



Neutral Citation Number: [2024] EWHC 3208 (Fam)

Case No: FD24P00431

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF P

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

**INCORPORATING THE 1980 HAGUE CONVENTION ON CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION**

IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/12/2024

Before :

VIKRAM SACHDEVA KC
SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

F

Applicant

- and -

G

Respondent

Ms. Mehvish Chaudhry (instructed by **DAWSON CORNWELL LLP**) for the **Mother**
Mr. Jonathan Rustin (instructed by **ALLINGTON HUGHES LAW**) for the **Father**

Hearing dates: 12 and 14 November 2024

Approved Judgment

This judgment was handed down remotely at 3.30pm on 11 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

VIKRAM SACHDEVA KC

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

Vikram Sachdeva KC:

1. This is an application for summary return of a 11 year old child, P, to Poland, pursuant to the 1980 Hague Convention. It arises from the allegedly wrongful retention of P in the United Kingdom by the father on 23 August 2024, the father seeking to justify her non-return to Poland on the basis that from 17 July 2024 onwards P did not wish to return to Poland to live with the mother.
2. The father concedes that P was habitually resident in Poland as of the date of P's wrongful retention; that the court with primary jurisdiction in respect of P is the Polish court; the mother holds rights of custody for P; P was retained (although not wrongfully) in this jurisdiction by the father on 23 August 2024; at the time of P's retention the mother was exercising rights of custody in respect of P; and the mother has not consented or acquiesced to P's retention in this jurisdiction.
3. The father's defences are twofold:
 - i) Article 13(b): harm/intolerability.
 - ii) Article 13: child's objections.
4. I acknowledge the hard work, care and skill which has been deployed by both counsel over the course of the hearing and in written submissions in the preparation and presentation of their respective cases. I do not intend any disrespect to either of the parties if I do not address every single point which has been made to me, but I have taken them all into account and what follows is my assessment of the issues important to the disposal of this claim.

Factual Background

5. The mother and father, who are both Polish nationals, met in the United Kingdom in 2006 and married on 21 December 2007. Their first daughter, L, was born in Spring 2008, and their second daughter, P, was born in Spring 2013. They are aged 16 and 11 respectively.
6. The family moved from the United Kingdom to Poland to live on 31 July 2020. On 14 May 2021 the parents separated, and agreed that L would live with the father, and P

would live with the mother, with the other parent having visiting contact with the non-resident daughter.

7. On 24 October 2021 the father and P left Poland to travel to the United Kingdom, without warning the mother. The mother contacted the Police and the Polish Embassy and on 27 October 2021 the father was arrested and questioned in the United Kingdom. The Local Authority brought an application for a Care Order for P, and an Interim Care Order was made placing P in foster care.
8. The mother also made an application for the summary return of P to Poland, under the 1980 Hague Convention.
9. On 22 February 2022 Judd J refused the mother's application for the summary return of L, holding that the child's objections defence succeeded and that the discretion would be exercised against return: [2022] EWHC 379 (Fam). L's objections had been clear and consistent; she was 13 years old; they were her own wishes; she had had educational difficulties in Poland, having spent most of her life in the United Kingdom. The other defence pleaded, the grave risk of harm defence, was rejected.
10. On 28 February 2022 the Polish court made an interim order that L should live with the mother and that the father should provide maintenance to the mother.
11. On 5 April 2022 L returned to live with the father. On 6 October 2022 Judd J made a final order in public law proceedings finding that L should be the subject of a "lives with" order in favour of the father and a family assistance order in favour of the Local Authority to support the contact arrangements between L, P and the mother.
12. There are ongoing divorce proceedings in Poland. A report by court-appointed experts in Poland, based on interviews with L and the mother, but not P or the father owing to his inability to travel (arising from the expense, and from work commitments) was completed on 4 April 2023. The report recommended that P lives with the mother and L lives with the father, plus interim video contact and face to face meetings at least yearly. However there was no contact between the father and P until November 2023, when the parties sought to agree the terms of a divorce settlement.

13. In February 2024, as part of the divorce negotiations, it was agreed that the father would visit Poland and take P away for a holiday and back to the United Kingdom, and the mother would then take both P and L back to Poland later in the summer.
14. The father duly came to Poland and collected P on 9 July 2024. There is a dispute over when the mother was due to collect P; the father asserts that it was 23 July, whereas the mother states that it was 9 August. In the event, the mother travelled to the United Kingdom on 9 August and stayed with the father and children overnight. The following day the family sat down to discuss matters and P stated that she did not want to go back to Poland. The father suggested that both children should stay with him until 23 August when he would drive them both to Poland. However, that did not happen.
15. On 13 September 2024 the mother made an application for summary return.
16. On 25 September 2024 Justin Warshaw KC, sitting as a Deputy High Court Judge, issued directions.
17. On 23 October 2024 the final hearing was listed to start on 12 November 2024.
18. On 12 and 14 November 2024 the final hearing took place.

The factual evidence

19. The father has filed a witness statement alleging as follows:
 - i) The mother was due to collect P on 23 July 2024 but did not turn up until 9 August.
 - ii) By that time P had made it clear to him on a number of occasions that she did not wish to return to Poland, that she was fearful of her mother, and wanted to remain in the United Kingdom under his care.
 - iii) P's objections to returning to Poland was what motivated the father to refuse to allow the mother to take P to Poland in August 2024, and to retain her in the United Kingdom since then.

- iv) P has made allegations (dates not specified) that the mother has been physically aggressive towards her on “a number of occasions” by pushing her and tugging her, grabbing her neck and ‘choking’ her.
 - v) P has also made allegations that her mother “regularly” shouts at her and calls her names.
 - vi) P is also “regularly” left at home by the mother when she travels for work, during which time P is not allowed to leave the house, which has resulted in her missing school.
 - vii) P says she has witnessed inappropriate sexual relationships between her mother and a number of males, and that P has been exposed to inappropriate sexual conduct by her mother.
20. The father seeks to rely on copies of text messages between L and P between 1 – 12 December 2023 and on 3 February 2024. The content of the messages convey P’s sadness at being separated from L, and her desire to live with L and the father, and also the mother’s anger upon reading the text messages. The mother is also said not to like it when P talks with the father. One message from P on 2 December 2023 stated that the mother gets really angry very frequently and it makes her cry; she does not want to live with the mother. Another message on 2 December 2023 states that P doesn’t feel safe around the mother any more. A further message records the mother having told P that she should not be talking to L five times a day and that when L goes to stay with the father and L the following year they will manipulate P to stay. Another message dated 9 December 2023 states that P is hungry but the mother did not leave her anything to eat. When questioned further by L, it emerged that the mother had in fact left her food to eat, but that it was “alot of stuff i dont like”.
21. The mother has filed a witness statement stating as follows:
- i) There are many untruths in the father’s statement.
 - ii) The father manipulated L to stay with him.
 - iii) The father reneged on their agreement that the mother could pick up both girls from the United Kingdom in late July/early August.

- iv) In her view the reason for his change of stance was due to having been informed of criminal proceedings against him in Poland for failure to pay child maintenance, the mother having provided a witness statement in support on 31 July 2024. The father then stopped answering messages from the mother.
- v) The mother believes that the father is manipulating P to refuse to return to Poland.
- vi) When she spoke to P in the father's presence, and P told her that she did not wish to return to Poland, she was unable to give the mother any reasons for that view. P was constantly looking at the father.
- vii) Contact with P after the mother returned to Poland has been practically non-existent.
- viii) P was happy in Poland, and her relationship with the mother was very good.
- ix) P sometimes missed her sister L, but never her father.
- x) The joint expert report for the Polish Court dated 4 April 2023 found that P "has a strong bond with her mother who she treats as her main carer" and she describes the father's presence making her "anxious" and perceived the time she did not live with the mother as a "sad time in her life".
- xi) The school report dated 2 September 2024 stated that there were not any signs of domestic violence.
- xii) The mother categorically denied that she treated P improperly, specifically denying using any physical or mental violence, or that she ever left her alone at home for many hours without supervision or food, and never overnight.
- xiii) She never screamed at P for no reason. Nor did she pull, push, or grab P by the neck, or choke P.
- xiv) There have been conflicts with P, for instance when she did not clean her room, or when she did not pack for school, or did not do her homework. It is untrue that she constantly criticises P.

- xv) The mother devotes all her free time to P. They go to the cinema and the swimming pool, and on various trips. She is not in a romantic relationship with anyone, and is solely focused on P.
- xvi) P's absences from school are all health-related and were always reported to the teacher.
- xvii) P was progressing at school in Poland and she was exceptionally good at English. She had many friends in Poland and is fluent in Polish. She enjoys traditional Polish food.

22. The Protective Measures which the mother proffers are as follows:

- i) To pay the reasonable costs of a one-way flight to Poland for P.
- ii) Not to support any criminal or civil proceedings relating to P's wrongful retention.
- iii) To arrange for the disclosure of the Cafcass report and the orders, the parties statements, the Cafcass report, the judgment and the final order to children's services in Poland and to the Polish Court seised with proceedings in respect of the child.
- iv) To maintain regular contact which shall be free and unrestricted (both direct and indirect) between P and L and to agree a schedule of contact prior to the first hearing in Poland.
- v) The mother shall make P available to spend time with the father twice per week via video call, pending any further decision of the Polish court.
- vi) On a strictly no admissions basis the mother must not intimidate, threaten, harass, verbally abuse, or use or threaten violence against P.
- vii) To make the appropriate referral, via her solicitors and ICACU, to children's services in Poland with a copy of the Cafcass report and orders, the parties statements, the Cafcass report, the judgment and the final order.
- viii) To restore the matter for an on-notice hearing in Poland as soon as possible.

- ix) Not to leave P unsupervised for any more than two hours.
- x) To arrange for suitable therapeutic support for P on return to Poland including consideration of family therapy.
- xi) Not to have male guests stay overnight at the family home.

The CAFCASS Report

23. CAFCASS has provide a report dated 6 November 2024, drafted by Ms. Emma Huntington, addressing the issues of (1) P's views, wishes and feelings in respect of returning to Poland, (2) P's maturity, and (3) whether P wishes to meet the trial judge. Ms. Huntington gave oral evidence in line with her report. She met P on 29 October 2024 for around 1.5 hours. The report states as follows:

- i) The parents married in the United Kingdom where both L and P spent their early childhoods. They returned to Poland in July 2020, where the marital relationship subsequently broke down. The mother has reported experiencing domestic abuse within the marriage and has described behaviours characteristic of emotional abuse at the time of the parents' separation.
- ii) L was the subject of international abduction proceedings, following what the UK court found was her wrongful removal from Poland around 21 October 2021. This led to her being placed in foster care and the initiation of care proceedings by the local authority. L was later returned to the father's care under a 12 month supervision order which expired on 5 April 2023, and in the Hague proceedings, the court declined to make a return order based on L's objections.
- iii) The family were known to Children's Services. The mother has no trace on the Police National Computer. The father had received a number of convictions:
 - a) Driving a motor vehicle with excess alcohol, 12 July 2005.
 - b) Driving whilst disqualified for which he received a suspended sentence, 29 December 2005.

- c) Driving whilst disqualified, using a vehicle whilst uninsured, and breach of suspended sentence, for which he received a custodial sentence, 26 June 2006.
- iv) The father has also received a number of cautions:
 - a) Possessing an offensive weapon (baseball bat) in a public place, 20 March 2005.
 - b) Making a false statement to obtain insurance, 4 March 2008.
- v) P was able to engage in a reciprocal discussion despite showing signs of nerves and stress.
- vi) She conveyed her family, which consisted of her sister, her parents, and maternal grandparents, as important to her.
- vii) She described positive relationships with her father, who calmed her down and intervened in arguments with her sister, and her sister, who she gets on well with, although they argue.
- viii) She described her relationship with her mother as “not that good, but not horrible”. P considered the difficulties in the relationship with her mother as associated with a difficult school experience in Poland, that her teachers did not like her and did not help her, leading to many absences. Her mother’s view was that she should work harder, which created tension in their relationship.
- ix) P said she did not like living apart from L. She wanted her family to live together but knew this would not work.
- x) She spoke positively about her life in Poland, but repeated her negative school experience, which upon examination appeared primarily related to her difficulties in Maths.
- xi) She told her father during the summer holiday that she wanted to stay with him, because she thought he could look after her better than her mother, and that he and her sister would be able to help her work on her mental and physical health.

- xii) Her mother became angry easily and shouted at her a lot, and she felt uncomfortable when men stayed with her mother overnight. She felt really sad really often, but this was not always attributable to her mother.
- xiii) She felt that her mother should respect her decision to stay with her father.
- xiv) Her mother had portrayed her father in a negative light, but she had questioned this view by what L had told her about him, and when she asked him questions he gave a different account to that of her mother.
- xv) She felt really stressed when her mother visited in the summer because of her reaction to P's expressed wish to stay. She also worried she would not be "safe" – which referred to her worry that her mother would want to talk about the proceedings and where she should live, and she felt stressed at the prospect of spending time with her mother alone.
- xvi) When given the option of having a magic wand, P would want her parents not to fight any more, so that "we could live together and be happy".
- xvii) If return was ordered, she would feel really scared and sad. She did not want to go back to her mother and rated her strength of feeling against a return to Poland at 8 or 9 out of 10.
- xviii) Her concern was that her mother would be more mean to her because of her decision to stay with her father and would shout at her more. Her mother used to blame her, call her lazy, and say that she should work harder at school and around the home.
- xix) Her mother used to leave her alone for many hours when she was working, and this had included overnight.
- xx) P has settled in to school in the United Kingdom very well, having joined year 7 on 20 September 2024, to be motivated to attend school and to be punctual. She has made a group of positive friendships. She is working at an average academic level and is said to work hard. There are no concerns regarding her behaviour.

24. As to P's views, wishes and feelings in respect of returning to Poland, Ms. Huntington stated that following the parental separation, each child has felt required to align with a parent, creating division, separation and longstanding conflict within the family. Whilst she did not seek to diminish P's concerns about her mother's behaviour towards her, there appeared to be some lack of congruence between the complete breakdown in her relationship with her mother, the depiction of more positive dynamics in the professional reports from Poland, and what P told her about her experiences in her mother's care. For instance when exploring examples of what was "mean" behaviour, she described what might be viewed as universal tensions in expectations and relationships between a parent and a pre-adolescent child. Some of the phrases used by P, for instance working on her mental and physical health, appeared somewhat adult and atypical for an 11 year old; she could not rule out that P may have experienced some pressure that has contributed to her expressed wishes and feelings.
25. As to her maturity, it is in line or slightly above her chronological age. However Ms. Huntington was struck by her emotional vulnerability, having made multiple references to feelings of unhappiness and difficulty regulating her emotions, and her body language was suggestive of stress, and she was tearful at times. Ms. Huntington considered that P felt very much at the centre of longstanding and intense parental conflict and division and separation within her family. She wanted the fighting to stop, but despite her wish for everyone to be together, she recognised that it was unfeasible. Her adverse experiences of parental hostility and repeated disruption to the family unit render her a vulnerable child whose emotional maturity and levels of resilience may be affected.
26. The weight that can be given to her expressed wishes and feelings should also be viewed within the context of her emotional vulnerabilities and the complex family situation.
27. P stated that she did not wish to meet the judge as it would be too stressful. Ms. Huntington did not support joinder of P as a party, due to the exposure to conflict, and the fact that it would not contribute to the court's understanding of the issues.
28. The report concluded, if P does return to Poland, the family court there would be well placed to determine her longer term arrangements, and if a return order is made, this

report should be disclosed to the Polish court. It is also important that the siblings have every opportunity to maintain a meaningful relationship.

Expert reports

29. The father seeks to rely on an expert report from a psychologist dated 13 August 2024. The psychologist interviewed P in the father's presence, and she repeated the allegations about the mother which she had made to the father concerning verbal abuse, not feeling safe in her mother's care, being left unsupervised often without food, and feeling uncomfortable when strange men stay with her mother at night. The allegations of physical assault were not made to the psychologist, although it was noted that such allegations had been made to the father. She also said that she made virtually no friends in Poland. The psychologist expressed the view that "it can be firmly established that the mother'[s] relationship with her daughter is marred by violence, which has [a] negative impact on [P]".
30. A report in Polish proceedings dated 4 April 2023 has been disclosed from the Polish divorce proceedings drafted by court-appointed experts. They interviewed the mother and P (when aged just under 10), but unfortunately were not able to interview the father or L.
31. The report records that during the interview P declared [a] strong bond with her mother who she treats as the main carer, and perceives her as a supportive person, showing her love and protecting her. She also sees herself as protecting her mother. The time when she did not live with her mother she perceives as a sad time of her life. She perceives her father in a negative way and is not willing to talk to him. She resents him for the way he was treating her mother. She perceives her sister as focused, to some degree, on her own life and affairs, and worries whether her bonds with her sister are reciprocal.
32. Their conclusion was that

"[P]... is a well developing child, joyful and cheerful. She has a strong bond with her mother and her sister. She accepted the fact that her sister lives separately but she misses seeing her face to face. Her relationship with her father has weakened, the girl does not express the need to contact him albeit doesn't avoid him."

33. The report concludes that P wishes to stay in Poland and live with her mother, and L wishes to live in the United Kingdom with her father. They recommend that the father should be granted parental responsibility for L, and the mother over P. The mother has good parental competence, based on her personality, and parental attitudes. The father's assessment is of no concern either. Contact between the siblings is recommended.

Legal Framework

Policy of the 1980 Hague Convention

34. The objectives of the 1980 Hague Convention are expressed within its preambles and initial articles. preamble declares that the signatory states are “Firmly convinced that the interests of children are of paramount importance in matters relating to their custody” and “Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.” Article 1 states the objectives of the Convention, which are as follows:

- i) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- ii) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

35. 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.

36. *Re D (a child) (abduction: rights of custody)* [2006] UKHL 51, [2007] 1 AC 619, [2007] 1 All ER 783, [2007] 1 FLR 961, Baroness Hale described the operation of the 1980 Hague Convention at §48 of her speech, as follows:

“The whole object of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their “home”, but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed...”

Article 13(b) – the legal framework

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

38. In *X (Children) (Abduction: Grave Risk: Child’s Objections)* [2024] EWHC 1296 (Fam), Mr Richard Harrison KC DHCJ summarised the proper approach to Article 13b as follows:

“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)."

39. The *Guide to Good Practice under the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* published by The Hague Conference on Private International Law – HCCH Permanent Bureau say as follows:

“44. Protective measures may be available and readily accessible in the State of habitual residence of the child or, in some cases, may need to be put in place in advance of the return of the child. In the latter case, specific protective measures should only be put in place where necessary strictly and directly to address the grave risk. They are not to be imposed as a matter of course and should be of a time-limited nature that ends when the State of habitual residence of the child is able to determine what, if any, protective measures are appropriate for the child.”

40. In *Re K (Abduction: Case Management)* [2010] EWCA Civ 1546, [2011] 1 FLR 1268 the Court of Appeal held that the court cannot refuse to return a child on the basis of the Art 13(b) defence of grave risk or intolerable situation unless it was established that adequate arrangements could not be made to protect the child on return. The judge had,

therefore, not been entitled to refuse to return the child unless it was plain to him that adequate arrangements were not available to protect the child on her return. The mother had herself invoked the jurisdiction of the Polish court by issuing her divorce petition, and the Polish court could provide her with protection against the father; if the judge had any misgivings about such protection, he could have put in place protective undertakings.

Child's objections

41. The leading case on this exception is the case of *In re M and others (Children) (Abduction: Child's Objections)* [2015] EWCA Civ 26, [2016] Fam 1. The principles were summarised by Williams J in *Re Q and V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490 (Fam) as follows [at para 50]:

“The law on the 'child's objection' defence under Article 13 of the Convention is comprehensively set out in the judgment of Black LJ in Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal) [2015] 2 FLR 1074 (and endorsed by the Court of Appeal in Re F (Child's Objections) [2015] EWCA Civ 1022). In summary, the position is 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 (Re M [2007] 1 AC 619).

I also note that in some cases an objection to a return to one parent may be indistinguishable from a return to a country.”

42. It is generally accepted that the child's objection must be to being returned to their country of habitual residence, and not to being returned to the left-behind parent (*Re M (A Minor) (Child Abduction)* [1994] 1 FLR 390 per Butler-Sloss L.J.). However, it has been acknowledged that ‘there may be cases where this is so inevitably and inextricably linked with an objection to living with the other parent that the two factors cannot be separated’ (*Re T (Abduction: Child's Objections to Return)* [2000] 2 FLR 192 per Ward L.J. at §203; *Re R (Child Abduction: Acquiescence)* [1995] 1 FLR 716 per Balcombe L.J. from 729). This approach was affirmed in *Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26 at [42-45].

Discretion

43. If the court's discretion arises it is to be exercised in accordance with the principles set out in *In re M and another (Children) (Abduction: Rights of Custody)* [2007] UKHL 55 [2008] 1 AC 1288.
44. When exercising the discretion under the Convention there were general policy considerations, such as the swift return of abducted children, comity between contracting states and the deterrence of abduction, which might be weighed against the

interests of the child in the individual case; that the Convention discretion was at large and the court was 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; that the weight to be given to the Convention considerations and to the interests of the child would vary enormously, as would the extent to which it would be appropriate to investigate such other welfare considerations; that it did not necessarily follow that the Convention objectives should always be given any more weight than any other consideration; and that the further away one got from the speedy return envisaged by the Convention the less weighty those general Convention objectives must be, since the major objective of the Convention could not be met.

Measures of protection

45. The 1996 Hague Convention, which came into force in the UK on 1 November 2012, provides a framework for the recognition and enforcement of measures for the protection of children across contracting states. According to the Convention, measures taken in one contracting state can be declared enforceable or registered for enforcement in another contracting state through a simple and rapid procedure.
46. The term 'measures' in the Hague Convention 1996, Arts 23, 24, 26 and 28 must be construed broadly and includes undertakings made by a party, and recorded in a court order, in the course of child abduction proceedings under the 1980 Hague Convention: *Re Y (Abduction: Undertakings given for Return of Child)* [2013] EWCA Civ 129, [2013] 2 FLR 649. These can include all steps that can be taken, including housing, financial support, as well as more traditional measures such as non-molestation injunctions: see *Re C* [2018] EWCA Civ 2834 [2019] 1 FLR 1045.

The parties' submissions

47. The father submits that both the harm/intolerability and child's objections defences are satisfied.

Harm/Intolerability

48. The evidence of harm/intolerability is based on both physical and emotional abuse and includes allegations of physical assault by the mother on P (pushing her, tugging her, grabbing her neck and ‘choking’ her), and also allegations that the mother regularly exhibits intense anger towards P, triggers including when she speaks to the father and/or L. On one occasion the mother is said to have thrown P’s airpods onto a desk. There are also allegations of neglect against the mother, being left unsupervised for extended period of time, including overnight, and being in proximity to inappropriate sexual relationships between the mother and an unspecified number of men.
49. The mother denies these allegations, and submits that P has been influenced by the father in her perceptions.
50. The father submits that there are no protective measures that would secure P’s welfare in Poland, for it would require P to manage their enforcement (by alerting the authorities) which would place P in an intolerable position.
51. The mother submits that the protective measures she has undertaken to provide are sufficient to ameliorate any risk.

Child’s Objections

52. Alternatively the father submits that P has since 17 July 2024 consistently expressed an objection to returning to Poland (that being inextricably linked to returning to her mother), having told her father and having written a letter to the mother, and also Ms. Huntington. There is a rationality behind P’s objections, including (1) wishing to avoid her mother’s emotionally punitive behaviour (2) not wanting to be separated from L (3) having experienced negative school experiences in Poland (4) feeling more supported by her father and L in the United Kingdom (5) concern for the mother’s reaction having expressed the wish to remain with the father and (6) wishing to avoid the discomfort of men staying overnight with her mother. The father also asserts that P has attained an age and level of maturity at which it is appropriate to take account of her views.
53. The father submits that the discretion should be exercised to decline to make a return order, for the following reasons:

- i) It is overwhelmingly in P's best interests to live with her sister, L, with whom she is close.
 - ii) Allowing P to remain in the United Kingdom is consistent with her wishes and feelings.
 - iii) Returning P to M's care will place P at risk of physical and psychological harm.
 - iv) P was raised and educated in the United Kingdom and speaks English fluently; it is where she has spent most of her life.
 - v) P has settled well into the father's care. She describes attending a nice school, where her grades are good and she is liked by her teachers.
 - vi) P feels better in the father's care than when she was with the mother.
 - vii) P has received a referral for counselling in the United Kingdom, following an initial assessment by CAMHS, to address her mental health needs, which she will not be able to access if a return order is made.
 - viii) The father has been unable to fully engage with the Polish welfare proceedings as the court-appointed experts have been unwilling to meet with the father remotely.
54. The mother submits that the discretion should be exercised to override the child's objections:
- i) P was very positive about her life in Poland and about her summer holiday in 2024 with her mother in discussion with the Cafcass Officer. The court must consider the extent to which P's expressed views have been contaminated by the environment in which she is living, where she is having extremely limited contact with the mother. P was reluctant to travel to the United Kingdom to stay with her father and took the key for her home in Poland, expecting to return. Some of the language used by P was noted by Ms. Huntington to indicate influence/coaching from the father.
 - ii) Ms. Huntington has noted significant concerns about P's emotional vulnerabilities and the need to view her expressed wishes and feelings in this

context. Limited weight should be placed on P's expressed wishes and feelings for this reason.

- iii) The mother was only able to speak to P over 9 – 10 August 2024 in the presence of the father, so she was not able to talk to P openly or freely.
- iv) The court is invited to place limited weight on the text messages on the basis that full disclosure has not been provided, and the allegations in the messages are far less serious than those alleged in the father's statement.
- v) There are a number of reasons which mean that policy should carry considerable weight in the circumstances:
 - a) There are ongoing proceedings in Poland in which both parties are involved.
 - b) This is the second abduction which the father has committed, during agreed contact from a primary carer who has been prevented from having meaningful contact since the time of the abduction, despite the interim court order, and the order for direct time planned for half term was discharged.
 - c) The father has had a longstanding wish for P to live with him.
 - d) It is a hot pursuit abduction, in which the mother commenced her Hague Convention application extremely promptly.
- vi) The father's conduct reflects a complete disregard for the mother's parental responsibility and reflects adversely on his credibility:
 - a) P and the father first informed the mother that P (and L) were not going to be coming to Poland on 8 August 2024, one day before they were due to be collected on 9 August 2024. They messaged almost simultaneously, indicating collusion. That was at the same time the Polish authorities initiated proceedings in respect of his non-payment of child maintenance.
 - b) P was enrolled in school without the mother's knowledge or consent.

- c) The father (but not P) informed P's school that her time in Poland was traumatic.
 - d) The father has made a number of referrals for P to CAHMS, the GP, and to a private psychologist without the mother's agreement, indicative of evidence-gathering.
 - vii) P's home is in Poland, where her school, friends, and primary carer reside. She is fully settled in her educational, social and familial environment, as evidenced by the photos adduced.
 - viii) The mother will support the sibling relationship despite the geographical separation.
 - ix) Given L's age of 16, there is likely to be a change in the sibling relationship as she transitions to adulthood and gains greater independence outside the home, which is likely to affect the amount of time she and P spent together in future.
55. The father made a written application dated 11 November 2024 for the judge to speak to P, but in the event it was not pursued.

Discussion

Grave Risk of Harm

56. Pursuant to the Guide to Good Practice, paragraph 40:
- (i) As a first step the court should consider whether the assertions are of such a nature, and of sufficient detail and substance, that they could constitute a grave risk.
 - (ii) If it proceeds to the second step, the court determines whether it is satisfied the grave risk exception to the child's return has been established by examining and evaluating the evidence presented by the person opposing the child's return, and by taking into account the evidence pertaining to protective measures available in the state of habitual residence.

First Stage: Grave Risk of Physical or Psychological Harm or Intolerable Situation

57. I first consider whether the assertions are of such a nature, and of sufficient detail and substance, that they could constitute a grave risk. There is an allegation of serious physical harm against the mother, made orally to the father. This question looks to the future, and of what may happen if the child is returned forthwith.
58. Taking the risk of harm at its highest, and considering all of the evidence, bearing in mind the need for the assumptions made with respect to the maximum level of risk to be reasoned and reasonable assumptions that includes consideration of all the relevant admissible evidence, I find that the father has failed to satisfy the burden of proving that there is a grave risk that the child would be exposed to physical or psychological harm or would otherwise be placed in an intolerable situation.
59. The assertion of physical harm, whilst of a concerning nature, is not of sufficient detail and substance that it could constitute a grave risk. In the father's statement dated 11 October 2024 the allegations are made as follows "[P] has also disclosed that her mother has been physically abusive towards her and that she has on a number of occasions pushed her and been physically aggressive towards her by tugging her, grabbing her neck and 'choking' her". There are no particulars of on how many occasions this is said to have occurred, over what time period, and what happened each time, whether P required any medical treatment afterwards, and whether she told anyone other than the father, particularly at the time. It is also surprising, given the potential gravity of the allegations of physical assault, that they come after two sentences containing allegations that the mother shouts at P and calls her names, rather than at the beginning of the paragraph, or possibly even as part of their own paragraph. It is unclear whether allegations concerning physical assault were made orally only to the father, or to L too.
60. It is clear that the father has an incentive to present P's state in her mother's care adversely, there having been a battle over custody of the two children since he separated from the mother in 2021, so caution is required in relation to these allegations and the presence of corroborative evidence would be relevant. However these allegations are not supported by any contemporaneous evidence. The allegation was not repeated to Ms. Huntington, nor is it corroborated by any other evidence, such as the text messages. There is no evidence that such an allegation has been made by the father or P to the Polish court, and the expert report in the Polish proceedings dated 4 April 2023, in

identifying a positive attitude by P towards the mother, is inconsistent with that allegation.

61. The letter which P wrote to the mother on 19 August 2024 did not mention anything about physical abuse. It went as follows:

“Hey Mum, I am changing my decision, I am staying with my dad, as he told you. I wrote in a letter I do not feel safe and comfortable with you.

You bring unknown men to me without my knowledge and I don’t feel well and comfortable, you also gave me lots of mental problems.

You are shouting at me, often without any proper reason. Please don’t do this to me like you did to [L] and don’t lock me up in some kind of a Children’s Home. If you can, give me my things and my cats as I love them (picture of a cat and 4 hearts). Please don’t be cross with me but I feel better with my dad.

[Picture of 3 people and a love heart]

[Picture of a figure on a house and a love heart]” (emphasis original)

62. Further the School report dated 2 September 2024, which expressly found that there was no evidence of abuse, is also inconsistent with it. Also relevant is the fact that P did not describe her relationship with her mother as “horrible” to Ms. Huntington, indeed she told her she wanted to live with the whole family again, including her mother, which would be surprising (although not impossible) had there been physical assault on P.
63. As to psychological damage arising out of the episodes of the mother’s anger towards P and her neglect of her, taken at its highest I do not accept that, taken at their highest, there could be a grave risk of harm. Again, there is no indication of the frequency or duration of the adverse comments or of P being left alone, and I find that the allegations are not of sufficient detail and substance that they could constitute a grave risk. Further, as to the nature of the allegations, I agree with Ms. Huntington’s that the nature of P’s complaints as contained in her comments to her father and to her sister on text message are generally reflective of the typical frictions between a parent and an adolescent, rather than being of a more concerning nature. I find that they do not satisfy the onerous

standard required under this Article. Further, they were mostly sent a year ago with there being no subsequent texts provided. The allegations as to leaving P unsupervised are also insufficient to satisfy the high standard under this Article. Complaints as to discomfort as to men staying with her mother are of a less serious nature than the other allegations made.

64. Overall I consider that, taken cumulatively, the allegations do not meet the grave risk of harm/intolerability criterion. Although the nature of the allegations concerning physical harm could constitute a grave risk, they are not of sufficient detail and substance that they could constitute a grave risk of harm. As to the psychological allegations, they are not of a nature or of sufficient detail and substance that they could constitute a grave risk of harm.

Second stage: Whether the grave risk exception has been established

65. Although I am not strictly required to consider the second stage, I will now examine in concrete terms the situation that would face P on a return being ordered.
66. I will perform an 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 risks which the allegations potentially create. The question is whether I am satisfied the grave risk exception to the child's return has been established by examining and evaluating the evidence presented by the person opposing the child's return, and by taking into account the evidence pertaining to protective measures available in the state of habitual residence.
67. The mother has offered extensive undertakings which cover all the allegations which have been made. As to physical violence she has undertaken not to use or threaten violence against P. As to psychological damage she has undertaken not to intimidate, threaten, harass, or verbally abuse P. As to neglect she undertakes not to leave P unsupervised for more than two hours. She also undertakes not to have male guests stay overnight at the family home.
68. In deciding the weight to be placed on undertakings as a protective measure, 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.

69. Further, there are ongoing divorce proceedings in Poland, and welfare proceedings. The mother has filed evidence from a Polish lawyer stating that if an order for summary return is made the Polish court will lift the stay and will refer the matter to the family appointed team in the Advisory Team of Court Specialists for the preparation of an expert report. That team has various experts in medicine, psychiatry and psychology, paediatrics and family medicine, and will objectively analyse the child, parents and other people relevant to her needs and will make recommendations based on the child's interests. The Court will take note of this evidence before making a substantive decision as to P's welfare. In the interim the court can be expected to monitor P's welfare.
70. The pending court proceedings in Poland are of great importance in determining the weight to be placed on the mother's undertakings, for if she is in any significant breach of them, the Polish court can both take interim measures to protect P, and could well take into account any breaches of undertakings in determining which parent would best protect P's welfare. There is therefore every reason for the mother to adhere closely to the undertakings she has given this court, and I therefore place significant weight on the undertakings she has given.
71. I also take into account what MacDonald J said in *G v D (Absence of Protective Measures)* [2020] EWHC 1476 (Fam) at §39, endorsed by Moylan LJ in *In re C (A Child)* [2021] EWCA Civ 1354 [2021] 4 WLR 118 at [60], 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.’’

72. No evidence has been filed to seek to demonstrate that the Polish courts cannot, or are incapable of, or are unwilling to offer adequate protection to P.
73. Contrary to the father’s submissions, I do not consider it appropriate for the court to adjourn to file evidence as to the enforceability in Poland of orders and/or undertakings made or given in England. The parties have had adequate opportunity to obtain the evidence they need to argue the case and further delay would be inappropriate.
74. Further, it is not the case that P would be required to manage the enforcement of any breaches of undertakings, contrary to the father’s submission. The mother’s relationship with P will continue to be assessed in the course of the proceedings in Poland by the experts instructed by the court. It may well be that social services will also be involved. Further, P will continue to communicate with her sister and her father and any significant problems can be expressed to them, as they have been in the past.
75. My clear conclusion is that, if I am wrong about there not being a grave risk of harm or of an intolerable situation, the undertakings offered are sufficient to sufficiently ameliorate that risk.

Child’s objections

76. There is a two stage test. First, a “gateway” stage, confined to asking whether, as a matter of fact, 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. Second, a “discretion” stage.

Stage 1: Factual objection

77. Where a child objects to returning to live with her primary carer, there will be some cases in which that does not mean that there is an objection to returning to the country itself. In a case where the only option is to live with the other parent, as here, return to that parent is inevitably and inextricably linked to a return to the country itself.

78. I find that P is now expressing an objection, rather than simply expressing a preference. In December 2023 P texted her sister L stating that she wanted to live with L and their father. She linked the feeling to her mother's frequent outbursts of anger towards her; it is also clear that she missed her sister. P also texted L to say that their mother had warned her that when she visited them the following year she should not listen to them and that L and the father would manipulate her to stay. At that time P was expressly a wish to live with her father and L, but it would not have constituted an objection within the Hague Convention 1980.
79. However now P is positively objecting to being returned to live with the mother, having expressed it orally to the father and sister, in writing to the mother on 19 August 2024, and orally to the psychologist on 13 August 2024, and to Ms. Huntington on 29 October 2024. It is not merely a wish or a preference.
80. I therefore find that P objects to returning to Poland.
81. P is aged 11 and Ms. Huntington comments that her level of maturity is in line or slightly above her chronological age, which I accept.
82. I therefore find that P is of a degree of maturity such that it is appropriate to take account of her views.

Stage 2: Discretion

83. The question arises how the court should exercise its discretion, which is at large. The factors I consider relevant are as follows.
84. First, the nature and strength of the child's objections. From around 17 July 2024 onwards P has expressed objections to returning to Poland, because (1) she wants to stay with her sister L and her father, (2) she fears her mother's reaction to that preference, (3) she was struggling at school in Poland because she felt her teachers did not like her and did not help her (which P said, on further questioning by Ms. Huntington, was primarily based on her difficulties in her Maths lessons, although P's text message on 7 December 2023 complains of being ignored and avoided by her friends at school), resulting in her reluctance to attend and many absences and (4) she is having a better experience at school in the United Kingdom, having made friends.

85. In fact P's school report from Poland dated 2 September 2024 indicated that P obtained the average mark of 4.27, and only obtained worse results in Maths (weak pass) due to missing Maths lessons, rather than any lack of ability in Maths. The report went on to comment "The pupil does not struggle to form friendships with her peers, she is liked by others in the form. During lesson breaks she plays with other children... No indication of domestic abuse." Her school report from the United Kingdom after 6 ½ weeks of school states that she is working at an average academic level.
86. Second, the extent to which they are authentically the child's own or the product of the influence of the abducting parent. In summary, the reason for P's current objection to return to Poland (as opposed to the wish not to return, which would not constitute an objection) is the influence of the father and of L, rather than it being authentically P's own view.
87. P had been thinking about living with her father and L prior to summer 2024, as evidenced by her text messages to L the previous winter, but it had not solidified as an objection until 17 July 2024. The feeling had reached a significant level of strength by October 2024, when P told Ms. Huntington that it was 8 – 9 out of 10.
88. It is instructive to consider the evolution of P's views in the last 18 months. In April 2023 she told the Polish experts that she valued living with her mother and was distant from her father. In December 2023 when exchanging text messages with L, she expressed a wish to live with her father and L, but it could not be inferred from that exchange that the feeling was strong. During summer 2024 she told Ms. Huntington that she enjoyed a holiday with her mother to Turkey. From 17 July 2024 onwards, having spent just over a week in the company of her father and L, she has been objecting to returning to Poland, which by 29 October was of the strength of 8 – 9/10. The reason for this dramatic change in attitude was the influence of her father and L. She candidly described to Ms. Huntington that speaking with her sister and her father led to a change in her previously negative view of her father, and Ms. Huntington concluded that she could not exclude that P may have experienced some pressure or influence that have contributed to her expressed wishes and feelings. It is relevant that there was virtually no contact with the mother during that period. I acknowledge Ms. Huntington's assessment of the cause of the change in P's attitude to returning to Poland, but would

go further, in considering that the influence of the father and L is the primary reason for the fact that P is now objecting to returning to Poland.

89. This is by contrast to the evidence in respect of L which caused Mrs. Justice Judd to find that the child's objections defence were met in her case. L's social worker had found L to be a mature and sensible 13 year old girl whose wish to remain in the United Kingdom had been clear, consistent and steadfast. Her views had remained the same notwithstanding the fact that she has been in foster care since October 2021 (the hearing being in February 2022) which limited the opportunity the father would have had to influence her. Mrs. Justice Judd stated as follows:

“31. ... L's views have been firmly expressed, and consistently so over a significant period of time. They do not appear to have been overly influenced by her father, and it is notable that the reasons she give all relate to her own experiences; she does not appear to be a mouthpiece for anyone else...”

90. Further, L was 13 whereas P is 11, and the difference in maturity is relevant. Further, L had spent most of her life in the United Kingdom and had had difficulties in schooling in Poland. P has spent the last 4 years in Poland and is fluent in Polish.

91. Third, the extent to which they coincide with or are at odds with other considerations which are relevant to the child's welfare.

i) Previously happy life in Poland. P had a settled and happy life in Poland before summer 2024, and although she had complaints about her relationship with her mother, those complaints were of the nature of the ordinary frictions between parents and pre-adolescent children. Although she complained to her sister of not feeling “safe” around her mother in a text on 2 December 2023, instead of that description being literally accurate, it referred to her worry that her mother would want to talk about the proceedings and where she should live. She was generally doing well at school, except in Maths, and she had friends, although they sometimes ignored her. She spent her leisure time with her mother, doing activities such as swimming and going to the cinema.

ii) Further deterioration and/or loss of relationship with mother. If P remains in the United Kingdom, given her current refusal to have even electronic contact with

the mother, and the father and L's ongoing supply of adverse information about the mother to P, there is a real risk that P's relationship with the mother will be seriously prejudiced or even lost. If P is returned to Poland, it seems likely that her contact with her father and with L will continue as before.

92. Fourth, general Convention considerations. General Convention considerations would point towards return to the state of habitual residence, and returns only being blocked in the clearest cases, otherwise it would incentivise child abductions. In this case this is the second instance of wrongful retention of a child. The father had said that he would never do it again, and would do things different[ly] in respect to his daughter P if this was required: Parenting Assessment of L dated 10 March 2022. Yet the father has nevertheless wrongfully retained his second child, relying (as he did before) on the child's objections. This repeated conduct on the part of the father is a reason to give general Convention considerations greater weight than in the average case. The mother alleges that the father never intended to return P, but I find that the evidence does not establish that intention.
93. Overall, taking account of the context in which the child's objections have arisen (being at the centre of longstanding family conflict), and balancing the factors in favour of return and against it, I consider that the welfare considerations and Convention factors should be given predominant weight, the objections being due to the influence of the father and L, and the discretion should be exercised so as to override P's objections.

Conclusion

94. For the reasons stated above, I will allow the application, and order the summary return of P to Poland to live with her mother.
95. I will hear submissions concerning the arrangements to be made for return, including the timing and who will accompany P back to Poland.