



Neutral Citation Number: [2021] EWHC 2737 (Fam)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/10/2021

**Before:**

**Mr Justice Poole**

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**Between:**

**Re L (Return Order)**

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**Ruth Kirby QC** (instructed by **The International Family Law Group LLP**) for the **Applicant**  
**Mark Jarman** (instructed by **Jai Stern LLP**) for the **First Respondent**  
**Paul Hepher** (instructed by **Freemans LLP**) for the **Second Respondent**

Hearing dates: 20-24, and 27 September 2021  
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**JUDGMENT**

**This judgment was delivered in private. The anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

## **Mr Justice Poole:**

### **Introduction**

1. The applicant is the father and the first respondent the mother of the second respondent child, L, who is 15 years old. The application is for an order for the summary return of L to Country K. That country is not a signatory to the Hague Convention 1980 and so the application falls to be determined having regard to the best interests of the child. The mother and father are embittered by years of mutual conflict. Each makes allegations of abduction, emotional torture, lies, manipulation, and abuse against the other. Neither parent gave credible, consistent evidence to the court and L's own voice has at various times been distorted by the influence of parental acrimony. Nevertheless, L has sounded one clear, authentic and consistent note – she is wholly opposed to the application, does not want to return to Country K and wants to remain at school in London.
2. The application was made as long ago as 16 November 2020. After delays for various reasons the case was listed for final hearing with an estimate of five days. I have heard oral evidence from the father and mother and from a jointly instructed expert in family law in Country K, Ms T. I have received written evidence from Ms Coyle, solicitor for L, Ms Odze of Cafcass, an immigration expert Ms Baxter, and, for the father, three family members: his sister-in-law, AB, his nephew CD, and the mother's son EF. I have been provided with a large bundle of documents including photographs, email communications, text messages, and transcripts of voice notes.

### **History of Events**

3. In setting out the history of events I have relied on documentary evidence or uncontested or clearly corroborated evidence from the parents.
4. To preserve L's anonymity I shall not include details of their occupations in this judgment. The father was born in Country K and owns properties there, but now lives in another country, X, with his wife and their three children the oldest of whom, M, is now aged 12. The mother was also born in Country K, has been four times married, but is currently unmarried, has five children including L, and presently lives in London with L. The mother and father married in 2003, divorced, re-married, and then divorced a second time soon after L was born.
5. L was born in the USA in May 2006 but returned with her mother to Country K soon afterwards. There is a dispute about her alleged abduction by the father when she was a few months old but there is documentary evidence that the father secured a sole custody order in 2007 from a religious court in Country K. Nevertheless, the mother managed to secure L back into her own care and L remained in the care of her mother and without any contact with the father, until she was about six or seven years old. The father's sole custody order and guardianship order was confirmed on 3 June 2008 by the Supreme religious court. The father also sought and obtained orders preventing the mother from taking L abroad. Nevertheless, the mother did take L abroad and remained as L's main carer, without involvement of the father, for a number of years. It appears that L may have lived in several different countries during her early years. The mother

was given a custodial sentence for breach of court orders on 18 August 2008. These religious court orders are extant.

6. In 2013 the father began to have contact with L for the first time since her infancy. Still, she remained under the primary care of her mother. It is evident that the mother often travelled abroad for the purposes of her work and that L was left with maids or other staff during those trips. Nevertheless, L remained in Country K, went to schools there, and appears to have thrived. The mother is not a parent who imposes boundaries, nor can she be described as a measured and consistent individual, but L was brought up under her mother's loose parenting style for the first twelve years of her life and without much contact with her father. That all changed in 2018.
7. In or about the summer of 2018 the mother decided that she could not cope with L's behaviour. She was anxious that L was out of control. Notwithstanding the years of hostility between the mother and father, the mother asked him to have L to live with him in X, believing that it would help L to have a taste of a different kind of family life. In the late summer of 2018, L moved to X to live with the father, his wife, and their three children. L began school in X in September 2018.
8. The mother visited X in October 2018 and March 2019. The circumstances of L's time living in X are disputed. L alleges that the father was controlling. He smashed her mobile phone to pieces in front of her and the other children. She says that on one occasion he beat her with a belt causing bruises. There is evidence that by May 2019 L had cut herself on her arms and thighs and was suffering psychological distress. The father denies striking L and blames the mother for emotionally torturing L and undermining her otherwise happy time in X. L went on holiday abroad, including to the USA, with the father and his family in the summer of 2019, but was then enrolled in a boarding school in England called A which she joined in September 2019. The father has not seen L in person since then.
9. Staff at A school noticed scarring from cuts to L's arms. She was removed from the school, stayed with relatives of the father who lived in England, and underwent psychiatric assessment by a Dr P. She returned to the school after about two weeks and remained there until the Covid pandemic caused the school to close its doors in March 2020. L continued with remote lessons but the father terminated L's place at the school with effect from the end of the academic year in 2020. Arrangements were made by the father's wife, Q, for L to return to Country K. L contracted Covid-19 and self-isolated in the father's house in Country K for about two weeks. She was visited by his nephew, CD, from whom I have a statement. Her mother would not allow L to stay with her before she was clear of the virus and there were disputes about the arrangements for L. Later, in April 2020, L did move to live with the mother in a rented flat in the capital of Country K.
10. Negotiations began between the mother and father, conducted through lawyers, to make arrangements for L's schooling and residence. In August 2020 there was an explosion in the capital of Country K which caused multiple fatalities. The mother's flat was damaged and the mother sustained modest injuries. This was a major, traumatic event for L to witness. Two days later the mother and L flew to London where they have since remained living. The father protests that the mother abducted L to England but negotiations continued and on 14 October 2020 the father's lawyer wrote to the

embassy for Country K in London [C87] indicating that he wanted to conclude a formal agreement for L to begin at B school in London, and for him to make financial provision for her to live in England with the mother. The agreement to which the letter refers is at [C707]. The father regarded the agreement as concluded but it was never signed. The mother has rented a succession of flats in London. She has spoken at various times of owning a property in London, but she has only rented. She disclosed her address to the father's lawyers during negotiations about child arrangements but she did not confirm her address initially in the father's application. L began at a private, day school, B, in the autumn of 2020 but lost her place there on or about 19 April 2021 due to a failure to comply with L's student visa requirements. She was not "excluded" as was put on behalf of the father at the hearing. A place has recently been found for her at a highly rated state school in London, C, which she was due to begin on 28 September 2021, the day after the hearing concluded.

11. The mother applied to the Central Family Court on 12 October 2020 for a prohibited steps order to prevent the father removing L from her care and the jurisdiction of England and Wales, a specific issue order in respect of L's attendance at B school, and a child arrangements order for L to live with the mother. Without notice orders were obtained but the father then applied without notice to the High Court for a return order. That application has taken priority and now falls to be determined.

### **Evidence from L's Parents**

12. In her first statement to the court the mother alleges that the father lied about his financial position to trick the mother into marrying him. He inflicted "horrific" physical, emotional and psychological abuse on her during the marriage. The father abused drugs and had a string of sexual affairs with the housemaids. She believes that he sexually assaulted her daughter (not L). She claims that the father abducted L when she was a four month old baby, still breastfeeding. He kept her for six months during which time the mother did not know where L was. She says that the father threatened her life and had influence militia in Country K. Whilst L lived with the father in X in 2018-19, the mother alleges that he "often" beat L using a belt. He forced her to wear the Hijab. She contends that the father has used repeated court proceedings because he wants the mother to suffer.

13. The father's response is summarised in his first statement at paragraph 3 where he says,

"Almost every accusation she has made against me is one of which she is guilty. It is sadly she who neglects L, who abducts L, who abuses L. It is she who duped me into marrying her, and it was she who cheated on me leading to our divorce. I am the one who fears for my family's safety because of her constant nefarious meddling and use of connections and subterfuge to evade the law and frustrate my every attempt to legally care for L. It is she who doesn't spend on her daughter, not even for basics ... It is she who hurls abuse at L, me and my wife, torturing us with insult and degradation characterising us all as monsters... She does all of this in an attempt to maintain a grip on all of our lives ... All I want is the best for L and that can only

be achieved by her return to Country K where we can properly care for her.” [C272]

14. When L is under her mother’s care, it appears that very few boundaries are imposed. The mother would say that she offers friendship and understanding to her daughter. The father characterises L’s life with the mother as being chaotic and filled with designer clothes and expensive possessions. In contrast, the father values structure and stability. In preparation for L coming to live with him in X he made it clear that he would not allow L to use a mobile phone in his house. She was expected to dress more modestly. The mother characterises the father’s approach to parenting as controlling and abusive. Each parent believes that the other is a terrible parent and that only they offer L love, and only they are capable of caring for her. The other, they each believe, causes L nothing but harm. In contrast to the parents’ self-images as loving and responsible parents, the evidence within the bundle demonstrates that their warring relationship with each other, has damaged their respective relationships with L, and caused her anguish and emotional harm.
15. These are some of the transcribed voice messages the father has left for L on her mobile phone over the past three years:
  - a. “How can I look at your face after what you said? Why would I? ... May shit eat you and your mother!” [H16]
  - b. “... you will do as I wish if I am the one responsible for you, not what your mother wants! ... I am responsible for you, then go ... to live with your father, you dog! You now move to ... your father house, you dog! ... Oh dog!” (his wife was then heard calming him) [H17]
  - c. “... it is either you come to live with us the way we do or you stay and live with your mother the way you like. You need to let me know. I need to know because this is not a game... If you don’t reply then you are on your own.” [H 37]
  - d. “... don’t even think of sending me any more silly messages, L. I don’t even look at them and I don’t care to what you send. You are my daughter and you carry my name. Do you understand what that means? If you don’t make me feel proud of you, I will throw you in the street. Besides, when you talk about me and my family, don’t say “them”. You must respect me, my family and your siblings ... We treated you as humans while you are not one of them. Respect yourself and behave as a human or otherwise it will be something else...” [H45]
  - e. “L, the dog L. Listen to me carefully. This is the last time I talk to you in a good manner... L, dog... Don’t you know that if [his wife, Q] did not exist in your life, you would be living in the street, you are a dog. Do you hear me? You are animals; you and your mum... Go to hell ... Damn you, you should ask me, you liar. You are a big liar. You lie on everyone ... Damn you. If I saw you, I would rip your eyes off from your head, you dog” [H 53].
16. The mother’s messaging to L in the last three years includes:
  - a. “Eat shit. And stop telling me stuff they taught you to say to me.” [C448]

- b. (audio) “You will never hear my voice again in our life. Ever again. I will make you cry blood..” [C450]
  - c. “So you are a big mouth. And you speak right and left. So cut your tongue and shut up. Okay? Otherwise things will shift.. Don’t be like your dad. Do you get that? Never be double-faced. Just once face, get it girl?” [C377]
17. The mother uses a mixture of threats and disinformation to seek to influence the father. For example, she told him on one occasion, “Please if you believe in God a tiny 1 percent, do what is right or otherwise a massacre will happen this time. Massacres, massacres. There is nothing I will not do ... “[C438]. In May 2020, when the mother wanted the father to look after L after the pandemic had taken hold, falsely informed him that she had married and that her husband did not want L to stay with them. L messaged her father’s wife on 15 May 2020, “My Mom got married and her husband doesn’t want me to stay with them... Mom’s husband said he will send me to X with the first airplane.” The only reasonable inference I can draw is that the mother encouraged L to write this wholly fabricated message. It was part of a bombardment of messages sent that day designed to persuade the father and his wife to look after L in X at a time when it did not suit the mother to look after L. The written and oral evidence demonstrates that the mother uses communication with others to produce an effect or consequence that she desires, irrespective of the truth of what she is writing or saying.
18. L has described to Ms Coyle and Ms Odze that when she lived in X, her father and his wife would sit her down for long periods and make disparaging remarks about the mother, severely criticising her character and parenting. Likewise, the hearing bundle includes many messages from the mother to L where she pours out vitriol about the father to her. I am quite satisfied that neither parent thinks twice about disparaging the other in front of L. Indeed, they each go out of their way to seek to persuade L that the other parent is untrustworthy and does not love L.
19. During what the mother describes as her “war” with the father, she has called the police in Country K, due to a dispute about L undergoing a PCR test for Covid-19, and in X, when the mother says she was denied contact with L in 2018, and she appealed to the ambassador for Country K in London in October 2020. She uses social media to promote her career but has also used it to allude to this case and to her life with L and conflict with the father. Some of her claims on social media are, she has accepted, fantastical and are designed to attract public attention, and to sustain a certain public image. The father appears to take them literally. For his part, the father has spent years collating evidence against the mother. He was combative during his evidence. He often resorted to blanket assertions that the whole of what the mother or L had said on an issue was “lies”. He routinely uses lawyers to communicate with the mother and has issued legal proceedings in “multiple jurisdictions” not just in Country K and England. He would say that they were all necessary and justified, but the end result has been that L has been the subject of disputes and litigation throughout her life. Arrangements about her schooling, support and care, have recently been negotiated in the manner of a commercial contract. I note that penalty clauses have been inserted in proposed agreements. These agreements negotiated on behalf of the parents ought to have been about the best interests of L, not penalising each other.

20. The mother took L out of A school early, before the end of the autumn term in 2019. The father terminated L's place at the same school with effect from the end of the summer term 2020, with the effect that she lost sponsorship for her student visa. Each acted unilaterally. At various times each parent has sought to hand over L's care to the other in a peremptory manner.
21. During the oral evidence, a matter arose that was only briefly touched upon in one document in the hearing bundle, but which was of significance. The father told me that whilst L was living with his family in X in 2018-19 an incident, or series of incidents occurred involving L and one of her step-sisters which he regards as so serious that he says it has "ruined" his other daughter's life. He told the court that he did not want to raise this matter at the hearing in order to protect L. I heard no evidence about the incidents, but the father accepted that his wife would not have L to live in their house again, and that he and his wife would need constantly to supervise L were she to spend time with her step-siblings again. That evidence is highly material to the question of what kind of contact L would have with her father and his family were a return order to be made. It is possible that the handling of these alleged incidents which, the father told me he addressed with L, might have some influence on L's wishes and feelings about this application. However, because the father decided not to raise these matters prior to the hearing, they have not been explored with L. I should emphasise that I heard no evidence of the details of these alleged incidents and I do not know whether what the father believed had happened, had in fact happened.
22. The father does not disguise his contempt for the mother. I have no doubt that he has expressed it openly to L, as she has said. He regards her conduct as nothing short of emotional torture of L. His position was reflected in closing submissions that the mother has "emotionally traumatised" L, that if this were a public law case it would be "miles beyond the threshold", that the mother's inconsistency means that neither the father nor L can negotiate or live with her, that the mother has taught L to believe that her father is "evil", that Ms Odze and Ms Coyle have been "drawn into" the mother's "false presentation of the father", and that the mother is motivated only by her desire to extract money from the father and views L as her "meal ticket". The father's contempt for the mother infects every aspect of his case. For example,
- a. He has not acknowledged any positive aspect of the mother's role in L's life notwithstanding that she has been primarily responsible for raising his daughter. He ignores the fact that the mother turned to him for help with L in 2018 and sent positive messages to L about his wife.
  - b. The father appears to have regarded the mother as having no further role in L's life once he had begun to care for L in 2018. He did not take any substantial steps to consult with the mother about L's education or upbringing once L moved to live with him in 2018. Such was his disdain for the mother that he regarded any continuing involvement by her in her daughter's life as an unwarranted interference.
  - c. The father was anxious to extol the benefits to L of his relationship with her by saying that L was happy to live in X with him and his family, and had a wonderful holiday with them in the Summer of 2019 (he produced a montage of images and film to show L's happiness), but at the same time he said that L

was unhappy and self-harming in X because of her mother, that L's conduct had ruined one of his other children's lives, that his wife would not have L live with the family again, and that it was better for L to be sent abroad to an English boarding school.

- d. Far from viewing her father as evil, as he has claimed she does, L was reported as saying this to Dr P in 2019: "You love your father but you also argue, you said that you hurt each other. Your father has more conventional expectations and rules for you." That shows a much more measured and objective view of their relationship than the father has been able to muster in these proceedings.
  - e. The father was willing for L to live with the mother in England whilst L was at school here. The parents' lawyers had finalised a detailed agreement to that effect in late 2020. It makes no sense for him to have done that if he truly believes that L should be removed from her mother's care because the mother's malign influence on L takes this case "miles beyond" the threshold of significant harm for a care order to be made.
  - f. The father has not visited L or seen her in person for two years. I take into account the effects of the pandemic but note that in the five months between L starting school in England, at his instigation, and the first lockdown in the UK, he did not see her. He seeks to blame the mother, but there is no evidence that he has made any real effort to see L.
  - g. It was very clear during the father's evidence that his prime motivation in these proceedings is to "win" the case, and for the mother to "lose" it, rather than to do what is in the best interests of L.
23. The father was often inconsistent in his evidence. For example, in cross-examination he initially described himself as cool and calm when he smashed L's mobile phone, but shortly afterwards confirmed that he was "beyond frustration" and acted in anger. He explained his failure to visit L when she was removed from boarding school because of concerns that she had self-harmed, on the grounds that Dr P had assessed her as being "fine", and these were old scars. At the same time, he told the court that L had self-harmed due to emotional "torture" by the mother, suggesting that L was in emotional turmoil during this period of her life. Whilst the father purports to be a loving parent who would do anything to support his daughter, in the relative short time that he has been responsible for her primary care he has delegated responsibility to others: to his sister-in-law, to his nephew, to his wife, to a boarding school, and he proposes to delegate responsibility to his sister if L is returned to Country K.
24. The evidence given by each parent, the mother's inconsistency and casual disregard for the truth, and the father's contempt for the mother, his hyperbolic characterisation of her, and lack of self-awareness, mean that I can place very little trust in what either of them have told the court. Instead, I look to other sources for evidence on which I can rely.



## **Evidence from Ms Odze and Ms Coyle: L's Voice**

25. By court direction, Ms Odze was directed to file a welfare report addressing:

- i. Whether L should be returned to Country K including consideration of her immigration status in England;
- ii. With which parent L should be based and what contact she should be having with the other parent;
- iii. L's stated views, wishes and feelings in respect of returning to Country K and with which parent she would prefer to live. A view should be expressed as to whether the wishes expressed by L are her own and whether she has attained an age and degree of maturity at which it is appropriate to take account of her views.
- iv. Whether L should be separately represented at the final hearing; and
- v. Whether L wishes to meet the trial judge and whether in the officer's opinion this would be in her best interests.

26. Ms Odze conducted Skype interviews with each parent and with L. Her report was filed on 22 February 2021. She reported that L presented as "an articulate and intelligent young person ... extremely confident ... she spoke English well and fluently." [F5] She "expressed strong views about a return to the Country K and about living with her father. She resists both." [F6] She reported feeling unsafe in Country K due to the political situation, crime and the explosion. The education provision in England was, she considered, superior to that in Country K. She expressed bitterness at her father for causing her pain by pursuing this application. She reported to Ms Odze that her father was "closed-minded" and made her "wear a hijab and cover-up." He once beat her with a belt causing bruises on her thighs after he saw her talking to a boy at her school. She has reflected on that experience often, preventing her from sleeping: "My dad was a very abusive person." [F7]. She cited other examples of abuse: of the father grabbing her by the arm and shaking her whilst shouting at her face; and verbal abuse over the phone when she was at boarding school. L said that she suffered anxiety attacks lately "wondering why my father is doing that ...". She wanted to stay in London where she had made friends and where she is very happy in her current school.

27. The mother told Ms Odze that the father had been guilty of domestic abuse of her between 2003 and 2006 comprising physical, financial, harassment, sexual, verbal and psychological abuse, controlling and coercive behaviour and threats to kill. Ms Odze observed,

"L appears confused by her parents' relationship however it was apparent that although domestic abuse has been reported by her mother this does not appear to be the primary cause of L's resistance to a relationship with her father, it is more so the parenting behaviour that he has demonstrated towards her. On this basis, I do not think that this Court will be assisted by a fact-finding hearing in relation to domestic abuse."

28. The father told Ms Odze that each and every report of harm made by L against him was a lie told because she was “doing her mother’s bidding.” He alleged that the mother had been neglectful of and verbally abusive to L, causing L to self-harm whilst in X. L was very happy with him and his family. The solution to L’s problems now was, argued the father, for L to return to Country K where she would have a good education and some stability in her life. However, Ms Odze observed that “the father did not have any firm plans for L that would show that he would be able to provide stability for L in Country K in the immediate and future.” [F11]. He wanted to be able to travel between Country K and the capital of Country K, leaving L in Country K. When Ms Odze said that this would leave L alone, the father said that he would be prepared to move his family to Country K and L would live with them.

29. Ms Odze considered L to be vulnerable,

“She is not a resilient young person who would not be able to countenance a return to Country K with or without her mother as L has told me.” [F13-14]

30. Ms Odze concluded,

“... it is my assessment that the father’s application for L’s summary return to the Country K is not in her best interests. Aside from the fact that there are no firm plans in place for her return and in the light of the fact that a return would be a forced move which goes against L’s clearly expressed wishes, I am concerned that the father fails to recognise the trauma that L has suffered from the explosion in the capital of Country K.” [F12]

“It is my recommendation to the court that L’s return to Country K should not be ordered and that she should reside in the care of her mother ... I am aware that L’s immigration status in this country remains uncertain. Also, the reports that L makes about her father’s care are disputed however I am of the view that her current care environment is one that best meets her needs because, as L told me, she has made friends here and dreads a return to Country K which is associated with the recent trauma but also a country about which she has no fond memories.” [F14]

Ms Odze considered that L’s maturity was commensurate with her chronological age and she was,

“measured when she waited for my questions and answered them in a way that I felt was genuine ... what L has told me [about the father’s abuse of her] ... came across as vivid and expressive.... It is my assessment that L’s strong objections to a return to Country K and to living with her father there instead of remaining in London with her mother for the reasons she has set out to me, are her own.” [F13].

31. Due to listing difficulties this hearing was moved to September 2021 from an earlier fixture. Ms Odze was unable to attend the re-scheduled hearing, but the mother and father did not want to change the date and have not sought to require Ms Odze to give evidence at the hearing or to be questioned.
32. Ms Coyle was appointed by the court as L’s guardian in these proceedings on the recommendation by Ms Odze that L be separately represented. She has made three witness statements and has plainly taken time to get to know L and to meet and speak to her on numerous occasions. Ms Coyle has not met the mother or father. She tells the court that,
- “Having spent time in discussion with L, I have reached the firm view that she has reached a level of maturity commensurate with her chronological age ... She was able to articulate her wishes and feelings around what had happened in the past and form her own views based on her concerns and worries about the future as well as directly from her own lived experiences. She objects to a return to the Country K and her reasons for objecting to such a return are in my view deeply rooted in experiences particular to her and why she would wish to remain in the UK. In my view L has been able to reach a position independent of adults in her life based on her own experiences and these views are authentically her own.” [C455]
- Ms Coyle has confirmed in a more recent statement that L’s views have remained constant and she has not resiled from them or from any of the information previously given about her father’s behaviour towards her [C751].
33. Ms Coyle has observed that L has been drawn into the “highly acrimonious” conflict between her parents. She is acutely aware of the conflict but, cautions Ms Coyle, L’s voice should not be drowned out by the battle between her parents.
34. I offered the opportunity for L to speak to me directly if she wished but was informed that she was content not to do so and to rely on the evidence of Ms Coyle on her behalf. At a previous hearing Moor J cautioned in strong terms against L attending the hearing lest she be pulled into the fray. Neither her mother nor her father asked her to be called for questioning. Neither parent has asked to put questions to Ms Coyle.
35. Having considered not only the evidence of Ms Odze and Ms Coyle, but all the evidence in this case, the damaging effects of the parents’ conduct on L are plain to see:
- a. When L was in X, there are several messages from her to her mother, pleading with her to calm down and to stop interfering because she was aggravating an already difficult situation for L. “please stop. I beg you mom.... I am speaking you from my heart now. I am fine mom. If you go on, I swear to God, I will be

obliged to go to a boarding school in Country K ... Please, mom, think about me a little ... Don't go an cause problems.”

- b. In February 2019 L underwent counselling through her school in X. At [C334] it is recorded that she had “sleeping issues, feeling overwhelmed, anxious, ruminations, family issues and difficulty with family re-integration - moved in with her father this summer (2018)... she perceives no family support... psychosomatic issues (frequent stomach aches)”.
- c. On 12 March 2019 at a counselling session, it was recorded that she was “struggling with situations where I feel like I am in between the worlds trying to balance both sides but feeling left out and tired, unimportant... I'm unhappy and will stay that way... I want for people to be happy... If I am frank/true others would be upset ... I am too much to handle ... I don't matter.”
- d. L started self-harming by cutting in March 2019. L later told Dr P as he reported, “You said that it only occurred in the context of conflict with your parents.”
- e. L told her solicitor this year that “she wishes this case to be over so that she can concentrate on her life and moving forward...” [C478]. The solicitor, Ms Coyle, added, “L desperately needs these proceedings to be resolved so that she can access therapeutic support without any fears that confidential information” will be used in the case.
- f. Ms Odze concluded that L is “a teenager who has experienced much disruption in her life and a number of adversities... she is not a resilient young person....”
- g. In June 2021, L called the police after an argument with her mother. It was reported that L had said that her mother had threatened to take her to Country K to have her killed. Social Services became involved and I have been provided with a detailed report of their initial contact [C799]. Upon police attending on S, she denied having said her mother had threatened to kill her. She explained to Social Services that she had become very stressed by the ongoing court proceedings and the prospect of returning to Country K. She did not want to return and considered that her life would be endangered if she were to do so: the explosion had had a great impact on her. She was blaming her parents for that threat hanging over her. In distress she called the police and was now embarrassed that she had done so. She had directed her anger towards her mother because she was the only one of her two parents around to blame.

36. An insight into L current relationship with her mother and her state of mind is provided by the report from social services which concludes:

“In my opinion, there is no need to proceed with the full assessment as the threshold of significant harm has not been met and the family needs would be best met by the Early Help Services. I observed positive exchanges between mother and daughter, they clearly love each other and [the mother] cares a

great deal about her daughter. L and [the mother] seem very close and they were both open about the arguments that they have at times, both stating that they were nothing out of ordinary. Both were very reflective of their current situation and both understood that the sense of entrapment contributed to the tensions that they have had. L and [the mother] are stressed by the court proceedings and how this will impact on their well-being and their future.” [C800].

37. Notwithstanding all the adversities L has suffered, and in particular the attritional conflict between her parents, she is clearly an accomplished young woman. I understand that she can speak three languages fluently, she is a horse-rider, and she is described by all as articulate and intelligent.

### **Other Evidence**

38. Moor J gave permission for the joint instruction of Ms T, an expert in the law in Country K. The father did put any written questions to Ms T as permitted but, at the start of the hearing before me, applied for permission to rely on his own lawyer to give evidence on law in Country K in rebuttal of Ms T’s evidence. I refused permission. Ms T’s evidence was, in short, that the judicial system in Country K is tainted with corruption and is generally unfair to women. Strikes have led to a large backlog of cases. Any application in respect of L’s residence, custody or guardianship, would take at least two years to resolve but, in any event, there would be little to no prospect of the mother succeeding. The father already has extant orders for custody and to imprison the mother for breaches of previous orders.
39. The father’s own evidence is that the mother has used influence with officials to bypass or negate the effect of court orders. That tends to support Ms T’s evidence that in Country K the rule of law does not operate impartially and effectively. I accept Ms T’s broad assertion that it would be a slow and very difficult process for the mother to seek custody of L in the courts of Country K, although I did not find much help about the detailed legal procedures in Ms T’s rather broad-brush evidence.
40. I have received expert evidence from a specialist immigration lawyer, Ms Baxter. Neither mother nor daughter currently holds a valid biometric residence permit. Both have outstanding applications to the Home Office made on the basis of their ‘private and family life’ in the UK. The mother’s application was submitted in January 2021 and L’s application submitted in April 2021. Ms Baxter indicates that the mother’s application is problematic. L might qualify for a student visa, as previously, but Ms Baxter’s evidence pre-dates L’s acceptance at a London state school and it is not clear to me how that will affect her current application, or the prospects of a successful application for a student visa, if at all.
41. I have also considered evidence from the father’s sister-in-law, AB, nephew, CD, and the mother’s son, EF, who have provided statements. AB looked after L when she was sent away from A school after scarring was noted on her arms. CD gives evidence of his involvement with L on her return to Country K at the start of the pandemic in 2020. EF, relied upon by the father, speaks well of the father’s character.

## **The Father's Position**

42. The Father made this application at the end of 2020 and he has pursued it with vigour. He has produced three witness statements with many exhibits, and two statements from his solicitor. He was aware of his daughter's reportedly strong opposition to returning to Country K from reading the evidence of Ms Odze and Ms Coyle and made sweeping assertions in response that what she said was so infected by the influence of her mother that it could not be relied upon. And yet at various points in his oral evidence he said, "I have no choice but to allow [L to live in London] but need assurances that she is being looked after"; "it is best for her to stay in England"; he accepted that she does not want to return to Country K; and he agreed that he would not want L to be forced to return to Country K against her will.
43. The father does not live in Country K. He lives with his wife and three other children in X. He currently visits Country K about 100 or so days each year. He has business interests there. The father has made various proposals for arrangements for L upon her return to Country K:
- a. L should live with him and his family in X;
  - b. L should live with him and his family in Country K;
  - c. L should live in his apartment in The capital of Country K;
  - d. L should live in his house in the mountains outside the capital of Country K with his sister and her husband.

His proposals for arrangements for L upon return to Country K were ill-planned and inconsistent. The solution he proposed at court – at (d) above - is not contained within his written evidence and so L, her solicitor, and Ms Odze, have not had an opportunity to consider it. There was no statement from his sister or her husband confirming her agreement to the proposal. I note that the evidence suggests that when L stayed at this property on returning to Country K at the beginning of the pandemic in March 2020 the father's sister and her husband were not living there. The father's nephew, CD, says that he would visit L at the house and otherwise only staff were living there with L. It is not at all clear when the father's sister and her husband started living there, under what terms, and how long they intend to remain there, let alone whether they are willing, able and suitable to look after L. The father himself would be in Country K only for about one hundred days or so each year. That is his current pattern. He visits Country K from X for the purposes of business. Therefore, on his proposal L would be living without either parent for over two-thirds of the time and the father would see her when he visited Country K for business reasons. He said in evidence that he would spend holiday periods with her alongside his family, but he also told the court that he and his wife would be cautious about L spending

time with their children and would have to monitor L at all times. It was clear from his evidence that his wife would be reluctant for L to spend time with her children.

44. As noted, the father did not present a consistent case as to whether he believed that it would be in L's best interests to be returned to Country K. Although he maintained his application for a return order he also gave evidence that he thought L should remain in England and go to school here but on condition that he should choose the school and that a guardian be appointed to ensure L was safely cared for. His focus appeared to be on the appropriate arrangements for L in England, rather than on the need for her to return to Country K. He told me that it was "best for her to stay in England" but that he needed "assurances that she is being looked after." That was also his position in the autumn of 2020, not long before he issued the present application, when he thought he had concluded an agreement with the mother that L should remain in England.

## The Law

45. The approach the court is to take concerned with an application for summary return under the court's inherent jurisdiction was recently considered by the Court of Appeal in *Re P (a child) (abduction/inherent jurisdiction)* [2021] EWCA Civ 1171, when Lord Justice Peter Jackson summarised the law by reference to the first instance judge's direction:

"36. The Judge directed herself at this stage in this way:

"101. The court's discretion under the Hague Convention and its inherent jurisdiction are not identical. It is generally difficult to justify an order to return where the exception of consent and also settlement have been established. The same considerations would be relevant under the inherent jurisdiction where welfare is more clearly the guiding consideration (and the policy of the Hague Convention is not in play). It was not suggested that the exercise of discretion on the different bases (an exception under the Hague Convention or the court's inherent jurisdiction) would give rise to a different outcome in this case."

37. In my view that was a sound practical approach. The exercise of a discretion under the Convention is at large: *Re M (Children)* [2007] UKHL 55; [2008] 1 AC 1288. The approach to making a welfare decision under the inherent jurisdiction was considered by the House of Lords in *In re J (A Child)(Custody Rights: Jurisdiction)* [2005] UKHL 40, [2006] 1 AC and by the Supreme Court in *Re NY (A Child)* [2019] UKSC 49, [2020] AC 665.

38. In *Re J*, the House of Lords affirmed that the welfare principle applies to decisions under the inherent jurisdiction. However, the court does have power, in accordance with the principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. As Baroness Hale put it at paragraph 28:

“It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child.”

In the following paragraphs, she considered how the choice should be made, with reference to a number of factors that would vary from case to case, including the degree of connection with each country and the length of time he has spent in each. She concluded at 38:

“Hence our law does not start from any *a priori* assumptions about what is best for any individual child. It looks at the child and weighs a number of factors in the balance, now set out in the well-known 'check-list' in section 1(3) of the Children Act 1989; ...”

39. In *Re NY* at paragraph 49, Lord Wilson similarly commended the use of the welfare checklist, although it is not expressly applicable to making orders under the inherent jurisdiction:

“... their utility in any analysis of a child's welfare has been recognised for nearly 30 years. In its determination of an application under the inherent jurisdiction governed by consideration of a child's welfare, the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3) ...; and, if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should conduct an inquiry into any or all of those aspects and, if so, how extensive that inquiry should be.”

What is therefore needed in all cases is an inquiry that sufficiently identifies what the child's welfare requires.”

## Conclusions

46. In my judgment it is unnecessary to make detailed findings about the many allegations and counter-allegations made by the mother and father concerning matters that go back almost to L's birth. Detailed schedules were prepared by the parties but I indicated at the outset of the hearing that close adherence to those schedules would not assist the court in determining the application. The following findings however are relevant to the court's determination of the return order application. The burden of proof is on the person making the relevant allegation, and the standard of proof is the balance of probabilities. On a review of all the evidence I conclude that:

- a. The mother has been L's primary carer for most of L's life.
- b. There is no evidence from the time that L suffered harm in her mother's care up to the age of 12, but, by 2018, the mother was



having such difficulty controlling L, that she asked the father to care for her. The mother was either unwilling or unable to care for L at that time.

- c. When L lived with the father and his family, his parenting style was wholly different from the mother's. It was much stricter and more formal. L found it very difficult to adjust to living with her step-siblings and under the regime her father and his wife imposed. L felt pulled in opposing directions by her mother and father. This caused her distress, leading to her self-harming. Relationships within the father's home became strained and resulted in the father deciding that it would be best for L to go to a boarding school in England.
- d. Whilst caring for L, and even before L moved to X to live, the father smashed her mobile phone in front of her because she had disobeyed an instruction not to use a mobile phone. The father admits this. L says that her father shook her whilst holding on to her arm whilst she was on her phone. The father denies this, but for the reasons already given his evidence lacks credibility generally, and L's account of this incident has been consistent and I can find no evidence that the mother has implanted this story in L's head. I am sure that L has given a genuine account from her own recollection of that incident.
- e. The father, I am satisfied, struck L with a belt on one occasion between September and December 2018 in the circumstances alleged by L. Again, the evidence before me shows that L has given consistent and detailed accounts of this incident. Her account is coloured with small details and descriptions of her feelings at the time and afterwards that lead me to accept its authenticity. She may have said on one occasion that her father acted as he did because he had seen L with a boy, and on another that it was because his wife had told him that she had seen L with a boy. To my mind that is not a significant discrepancy that undermines the credibility of her account. L has been trying to understand why her father acted as he did. In contrast the father could only account for this "fabrication" by saying that the mother had suggested it to L. Once again his answer is to blame everything on the mother. He told the court that if he was the type of man to do this, then L gave him better reason to hit her with a belt than simply having talked to a boy. As it is the father has admitted smashing L's mobile phone in front of her. I am sure he did so in temper because she had disobeyed him. Throughout his evidence he showed himself to be someone determined to have his own way, and for others around him to follow his wishes. On the balance of probabilities, I find that the father did strike L with a belt as she has alleged. This happened on one occasion.

- f. Later, in 2020, the father unilaterally terminated L's place at A school without informing her.
  - g. The mother has taken unilateral decisions about L's living arrangements without consultation with the father including removing L from the capital of Country K in August 2020.
  - h. L wishes not to return to the capital of Country K. She has stated that wish clearly and consistently for several months. It is her authentic wish, freely stated. I have no doubt that at various times in her life L's views have been influenced by each parent and that her mother currently has more influence over L than her father. Nevertheless, the evidence establishes that L is capable of speaking her own mind. On the issue of her return to Country K I am sure that she is aware of both her parents' views and is able to speak for herself, as she has done.
  - i. L is of a maturity consistent with her age.
47. I have also considered what the evidence establishes as to L's likely living arrangements should she remain in England, alternatively, should she return to Country K. There are uncertainties with each alternative:
- a. If no return order is made, it is likely, subject to the immigration status of L and her mother, that L will go to the C state school in London and she will complete her secondary level education there. She might go to university in England or abroad.
  - b. S's immigration status is yet to be confirmed. She has an ongoing application for leave to remain. Relying on Ms Baxter's evidence, I conclude that the likelihood of the mother being granted immigration status beyond a visitor does not appear to be strong. L may have a better prospect of obtaining a student visa but it is difficult to predict the outcome of her application. Accordingly, it seems to me that the court can have no great confidence as to the outcome of the mother and L's immigration applications. I have no timetable for the outcome of those applications. These are factors that must be weighed in the balance when considering the father's application.
  - c. Court intervention in this jurisdiction is likely to be required to support the relationship between L and her father if L remains in England and to promote L's best interests. I note the involvement of the local authority in London. It is limited, but it is of some reassurance that they are aware of L.
  - d. If L were to return to Country K it is likely she would be enrolled in a school there but no preparatory work on enrolment has been done and the evidence does not allow me to find which school she would be likely to attend. She may well be housed in her father's house "in the mountains" but I have no confidence as to

what the arrangements would be there. The father would doubtless visit her there but her day to day care would be the responsibility of others. There would be considerable tensions in relation to L spending time with her mother. Were her mother to return to Country K herself, upon a return order being made in respect of L, it can be foreseen that L might well “vote with her feet” by leaving her father’s house and going to live with her mother. That could well trigger further disputes and litigation in Country K.

48. L is undoubtedly now habitually resident in England. She is educated here and has been for (most of) the last two years. She resides with her mother and has done for over a year. She has friends here. She is integrated into social and family life in England. As of the beginning of August 2020, when she came to England after the explosion in the capital of Country K, she was, on the balance of probabilities, habitually resident in Country K. Although L had been at boarding school in England from September 2019 to February 2020 and may well have expected to go back to school in England in the autumn of 2020, she had lived in Country K for most of her life, had been educated there until 2018, and had family there. She had come back to Country K because of the lockdown in the Covid-19 pandemic and had been there for about five months before leaving on 6 August 2020. However, she left with her mother in the immediate aftermath of a huge, destructive explosion which had caused damage to the flat in which she was living and which caused multiple fatalities in the city. Within weeks of her returning to England, her father was content for her to remain here, to go to school here and to live with her mother in London. He was willing to pay for that arrangement. Significant time has now elapsed since L’s arrival back in England in early August 2020. This application should not be determined by reference to analysis of past habitual residence, wrongful retention, acquiescence or other concepts familiar in cases brought under the 1980 Hague Convention. I take into account the history of L’s arrival in England in 2020 but as part of my assessment of her welfare. L’s welfare is my paramount consideration and I have regard to the welfare checklist under s. 1(3) of the Children Act 1989.

49. *The ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding).* I have already recorded my finding that L’s authentic and strong wish is not to be returned to Country K. She is fifteen years old; she has a maturity commensurate with her age.

50. *Her physical, emotional and educational needs.* L’s physical needs are well met, as they always have been. I do not doubt that they could be met in Country K as well as in London. Her educational needs can be met if her parents cease fighting over arrangements for schools. She appears to have secured a place at a highly rated London school where she can prosper if she is given joint parental encouragement and support. She has been in the English education system, on and off, for two years

now. There is no firm arrangement for her schooling in Country K were she now to return there. The father says he could speedily arrange a school, but he has not provided any reassurances to the court to that effect. L has been out of the education system in country K for three years. For her emotional welfare, L now needs a period of stability and to be protected from her parents' mutual hostility. A return order to Country K would cause more instability, more resentment and bitterness between L's parents. I do not pretend that all hostility will cease were the father's application to be dismissed, but since the father had agreed to his daughter attending school and living in England (the unsigned agreement from October 2020) then I expect that he will support his daughter in England if no return order is made.

51. *The likely effect on her of any change in her circumstances.* The frustration of L's strongly held wish not to return to Country K - a decision of fundamental importance to her - would be likely to cause her considerable emotional harm. I accept the evidence of Ms Odze that L is not resilient. Her parents' warring relationship has created emotional fragility in their daughter. A move to Country K would separate her from the friends she has made in England. It would disrupt her education which has been conducted outside Country K for the past three years. It would, on the father's proposal, remove her from the care of her mother who has been her main carer for most of her life. In my judgment the father's evidence made it quite clear that were L to return to Country K he would use all means at his disposal to ensure that she was not cared for by the mother - I am satisfied that his motivation in pursuing this application is to remove L from the care of her mother.
52. *Her age, sex, background and any characteristics of hers which the court considers relevant.* L is a 15 year old girl with some emotional fragility. She shares her mother's enjoyment of fashion and materialistic pleasures such as luxury brands. She enjoys independence. Her age and sex, and her emotional vulnerability, mean that it is particularly beneficial to L at this time to maintain what appears to be a close bond with her mother.
53. *Any harm which she has suffered or is at risk of suffering.* As I have recorded, there is evidence that L has suffered emotional harm in the last three to four years, primarily due to the conflict between her parents. The father's hyperbolic assertions that the mother is torturing L, and the mother's equally overstated characterisation of the father as a tyrant - each parent seeking to place the entire blame for L's problems on the other - miss the mark. It is the conflict between the parents, for which they are both responsible, that has been harmful to L. However, the harm should not be overstated. L has self-harmed in 2019 but there is no evidence that it is continuing. She may have benefited from counselling but there is no evidence of any significant mental health difficulties. I rely on the evidence from Ms Odze and Ms Coyle as showing that L may not be resilient but she is an intelligent, articulate and engaging young woman who knows her own mind.. Nevertheless, she is in a

fragile state and the stress of this ongoing litigation has already taken its toll on her. Ordering her to return to Country K, away from her mother, in the care of the father's relatives, would be likely to compound her sense of parental abandonment, of being ignored and unloved, and has the potential to cause her significant emotional and psychological harm.

54. *How capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.* L has learned to negotiate a way to live with her flamboyant and sometimes erratic mother and found the more constrained life with her father difficult to cope with. The conclusion reached by the social worker on first contact which I have quoted above [C800] helps to persuade me that for all the criticisms I have made of the mother's parenting, she has a loving relationship with L, that they are honest about their own relationship with each other, and that the mother is capable of meeting L's emotional needs. I am satisfied that the mother can also meet L's physical needs were she to remain in her care. There is a risk that if no return order is made and L remains in London, the mother will leave her for periods of time as she flies abroad in the course of her work. The mother did not pretend to the court that she might not leave L in England whilst she went abroad for a few days at a time. She told the court of a close family friend, well known to L, who has children of her own and with whom L could stay. I do not have any statement from that friend and only have the mother's word about this proposed arrangement. Nevertheless, the mother has lived together with L in London now for over a year, they lived together previously in Country K, and L's needs have been met. The harm L has come to has been due mostly to parental conflict. On the father's proposal, L would live with his sister and brother-in-law on return to Country K. I have no evidence from them and only have the father's word that they would look after L. The father himself would not live in Country K. He is wealthy and can provide a house and, if needed, pay for practical care, but his proposal would deprive L of day to day parental care and so would be deficient in meeting L's needs.
55. *The range of powers available to the court under this Act in the proceedings in question.* On L's return to Country K, neither this Court nor the Family Court in England would, in fact, be able to exercise effective powers to support L's welfare. Were L to remain in England, then child arrangements orders could be made to support future contact between L and her father. Their relationship needs to be supported. The father's pursuit of this application in the face of his daughter's express wishes, has scarred their relationship. The court has powers under the Children Act to protect L from parental conflict and to help to re-build relationships within the family.
56. The most striking feature of this case is that L has made absolutely clear her wish to remain in England and not to return to Country K. This has been considered by her solicitor and by Ms Odze, an independent Cafcass Officer, to be her own, freely expressed, authentic view. If L

were returned to Country K I doubt whether she would voluntarily stay at her father's house there for very long. In my judgment it would take exceptional countervailing factors to persuade the court that it was in L's best interests to be returned to Country K against her will. As it happens, the balance of other factors weighs in favour of not making an order for her return. I am satisfied that the mother and L have a close, loving relationship, and that for all her faults, the mother is capable of meeting L's needs. Return to Country K would risk placing L in a setting without daily contact with either parent, exacerbating her fear of abandonment, and her sense that she is a victim of a war between her parents. Considering the evidence as a whole, and with L's welfare as my paramount consideration, I have no hesitation in dismissing the father's application. It would be contrary to L's best interests to order her return to Country K.

57. That is not the end of this matter. The mother has an extant application for a child arrangements order, and it will be necessary for the court to consider what orders should be made, if any, in L's best interests. It is clear to me that at least in the interim period, before any further orders are made, it is in L's best interests to continue at the HS school where she was due to start very shortly after the hearing. The parents came very close to concluding agreement as to child arrangements for L that would have allowed her to remain in England, at school here, in the care of her mother. I hope that both parents will reflect on impact of their warring relationship and be able to reach agreement as to the arrangements for L, in L's best interests. I shall consider proposals for further directions by the parties.