Neutral Citation Number: [2024] EWHC 3463 (Fam)

Case No: FD24P00287

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

-

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2024

Before :

Ms NAOMI DAVEY, SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

GK	**Applicant**
- and -	
HX	**Respondent**

- -
- -

Simon Rowbotham (instructed by **Stephensons Solicitors**) for the **Applicant**
Mani Basi (instructed by **Dawson Cornwell Solicitors**) for the **Respondent**

Hearing dates: 11th - 12th November 2024

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Approved Judgment

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Ms NAOMI DAVEY SITTING AS A DEPUTY HIGH COURT JUDGE :

INTRODUCTION

1. This is an application under the Child Abduction and Custody Act 1985 for a summary return order under the 1980 Hague Convention. The application concerns F, a 5-year-old boy who has dual British and Australian citizenship. F's father, GK, is an Australian citizen. F's mother, HX, is a British national with permanent residency in Australia.

2. The mother first travelled to Australia in November 2014 to be with her then partner. In 2018 she obtained residency in Australia. She met the father in or around May 2018 when they were both working at the same company. The relationship commenced in November / December 2018. F was born 8 July 2019 and is the only child of the parties.

3. The parties cohabited from December 2018 to August 2022 during which time they parented F together. The mother worked for the company from May 2018 until September 2020 when she took redundancy. She looked after F full time from September 2020 until May 2021 when she found a part time role and started working three days per week, with F in daycare on the days she worked.

4. The parties separated in June 2022 and in August 2022 the mother moved into alternative accommodation with F. Between August 2022 and March 2023 the father spent regular time with F: a weekly overnight stay from Sunday morning until Monday morning; and morning visits on Wednesday and Thursday mornings before dropping F at daycare.

5. In early 2023 the mother wished to take F to the UK with her to visit her grandmother who was terminally ill. There were protracted negotiations about this between the parties with each party instructing solicitors; in the event the mother did go with F for a short period.

6. On 16 June 2023 the mother ceased to permit face-to-face contact between the father and the child; no face-to-face contact took place from 15 June 2023 to 30 March 2024. There was limited telephone contact. In August 2023 the mother contacted the father's solicitors indicating a wish to relocate to England with F and in October 2023, the mother submitted an application to the court in Australia seeking permission to relocate to England with the child.

7. On 13 March 2024 an interim order was made by the court in Australia which included provision for the child to live with the mother and spend time with the father. The father's contact with the child was to take place each week with professional supervision for six sessions and then to progress to take place in the presence of the paternal aunt. The court did not make an interim relocation order.

8. The first professionally supervised contact session took place on 30 March 2024. Before any further sessions could take place, on 11 April 2024 the mother took F to the UK. It is agreed that she did so without the father's knowledge or consent and in breach of his rights of custody. It was a wrongful removal for the purposes of Article 3 of the Hague Convention.

9. The father first became aware of the removal on 2 May when he received a text message from the mother stating *"if you want to see F this weekend he is available. He is in the UK, more than happy for you to come and see him"*.

10. The father issued an application on 5 July 2024 seeking summary return of F to Australia. The mother resists F's summary return on the grounds set out in Article 13(b) of the 1980 Hague Convention, namely that "*there is a grave risk that his return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation"*.

11. The final hearing in this case was originally listed for Monday 9 September. On the evening of Friday 6 September, the mother filed a witness statement confirming that she would not return to Australia. The hearing was adjourned and relisted for final hearing before me on 11 November. The court ordered the father to file and serve a statement in response to the mother's statement dated 6 September 2024, including any protective measures that he is prepared, without prejudice to his case, to offer for the purpose of securing the child's return to Australia.

12. Both parents attended the hearing in-person. The mother sat behind a screen by way of special measures. I was not asked, and did not consider it necessary, to hear oral evidence.

13. In deciding this matter, I have had the benefit of reading:

    a) the main court bundle in full (568 pages) including the witness statements and exhibits provided by both parents, previous orders in the proceedings, and the expert psychiatric report on the mother;

    b) the separate court bundle containing the documents in the Australian proceedings, including:

        i) Clinical psychologist's report on the father dated 28 February 2024

        ii) Sealed affidavit of the father dated 16 September 2024

        iii) Sealed affidavit dated 17 May 2024 from the Australian court-appointed clinical psychologist.

        iv) Sealed affidavit of the mother dated 7 March 2024

        v) A letter to both parties from the Independent Children's Lawyer in the Australian proceedings dated 7 November 2024.

14. I am grateful to both Counsel for their comprehensive skeleton arguments, which took me to a number of authorities on Article 13(b), and their oral submissions.

THE LAW: ARTICLE 13(b) DEFENCE

15. Article (13)(b) of the 1980 Hague Convention, states that a member state:

> "*…is not bound to order the return of the child if the person, institution, or other body which opposes its return establishes that 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.*"

16. In *E v D* [2022] EWHC 1216 (Fam) MacDonald J, provides a helpful summary of the law on the Article 13(b) defence:

> "*29. …The law in respect of the defence of harm or intolerability under Art 13(b) was examined and clarified by the Supreme Court in Re E (Children) (Abduction: Custody Appeal) [2012] 1 AC 144. The applicable principles may be summarised as follows:*
>
> *i) There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.*
>
> *ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.*
>
> *iii) The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two.*
>
> *iv) The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation'. 'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'.*
>
> *v) Art 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.*

> *vi) Where the defence under Art 13(b) is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable, in principle, such anxieties can found the defence under Art 13(b).*
>
> *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.*
>
> *31. The methodology articulated in Re E forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see Re S (A Child) (Abduction: Rights of Custody) [2012] 2 WLR 721), and this process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.*"

17. It is clear that, in principle, the consequences of a child being separated from their parent/primary carer upon return can create a grave risk under Art 13b (*A (Children) (Abduction: Article 13(b)* [2021] EWCA Civ 939).

18. The *Guide to Good Practice* under the Hague Convention, published in 2020 by the Hague Conference on Private International Law deals expressly [at paragraph 72] with the 'unequivocal refusal to return' of the abducting parent:

> "*In some situations, the taking parent unequivocally asserts that they will not go back to the State of the habitual residence, and that the child's separation from the taking parent, if*

> *returned, is inevitable. In such cases, even though the taking parent's return with the child would in most cases protect the child from the grave risk, any efforts to introduce measures of protection or arrangements to facilitate the return of the parent may prove to be ineffectual since the court cannot, in general, force the parent to go back. It needs to be emphasised that, as a rule, the parent should not - through the wrongful removal or retention of the child - be allowed to create a situation that is potentially harmful to the child, and then rely on it to establish the existence of a grave risk to the child.*"

19. The recent case of *R (Child Abduction: Parent's Refusal to Accompany)* [2024] EWCA Civ 1296 helpfully sets out the approach the court should take when the parent opposing return asserts that the grave risk of psychological harm or intolerability arises from their refusal to return with the child:

> "*36. Drawing matters together, Article 13(b) requires the parent opposing a child's return to establish that there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Where that parent asserts that they will not accompany the child to return, the court will scrutinise the assertion closely, because it is an unusual one for a main carer of a young child to make. The court will therefore make a reasoned assessment of the degree of likelihood of the parent not returning. Relevant considerations will no doubt include the overall circumstances, the family history, any professional advice about the parent's health, the reasons given for not returning, the possibility that the refusal is tactical, and the chance of the position changing after an order is made. The Court will then factor its conclusion on this issue into its overall assessment of the refusing parent's claim to have satisfied Article 13(b). By this means it will seek to ensure that the operation of the Convention is neither neutralized by tactical maneuvering nor insufficiently responsive to genuine vulnerability. ...*
>
> *38. ... but in assessing the likelihood of a parent not returning the court is not addressing a binary issue of fact (such as consent: see Re W at [58]). Instead, it is asking whether, factoring its assessment on this issue into the evidence as a whole, that parent has established an Article 13(b) grave risk to the child if a return order is made. In that context, the court is assessing likelihood on a summary basis, not finding facts.*"

20. There are a number of recent cases on a parent's refusal to return and the impact of separation, all of which turn on their own facts. In *A (Children) (Abduction: Article 13(b)* [2021] EWCA Civ 939 the Court of Appeal overturned a return order in circumstances where the trial judge, while sceptical of whether the mother would in fact decide not to return with the children, did not conclude that the mother was being manipulative or "self-serving" nor that, as alleged by the father, she would in fact

return with the children. The Court of Appeal found that the mother's decision to remain with a sibling who could not return was not *"a case of a mother capriciously or opportunistically seeking to take advantage of her own wrongful abduction"*. In *Re C (A Child)(Child Abduction: Parent's Refusal to Return with Child)* [2021] EWCA Civ 1236 the court of Appeal declined to overturn the trial judge's determination "*that this was a loving and devoted mother, that she would in fact return with the child"*. The Court of Appeal approved the question the judge posed himself: *"The test is not what it is reasonable for her to do... I have to look at that* [what protective measures can be put in place] *not so as to determine whether objectively the mother's expressed refusal to return to France is reasonable, but to determine what impact these measures will have on her reasoning and whether they are likely to lead to her returning."*

21. In *NP v DP (Hague Convention; abducting parent refusing to return)* [2021] EWHC 3626 (Fam) the trial judge found that an intelligent and fiercely analytical mother who firmly believed she had no prospect of succeeding in retaining custody of her child in the US and acutely feared she was at significant risk of arrest and detention on arrival in the US would not return. In *Z v Z* [2023] EWHC 1673 (Fam) the mother's assertion that she would not return was based on the need to complete cancer treatment in the UK. In *R v P* [2017] EWHC 1804 (Fam) Theis J found that it was more likely than not that the mother would not return on the basis that she would not want to be separated from her young baby who could not go with her and because of the serious history of abuse coupled with repeated failures to comply with the orders.

DISCUSSION

22. The burden of proving, on the balance of probabilities, that F's return to the jurisdiction of Australia would expose him to a grave risk of physical or psychological harm or would otherwise place him in an intolerable situation rests with the mother.

23. The mother's case is that she will not return to Australia with F if I order F's return. She says that the separation from her, as primary carer, and the transition from her care to that of his father and his father's family would amount to an intolerable situation for F. At the hearing Counsel for the mother did not address the situation of F returning with his mother. Nor did he address the protective measures offered by the father. This was because the mother's case is that she will not return under any circumstances and that this separation of F from his mother and transfer of care to the father in and of itself gives rise to a grave risk of harm that is incapable of being ameliorated by way of any protective measures.

24. Counsel for the father submits that the mother's assertion on 5 September that she would not return with F is purely tactical in light of the psychiatric report which meant that it was no longer sustainable for her to rely on her mental health as a ground for an Article 13(b) defence. He puts this in the context of what he says is deliberate decision making by the mother, having decided she wanted to relocate to the UK, of edging the father out of F's life, and finally when the Australian courts refused to make an interim relocation order, abducting F.

Likelihood of mother not returning

25. Following the guidance in *Re R* above, I must make a reasoned assessment of the likelihood of the mother not returning and factor that assessment into my overall conclusion as to whether the grave risk of harm defence is made out.

26. Counsel for the mother relies on the domestic abuse suffered by the mother and its impact on the mother's mental health in support of the mother's assertion that she will not return to Australia. He argues that in these circumstances it cannot be seen as a tactical manoeuvre; but rather a genuine determination, as contemplated in her original statement of 19 August 2024.

27. The mother alleges that she suffered from domestic abuse, including verbal, emotional, physical, financial and coercive control, from early on in her relationship with the father as detailed extensively in her statement in these proceedings. The mother sought help from the Australian authorities for domestic abuse on several occasions from August 2019. On 20 April 2021 the mother called the police who attended and issued a provisional Family Violence Safety Notice. A Family Violence Intervention Order was in place between 30 April 2021 and 30 April 2022. The parties continued to live together during this period. On 13 August 2022 the Police issued a further family violence safety notice following an incident of alleged physical violence. A final order was made on 4 October 2022 on the basis that the father consented without admission of allegations. The order prohibited contact with the mother and child by the father if he is affected by drugs or alcohol. A further final intervention order was made on 7 March 2023 varying the provisions to prohibit any communication with the mother or child unless under a written agreement about child arrangements or to negotiate child arrangements. A further interim order was made on 4 October 2023 and made final on 27 November 2023 to the same effect.

28. Counsel for the mother asks me to consider the fact that the domestic abuse allegations are serious and credible, supported by the referrals to the police, the Intervention Orders that have been in place since 2021, and the text messages from the father exhibited to the mother's statement. Further, Counsel argues that the measures put in place in Australia to protect the mother (namely the Intervention Orders) have not been effective given the numerous breaches of those orders by the father listed at paragraph 54 of the mother's statement. The mother reported a breach of the Intervention Order to the police in March 2023. The father was fined $1,200 without conviction and required to complete a Men's Behaviour Change Programme.

29. There are several disputed facts in this case and the father makes cross-allegations, including adducing photographic evidence of injuries he says were caused by the mother. While I am considering the domestic abuse at this stage in the context of assessing the likelihood of the mother not returning to Australia were I to order F's return, rather than a ground for 13(b) defence in its own right, I consider it appropriate to adopt a similarly cautious approach given the summary nature of the proceedings and will assume the mother's case at its highest.

30. Taking the mother's case on domestic abuse at its highest, Counsel for the father asserts nonetheless that:

    a) There have been no allegations of physical harm post-dating the mother's last allegation of an assault on 13 August 2022.

b) The father has undergone a psychological evaluation and risk assessment in the context of the Australian proceedings. That report dated 14 May 2024 describes the father as presenting 'a low risk of spousal violence' and 'a low risk of violence more broadly. In the view of the author, the assessment did not return information that would preclude the father from independent care of the child.

c) The one substantiated breach of the FVIO was a technical breach in the context of daily communication regarding the mother's request to travel to the UK which were not abusive in and of themselves.

d) The mother worked consistently throughout her time in Australia, was financially independent, was able to find her own rental property, drove her own car and imposed her own restrictions on the father's time with the child without the need for court orders.

e) The mother has herself shown a cruel sense of humour e.g. the text to the father revealing she had taken F to the UK and her replies to the father's text messages suggest that she was able to be dismissive or sarcastic rather than controlled.

f) The majority of the emotive and inappropriate text messages were from 2018 / 2019 a time when the father was struggling with diagnosed depression and anxiety 'at a severe level'. I was pointed to the report by the treating psychologist in the Australian proceedings in which she confirms that the father "*is now aware that the expression of* [his mental health] *was at times misdirected (phone calls and text messages)".* She concludes that "*his awareness of the changes in his own behaviour is consistent with [her] observations and he is conscientious and consistent client who has invested ... in the therapeutic process".*

g) Even taken at its height the risk of harm alleged to the mother (and by extension the child) is not such that it cannot be managed by an FVIO. There has never been an absolute bar on the father contacting the mother under the terms of those orders.

31. In relation to the mother's mental health, Mr Basi referred me to the Child Impact Analysis conducted in the Australian proceedings (which I note is caveated as providing *"preliminary expert advice about the needs and experiences of children"* and is authored by a Court Child Expert, not a psychologist). The author of the report concludes that on the mother's account of events, she *"is a vulnerable and isolated young woman, and that the current situation has the potential to have a significant impact on her emotional and mental wellbeing and potentially undermine her parenting capacity with F".*

32. Mr Basi also referred me to the letters from a psychologist, an accredited mental health support worker the mother saw for two sessions in Australia, prior to her move to the UK, in which she opines that the mother is experiencing a high level of anxiety related to her circumstances of ongoing domestic violence. The psychologist

encouraged the mother to link in with a specialist domestic violence counsellor for ongoing support.

33. Mr Basi further referred me to the expert psychiatric report prepared for these proceedings. Mr McClintock concluded that the mother experienced symptoms of panic disorder, the treatment for which is based on talking therapy and the prescription of psychotropic medication. He went on to say:

> "*If [the mother] is required to return to Australia then I would expect there would be a relapse in her symptoms of anxiety and panic attacks and it would be necessary for her to engage in both treatment and to take practical steps to limit the severity of those symptoms. She would need to engage with sessions of cognitive behavioral therapy in Australia, which would be delivered in batches of six to twelve sessions, if this was not effective then the GP could consider prescribing antidepressant medication which is known to have anxiolytic properties, and the dose could be increased depending on the clinical response. I would stress that the panic disorder is a condition which is generally managed by general practitioners, with the support of counselling services and does not generally require a referral to mental health services. .... Whilst it is not impossible that the mother could deteriorate in her mental state to such an extent that it would impact on her ability to care for the child, I would stress that there are effective treatments available for panic disorder, which I would expect would help to control her symptoms and it would be very unusual for [the mother] to become so unwell that there was a significant impact on her ability to care for F. ... I think it is very difficult to comment on whether this could diminish her secure attachment to the child as this would require an assessment of F as well as the mother and also an understanding of the circumstances which they found themselves in, in Australia. I consider it would be very unusual for the mother to deteriorate to the point at which the child's situation would become intolerable*".

34. Counsel for the father relies on the psychiatric report to show that in fact nothing in the mother's mental health is sufficient to found a 'grave' risk nor an intolerable situation for F. There are no limitations on the mother's access to healthcare in Australia nor is she receiving treatment that would be disrupted on return.

35. I remind myself that my task is to *make a reasoned assessment of the degree of likelihood of the mother not returning; not take a view on the reasonableness of her position.* I have turned my mind to the factors suggested in *Re R*:

    a) *Family History.* The mother says she felt isolated in Australia and has important family links in the UK. However, by her own account she is estranged from her father and not close to her mother. Her account of her sibling relationships given to Dr McClintock does not paint a picture of close relationships.

b) *Professional advice about the parents' health.* According to the expert psychiatrist report, the anxiety and panic disorders suffered by the mother are treatable in Australia. There are no limitations on the mother's access to healthcare in Australia nor is she receiving treatment that would be disrupted on return.

c) *Reasons given for not returning*. The mother's statement gives no reason for her assertion that she cannot return. The reasons she gave in her first statement for leaving Australia in the first place were her mental health, the father's stalking of her and financial hardship. I have addressed the issue of mental health above. I accept the mother's case of domestic abuse and stalking at its height but, without minimizing the distress caused by the father's behaviour, note that she was living a separate, independent life from him, and had done so for some time, with the benefit of protective orders and without any direct contact with him. The father has made clear in his statement in response that he will consent to the current Intervention Order being extended. In terms of financial hardship, while the mother's evidence is that she is better off financially in the UK, she is clearly a capable person who was in work for nearly the whole time she lived in Australia, and is entitled to benefits and child support. The father has also offered financial support as part of the protective measures. While I can understand the mother's reluctance to accept an offer that she move into the father's apartment even with an undertaking that he does not attend that apartment, as an alternative the father is offering her a payment to assist her find a rental accommodation and payments to cover groceries and furniture. The mother is not facing significant financial hardship if she returns.

d) *Possibility that the refusal is tactical.* In my view the timing of the mother raising this argument, following receipt of the psychiatric report which is not supportive of her previous case, suggests that it may well be tactical. I also bear in mind the fact that the mother told the Australian court that she would not relocate with F without the father's consent shortly before doing exactly that.

e) *The chance of the position changing after an order is made.* It is clear that the mother is a very loving and caring mother. She has not been separated from F for longer than twenty-four hours since his birth and for at least the last sixteen months has had sole care of F. I think there is a strong likelihood that this loving and caring mother would change her mind and in fact return to Australia. When faced with a stark choice I do not think it likely that the mother would choose to be separated from her son or voluntarily place him in the care of his father.

36. Overall, looking at the matter in the round I think it unlikely that the mother's fear of the father or of her mental health deteriorating are so great as to prevent the mother returning to Australia with her son when that is clearly in his best interest. It follows from this that I do not consider there to be a grave risk that F's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation by virtue of separation from the mother.

Article 13(b) in scenario mother returns with F

37. As set out above Mr Basi did not pursue an argument that were F to return to Australia with his mother the Article 13(b) defence would have been made out because it was the mother's case that she would not be returning with F. However, for completeness I do not find this defence to have been made out for the following reasons:

    a) The Australian courts are seized of F's welfare and there are interim orders providing for F to live with the mother and supervised contact with the father. The mother is eligible for legal aid;

    b) There are Intervention Orders in place (akin to non-molestation orders in this jurisdiction) to protect the mother and nothing to suggest that the Australian police will not act on reports of breaches (as they did in relation to the March 2023 breach). The father has said that he would not object to the current order being extended beyond November 2024;

    c) While the evidence shows that the mother has suffered from anxiety and panic disorder the psychiatrist's opinion is that recurrence would be likely to be treatable via therapy and medication, which is available to the mother in Australia, and that it would be "*very unusual for the mother to deteriorate to the point at which the child's situation would become intolerable".* The father has said that he would ensure health care remains in place for the mother;

    d) While the mother's evidence is that she is financially more secure in the UK being able to save money each month rather than be in deficit, there is no evidence that she would be so impecunious in Australia as to amount to an intolerable situation for F. She is clearly a very capable person who has the right to work in Australia; and has been in work the majority of the time. She will also be entitled to child maintenance payments from the father. The father has offered to reimburse the mother for travel costs of F and the mother and offered the mother to live in the father's apartment for six months with utilities paid for on the basis that the father will never attend the apartment; or a one off payment of up to AUS$14,000 to the mother for accommodation and utilities, and $1000 for groceries and provision of furniture in addition to maintenance payments as determined by the Child Support Agency.

38. I therefore decide that F should be returned to Australia. I have explained why I do not accept it is likely that the mother would not return with F and therefore that there is not a grave risk of harm or intolerability caused by separation from the mother. I have also considered whether returning F with his mother would give rise to a grave risk of exposing F to harm or place him in an intolerable situation. For the reasons given I do not find that to be the case.

TIMING OF RETURN ORDER

39. Finally, Mr Basi suggested that were I minded to return F I should give consideration as to whether to defer the return pending a decision from the Australian court. He

referred me to two cases where this has been done. I have considered those cases. Both are very different to the facts before me. In Re Y (A Child) (Abduction: Romania: Art. 13(b)) [2023] EWHC 1676 (Fam), the mother's application for temporary leave to relocate to England and Wales was due to be back in the Romanian court for a substantive decision the week after judgment was handed down. In ADK v ASK [2022] EWHC 2610 (Fam) the return order was delayed by 8 weeks to enable the mother to bring an application before the Latvian court for permission to relocate twins to avoid unnecessarily uprooting an older sibling from England.

40. In this case the Australian proceedings are stayed pending these return proceedings. There is no indication that a resolution of those proceedings would be achieved within a matter of weeks. I am mindful of the difficulties in asking the Australian courts to determine the case while the child is outside the jurisdiction, particularly bearing in mind that the Independent Child's Lawyer has not yet met F. It seems to me that to suspend a return order in these circumstances would subvert the objective of the Convention. I recall the observations of Mostyn J in B v B [2014] EWHC 1804 that:

> "*the objective of the Convention is to ensure that a child who has been removed unilaterally from the country of his or her habitual residence, in breach of rights of custody, is returned forthwith in order that the courts in that country can decide his or her long term future and that a decision by the English court to return a child under the terms of a Convention is no more and no less a decision to return the child for a specific purpose for a limited period of time pending the court of his or her habitual residence deciding the long-term position.*"

41. I see no reason to delay F's return; on the contrary the sooner the proceedings in the country with jurisdiction in this matter can resume and conclude the better. I therefore order that the mother must return F to Australia by 11.59 pm GMT on Tuesday 10 December 2024. If the mother does in the event refuse to return with F then she must hand F over to the father by Monday 8 December 2024 for the father to accompany F to Australia.