Ultimately financial issues are for the Hong Kong court to determine. The sum of £1000 must be deposited in the mother's bank account and the flights paid for before the return order takes effect.

98. With these protective measures in place, the children are likely to be more accepting of a return to Hong Kong than would otherwise be the case and, whilst they will not doubt continue to oppose it, I do not think that their likely reaction will be such as to give rise to a grave risk of harm.

99. [deleted]

The children's objections

100. It is accepted that all three of the children have attained the requisite age and degree of maturity for the purposes of Article 13(2). I am also satisfied that each of them objects to returning to Hong Kong. They have all expressed a strong desire not to return for reasons which are rational and cogent.

101. It follows, therefore, that I have a discretion as to whether to make a return order not. My discretion is '*at large*'. I have found this the most difficult aspect of the case and consider the issue to be finely balanced.

102. I begin with the policy of the 1980 Hague Convention. This was a clandestine abduction which involved a significant amount of pre-planning. The children were involved and placed in the position of having to keep secrets from their father. Having arrived in this country the mother concealed her address from the father and was less than fulsome in facilitating contact. Those circumstances mean that the policy objectives of the Convention such as the need for deterrence and to restore children speedily to their country of habitual residence carry a great deal of weight. The father reacted speedily in bringing proceedings such that this has been a '*hot pursuit*' case. There is no reason to reduce the weight I give to those policy considerations as a result of the length of time the children have been here.

103. The children are aged 13, nearly 11 and 9. At the age of 13, A's expressed objections must *prima facie* carry substantial weight, although he is not yet at an age where the objections would by themselves be decisive. There is no suggestion that A's conditions in any way impede his ability to make decisions. B is a child whose maturity is '*at least*' commensurate with her chronological years. My starting point is that her objections should also carry significant weight. C is a little younger. Taken in isolation, I would afford less weight to C's objections, but these are a sibling group and it is necessary that I consider the children's position in the round. Neither party has suggested that I should treat any of the children differently from the others. On the face of it, leaving aside superficial matters such as food and the weather, the children's objections are cogent and rational: they object to returning to an environment where they witnessed and experienced abuse and were subjected to an onerous form of education.

104. I have given very careful consideration to Mrs Demery's written and oral evidence. I accept her ultimate conclusion that the matters described to her by the children are '*based*

upon their lived experience. This conclusion is supported by the physical reactions she witnessed from A and B during her interviews. This, however, does not tell the whole story. In my judgment, the children's expressed objections are also likely to have been influenced to some degree by the mother. I have reached this conclusion for the following reasons:

- (a) On the mother's own evidence, the children have been aware for some time that she has been pressing to come to England whereas the father was standing in the way.
- (b) As part of her pre-planning, it will have been necessary for the mother to impress upon the children the need to keep secrets from the father. It is likely that she also made clear to them the need not to reveal their address following their arrival in England. It will have been impossible to take such steps without conveying a wholly negative impression of the father to them.
- (c) I agree with Ms Demery's analysis of the children's letters and that B's in particular uses adult language. This, combined with the length of the letters, leads me to conclude that the mother is likely to have assisted the children in writing them.
- (d) The children's inability to find anything positive to say about the father or about Hong Kong is also consistent with the children having been adversely influenced against him by the mother, although I accept it is also possible that the children were seeking to advocate their wish to stay in England and therefore reluctant to concede anything positive about Hong Kong or the father.

Thus, although I remain of the view that the children's objections should carry significant weight, it is tempered to some degree by the influence to which I find them to have been subjected. This is not a case where the objections of any of them are so cogent as to carry overriding weight.

105. Aside from the children's objections, there are three other aspects of their general welfare which in my view need to be weighed in the balance.

106. First of all, as I have set out above in relation to Article 13(b), there are serious allegations that the children have been exposed to abusive behaviour. These are relevant to the exercise of my discretion, albeit I need to consider them on the basis of the protective measures which will be in place in the event of a return. As Mrs Demery said, the removal of a requirement to attend a tuition centre goes some way to meeting the children's objections about a return. Without the presence of the father in their home, they will be living in a very different climate from that which they previously experienced.

107. Secondly, the children are settled in school in England and appear to be doing well. Mr Langford goes further and submits that in England more suitable SEND provision will be made for the children than in Hong Kong but I do not consider this is a conclusion I can reach on the evidence, not least because the local authority has yet to undertake an assessment of the children's needs. I do, however, accept that the children will be upset at the prospect of changing schools. Although the mother acted to their detriment in bringing them to England, this does not of course mean that they will benefit from having to change schools again. It is, however, important not to attach too much weight to the fact that the children seem to be doing well in school. They also received very good reports from their Hong Kong schools, where they appeared to be thriving. They have only been in English schools for a

term. It is a wholly new curriculum for them and they are having to be educated in their second language. Whilst they may be enjoying school at present, it will have something of a novelty factor for them which may in time wear off. They are also inevitably enjoying the freedom of being able to play after school rather than attend a tuition centre. On the basis of the protective measures that will be put in place, the children will not have to return to the same regime involving the tuition centre.

108. The third and, in my view, most significant welfare issue is that in coming to England the children have been separated not only from their father but also from their extended family on both sides and their home environment. They have been abruptly cut off from their country of birth and nationality and brought to live in a country with which they have virtually no connections at all. This has the potential in future to affect their sense of identity and their self-esteem. The children were able to identify members of their family whom they miss and who will be missing them, in particular their maternal grandmother. She is suffering from a terminal illness. I do not know her precise prognosis, but were she to die without the children having been able to spend time with her, this has the potential to be profoundly upsetting for them.
109. I am also concerned about the polarised view the children have expressed about their father. Whatever may have happened in the past, it is a relationship that needs to be restored and repaired. Not to do so, risks causing emotional harm to the children in the medium and long term. It will be difficult to repair the relationship while the children remain in a different jurisdiction from the father, especially as the mother has not been proactive at promoting contact.
110. It may well prove to be in the children's best interests to relocate from Hong Kong to England, but this is a decision that should be made following a careful welfare evaluation by the Hong Kong court. The children's lives until last summer have been in Hong Kong and most of the evidence relevant to their welfare is in that jurisdiction. Growing up in England would represent a major cultural change for them and the court will need to evaluate whether it is justified as being in their interests.
111. Ultimately, I have come to the conclusion that the policy objectives of the 1980 Hague Convention, combined with the balance of the welfare considerations to which I have referred above, should override the children's objections.
112. For all these reasons I propose to make an order for the return of the children to Hong Kong on the basis of the protective measures set out above.
113. I propose also to direct that none of the papers in these proceedings including this judgment may be disclosed to any person or entity save in a redacted form to be agreed by the parties' solicitors (or absent agreement determined by me).