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No. FD23P00130

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION



Royal Courts of Justice
The Strand
London WC2A 2LL
Tuesday, 9 May 2023

Before:

MR JUSTICE WILLIAMS

(In Private)

B E T W E E N :

TMS

Applicant

- and -

AVS

Respondent

MR E BENNETT (instructed by Dawson Cornwell) appeared on behalf of the Applicant.

MS G RUSHWORTH (instructed on Direct Access basis) appeared on behalf of the Respondent.

APPROVED J U D G M E N T

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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

MR JUSTICE WILLIAMS:

- 1 It is now 3 o'clock on 9 May 2023 and I am today giving judgment in relation to an application brought under the 1980 Hague Child Abduction Convention in respect of two children: AS born on 7 April 2011, and so now 12 years and 1 month; and VS, born on 2 June 2016 and so rising 7.
- 2 The applicant, TMS, is the children's mother. She is represented today by Mr Edward Bennett, of counsel, and solicitors Dawson Cornwell. The respondent is the children's father, AVS, who is represented by Ms Rushworth on a Direct Access basis.
- 3 The family have four children together but this application only concerns, as I say, AS and VS. The circumstances in which the applications are brought are on the back of a holiday that three of the parties' children took to this country in February of this year when the mother and father met, I think, in Vilnius in Lithuania. MS, the eldest, AS and VS came with their father to London, England for a holiday which was due to last a little over two weeks whilst the mother and the parties' youngest child, NS, aged 2, went to Toronto.
- 4 An issue which has lurked in the background is whether the family had decided to relocate away from Russia, the father's case being that it had been agreed that the family would relocate away from Russia. He is saying, or suggesting at least, that a fairly settled decision had been made to come to England, whereas the mother says that the possibility of relocating from Russia had featured at times during their marriage, they both having international connections, but no settled plan had ever been determined, in particular the mother having as a precondition that the financial position would have to be sufficiently secure in any alternative country to Russia for her to consider such a relocation.

- 5 So, I think her trip to Canada was, at least in part, to explore the possibilities there whilst the children spent time with their father in London. As things turned out, when the mother and NS returned to Lithuania, the father had the day before emailed the mother saying that he had decided that the children should live with him in London, or that VS and AS should live with him in London, and so he returned to Lithuania only with MS, and so MS, the mother and NS returned to Moscow whilst the father returned to England.
- 6 The mother very rapidly issued proceedings in this court. In “hot pursuit” terms this is pretty much red hot, because I think the children were retained on 27 February and two days, or three days, later on the 1st or 2 March these proceedings were issued. It was sensibly and rapidly acknowledged by the father that the children had been habitually resident in Russia up until that point and that his retaining the boys in London constituted a wrongful retention within the meaning of the Convention, and he also sensibly acknowledged that there was no question of an exception being raised under either acquiescence or consent, and thus at an early stage the issues which were for the court to determine were identified as whether a return of the children, or either of them, would give rise to a grave risk of physical or psychological harm or place them in an intolerable situation if they were to be returned to Russia, and secondly, whether the children objected to a return to Russia, and the case was listed for a one-day hearing – that is today, 9 May – when those issues have remained as highlighted in the earlier directions hearing.
- 7 The slightly extended background to the case is that the respondent father was born in Russia and holds Russian citizenship. He acquired British citizenship following a period of time working in London in the early 2000s before he then returned to Russia, where he was, I think, chief executive of a business dealing with senior care.
- 8 The applicant mother also was born in Russia. She holds Russian and Canadian citizenship, her Canadian citizenship, I think, arising from a period of years when she and her parents

lived in Canada. She returned to Russia many years ago and the parties met and married in Russia in April 2008, following which they made their lives in Moscow.

- 9 The first child, MS, was born in July 2009. Their second child, AS, was born, as I have said, on 7 April 2011. On 2 June 2016 VS was born and the children were, I think, educated in an international school for many years until June of 2020, when the mother was about four months pregnant with the parties' fourth child.
- 10 Although it is not of considerable relevance, it appears that the parents' separation must have been to some degree either kept from the children, or at least they were insulated from the consequences of it, because it emerges in some of the medical evidence, and the CAFCASS evidence, that AS felt that his mother, in particular, had kept the separation from the children, but, be that as it may, it seems that for a period of time after the parents separated, the children appear to have remained to some extent insulated from the consequences of that separation, and even when the parents were living in separate households, that seems to have been the case, that their lives continued in terms of spending significant amounts of time with each of their parents and continuing at their schools.
- 11 However, it appears that by the Spring of 2021, that level of insulation began to deteriorate, because by that stage AS was noted to be having behavioural difficulties and the parents were concerned about his unhappiness, such that they were exchanging texts about whether he needed psychiatric support, whether he was expressing suicidal ideation, whether he needed medication, and as a result of that, he indeed was taken to see a psychiatrist, and I will return to that later. He continued to see a psychiatrist, for, I think, about 16 or 17 months, which also incorporated a change of schools, as the children were taken out of their international schooling and placed in, a Russian Jewish State school, which seems to have caused some unhappiness for at least AS and possibly VS as well.

- 12 By the summer of 2022, the father's employment seems to have come to an end and in or about July of that year he left Russia and, I think, has not subsequently returned. He has published, or has had published, some interviews or articles in which he has been critical of the Russian regime and President Putin and the war in Ukraine, and he says that he left Russia because of his dissident position and the vulnerabilities that he felt as a result of that. I think he travelled via perhaps Georgia and ended up in England in about September of 2022. Following his departure from Russia in the summer of 2022 he had not seen the children face-to-face, until the holiday was arranged for the children in February of this year.
- 13 As I said earlier, the pre-conditions for the effectiveness of the 1980 Hague Child Abduction Convention were accepted as being met soon after these proceedings were instituted and so this hearing was listed to consider the exceptions relied upon by the father of the child's objections and grave risk of harm and the children were seen by a CAFCASS officer, Ms Huntington, for the purposes of ascertaining their views and considering whether those amounted to objections for the purposes of the Convention.
- 14 In hearing this application, I have had the benefit of a bundle, which extends to over 500 pages. I have also had skeleton arguments from Mr Bennett and Ms Rushworth, which have been supplemented by their oral submissions and the short evidence from the CAFCASS officer who was called in particular to amplify her evidence in relation to the possible impact on AS of a return to Russia and in relation to the issue of whether in fact VS himself could be said to object.
- 15 In relation to the child's objections exception, Mr Bennett on behalf of the mother sensibly accepted that what AS had said to Ms Huntington, his strong preference for remaining in England with his father, amounted to an objection for the purposes of the Convention, and so in respect of AS the real issue was how the resulting discretion was to be exercised. In

relation to VS, the issue was both whether he objected and whether it would be appropriate to take account of any objection, given his age and degree of maturity, as well as how the discretion should be exercised if it came into play. The mother's position in relation to VS was that he did not object, on the basis of what he had said to Ms Huntington and even taking account of what he had subsequently indicated to his school.

- 16 The father's position was that AS's expressed views amounted to a strong objection and that in conjunction with the other matters, the discretion ought to be exercised so as to allow him to remain in England. His position in relation to VS was that, if one took a broad approach to his views, one could discern an objection in that regard as well and that the discretion ought to be exercised to enable him to remain also, although I think, realistically, both the father and Ms Rushworth acknowledged that what VS had said was far less compelling and far more balanced, and thus the objections argument in respect of him was a harder one to make.
- 17 The father's case in relation to the Article 13b "grave risk of harm or intolerable situation", had a number of strands to it; first of all, in relation to AS, that a return against his wishes would expose him to a deterioration in his psychiatric state such that he may become suicidal again, and that would meet the threshold, but the father also alleged that there was a real risk of the children being exposed to physical and emotional harm from their mother, both in terms of physical beatings but also threats from her to kill herself or to kill AS, and that the maternal grandfather posed a physical risk of abuse to them as well.
- 18 In addition, the impact on AS of returning to Russia to his school was relied upon, he having been unhappy at that school, and further, the father relied upon the risk of the Ukraine/Russia war, or the special military operation, extending into Russia with risks of harm attached to that, and also, in particular, an alleged risk to the children of dissidents

being targeted by the State and either removed from their family's care or being subjected to other forms of physical abuse at the hands of the State.

- 19 Mr Bennett and Ms Rushworth were broadly agreed in respect of the legal framework which applies. Given that habitual residence and wrongful retention in breach of the mother's rights of custody is accepted, the principal focus is Article 13b of the 1980 Hague Convention, which says as follows:

“The requested State is not bound to order the return of the child if the person 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, or the judicial authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views”.

- 20 In relation to Article 13(b), that has been subject to extensive consideration in the Supreme Court and the Court of Appeal, and this court, and has relatively recently been subject to Good Practice Guidance issued by the Hague Conference on Private International Law. Ultimately, however, the task that the Court has to evaluate, is whether the father has established on the balance of probabilities that there is a grave risk that the children's return would expose them to physical or psychological harm, or otherwise place them in an intolerable situation. In this context, "grave" connotes such a level of seriousness as to warrant the term "grave" either in the magnitude of risk or in the consequences, and colour is added to that by the alternative "intolerable", which is a situation in which this particular child in these particular circumstances should not be expected to tolerate.

- 21 The source of harm can be from any source. The authorities indicate a need to focus upon the circumstances of **this** child returning to **that** country, and the risks which arise on their return and thereafter. Protective measures are a relevant consideration; they can take many forms. Essentially, however, the question the Court should ask is whether any protective

measures ameliorate or negate a risk identified, in a concrete or effective way, such as to bring the case below the grave risk threshold identified in Article 13b. Article 11 of the 1996 Hague Child Protection Convention provides a jurisdictional route whereby protective measures made could become enforceable in Russia.

22 The starting point which emerges from *Re E* [2011] UKSC 27 in the Supreme Court is that the court takes the allegations at the highest and asks the question: would, taken at their highest, the allegation or the allegations cross the Art.13(b) threshold. If the answer to that is no, taken at their highest they would not, then the Art.13(b) exception cannot be established. If the allegations taken at their highest would cross the Art.13(b) threshold, then the second stage is to ask whether the protective measures could be effective rather than theoretically reduce a risk but could be effective, in practice, to reduce the risk to the children to a level below the Art.13(b) threshold. This simple starting point has been subject to some further exploration and elaboration as there has been some uncertainty about when the court should approach allegations on the basis that they are to be taken at their highest.

23 In most cases of this nature, the Court cannot undertake a detailed factual enquiry with hearing of oral evidence, and so some care has to be exercised in evaluating documentary and written evidence. In *Re C (Children) (Abduction Article 13(b))* [2018] EWCA Civ 2834, Lord Justice Moylan emphasised that the Court has to be careful when conducting a paper evaluation, but equally affirmed that that does not mean that no assessment at all about the credibility or substance of the allegations can be made. In *re A (Children) (Abduction: Article 13(b) Court of Appeal* [2021]; EWCA Civ 939 [2021] 4 WLR 99 Moylan LJ examined this further.

[91] The summary nature of the process inevitably impacts on the manner in which the court assesses the evidence. As Baroness Hale and Lord Wilson explained in In re E, at para 32:

“... in evaluating the evidence, the court will of course be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.”

This led the Supreme Court to endorse the following approach, at para 36:

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

*[92] This does not mean, as I said in *In re C*, at para 39, that it was being “suggested that no evaluative assessment of the allegations could or should be undertaken by the court”. In support of this conclusion, I quoted what Black LJ (as she then was) had said in *In re K (A Child) (Abduction: Child’s Objections)* [\[2015\] EWCA Civ 720](#) at [53], about the *In re E* approach: “I do not accept that a judge is bound to take this approach if the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an article 13b risk.” I would emphasise that Black LJ was referring to discounting the possibility that the allegations would give rise to an article 13(b) risk. She was not otherwise diverging from the approach set out in *In re E*. It is also plain that she was referring to the end of the spectrum, namely when the court was able confidently to discount the possibility that the allegations gave rise to an article 13(b) risk. This is not to dance on pins but is a distinction of substance derived from the court not being in a position to determine the truth of the allegations relied on as establishing the article 13(b) risk.*

*93 It was for this reason that, in *re C* at para 39, I commented that “a judge has to be careful when conducting a paper evaluation” of the evidence. The court has to be careful for the reason given by the Supreme Court, at para 36, namely “the inability of the court to resolve factual disputes”. This creates the “tension” there identified between this inability and “the risks that the child will face if the allegations are in fact true”. This led the Supreme Court to adopt the “pragmatic and sensible solution” set out above. In its concluding paragraphs in *In re E*, the Supreme Court repeated, at para 52:*

“Where there are disputed allegations which can neither be tried nor objectively verified, the focus of the inquiry is bound to be on the sufficiency of any protective measures which can be put in place to reduce the risk. The clearer the need for protection, the more effective the measures will have to be.”

94 In the Guide to Good Practice, at para 40, it is suggested that the court should first “consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk” before then determining, if they could, whether the grave risk exception is established by reference to all circumstances of the case. In analysing whether the allegations are of sufficient detail and substance, the judge will have to consider whether, to adopt what Black LJ said in In re K, “the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an article 13(b) risk”. In making this determination, and to explain what I meant in In re C, I would endorse what MacDonald J said in Uhd v McKay [2019] EWHC 1239 (Fam); [2019] 2 FLR 1159, para 7, namely that “the assumptions made by the court with respect to the maximum level of risk must be reasoned and reasonable assumptions” (my emphasis). If they are not “reasoned and reasonable”, I would suggest that the court can confidently discount the possibility that they give rise to an article 13(b) risk.

95 But, I repeat, a judge must be careful when undertaking this exercise because of the limitations created by it being invariably based only on an assessment of the written material. A judge should not, for example, discount allegations of physical or emotional abuse merely because he or she has doubts as to their validity or cogency. As explained below, in my view this would lead the court to depart from the In re E process of reasoning while, equally, not being in the position set out in In re K

96 If the judge concludes that the allegations would potentially establish the existence of a grave risk within the scope of article 13(b), then, as set out in In re E, at para 36, the court must “ask how the child can be protected against the risk”. This is a broad analysis because, for example, the situation faced by the child on returning to their home state might be different because the parents will be living apart. But, the court must carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to a grave risk within the scope of article 13(b). And, to repeat what was said in In re E, at para 52: “The clearer the need for protection, the more effective the measures will have to be.”

97 In my view, putting it colloquially, if the court does not follow the approach referred to above, it would create the inevitable prospect of the court’s evaluation falling between two stools. The court’s “process of reasoning”, to adopt the expression used by Lord Wilson in In re S, at para 22, would not include either (a) considering the risks to the child or children if the allegations were true; nor (b) confidently discounting the possibility that the allegations gave rise to an article 13(b) risk. The court would, rather, by adopting something of a middle course, be likely to be distracted from considering the second element of the In re E approach, namely “how the child can be protected against the risk” which the allegations, if true, would potentially establish.

98 The likely consequence of adopting this middle course is, in my view, that the court will be treating the allegations less seriously than they deserve, if true. Equally, there is the danger that, for the purposes of determining whether article 13(b) is established, the court will not properly consider the nature and extent of the protective measures required to address or sufficiently ameliorate the risk(s) which the allegations potentially create. In my view, as explained below, this is what happened in the present case.

99 This does not, of course, mean there is no evaluation of the nature and degree of the risk(s) which the allegations potentially establish. This is the essence of the approach

endorsed in re E because the court is required to determine whether the allegations, if true, would establish the required grave risk.

24 One can discern a differential emerging in the cases in the Court of Appeal and this court since *Re E* from the relatively straightforward approach that the UK Supreme Court adopted in *Re E*, with the court now considering (deriving from the Good Practice Guide) whether the allegations made by the respondent are of such a nature and of sufficient detail and substance, in terms of evidence, that they could constitute a grave risk. Supplementing this Moylan LJ approved MacDonald J's phrase of asking whether the maximum level of risk is supported by "reasoned and reasonable assumptions". This is a rather more nuanced and detailed exercise than the pragmatic solution suggested in *Re E* as that proceeded on the basis of the assumption "if true" whereas both the Good Practice Guide and MacDonald J's approach involve some evaluation of the evidence to determine whether they are of "sufficient detail and substance" or whether they are supported by "reasoned and reasonable assumptions".

25 The outcome envisaged by Moylan LJ if the allegations do not meet those tests is identified as them falling into the category of "*..the court can confidently discount the possibility that they give rise to an article 13(b) risk.*" However, as Moylan LJ says in paras 93, 95 and 97 this evaluative exercise needs to be approached cautiously. On one reading of Moylan LJ's judgments, one could, by the application of 2 forensic tools end up answering the ultimate Art 13b question in a binary way, either

The allegations are determined **not** to be of such a nature and of sufficient detail and substance and/or taking the allegations at their highest do not pass the reasoned and reasonable assumptions test and so fall by application of Moylan's approach at para 94 fall to be confidently discounted. The corollary of this is that Art 13b is not

established and no protective measures fall to be considered (other than perhaps those addressing 'soft-landing' type issues rather than true Art 13b issues) **OR**

The allegations are determined **to be** of such a nature and of sufficient detail and substance and/or taking the allegations at their highest **do** pass the reasoned and reasonable assumptions test and so attract the full panoply of protective measures attached.

26 However, I do not think that this binary approach is what the authorities do mandate although the "falling between two stools" observation at para 97 might indicate this. As Art 13b itself and as the Supreme Court in Re E said at para 36 they envisage there may be cases where neither forensic tool assists, in particular where protective measures could not address the risk or where the evidence in relation to protective measures is uncertain as to their effectiveness where the court has to do its best to resolve the disputed issues themselves or resolve dispute over the effectiveness of the measures.

27 It is self-evident that between taking the allegations at their highest on the basis of reasoned and reasonable assumptions, and confidently discounting the allegations potentially results in a forensic no-man's-land where, in practice, the evidence which is before the court does not sit easily within the confidently discounted or reasoned and reasonable assumptions territory. But this is a summary jurisdiction, and the court essentially works on the basis of protecting the child from risks which may exist, rather than taking risks with child protection. Although it is a rather broad-brush process (however this is a summary jurisdiction), it means that probably more cases fall into the reasoned and reasonable assumptions territory than would, at first blush, meet the eye, and that the confidently discounted territory is really a relatively limited territory where the court is satisfied, on good evidence or absence of evidence, that really there is no substance to the allegations which are made.

- 28 How should the court approach the case where the evidence on risk may in evaluative evidential terms fall somewhere between the two bases of on the one hand of “sufficient detail and substance/reasoned and reasonable assumption” justifying the allegations being taken at their highest and “confidently discounting” to fall under the 13b threshold.
- 29 This it seems to me leads to two possible courses; (a) the court has no option but to do the best to resolve the disputed issues which will rarely be appropriate in the summary process or (b) it applies a rather broader approach to the Re E ‘taken at their highest’ approach which permits of some careful evaluation of the nature and extent of the risk and the nature and extent of the protective measures required to ameliorate it but always under this option on the basis that a risk exists which requires ameliorating. This is supported by what the UKSC said in para 52 “*The clearer the need for protection, the more effective the measures will have to be*” and what Moylan LJ refers to in #99 of Re A and para 40 of Re C “*the approach 'commended in Re E should form part of the court's general process of reasoning in its appraisal of a defence under the Article'.*” What the court should not do is fall between two stools by undertaking some form of summary fact finding which falls in the middle ground or between the two stools or I think into some sort of blighted forensic no mans land where you are neither clear of one thing or the other.
- 30 Thus, in addressing the question of whether the Respondent has established 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 the range of approaches and outcomes include
- (a) The evidence establishes on the papers so that the judge is satisfied on the balance of probabilities that the grave risk exists. The court then in the light of its actual findings on the level and nature of risk what protective measures are available and whether or not they would be effective to ameliorate that determined risk. Examples

might include those such as the subject cases in the UKSC; Re E (impact on mother psychiatrically on return where the protective measures would ameliorate the risk) and Re S (domestic abuse established). Of course, the established risk might not fall at the top end of the spectrum for instance in a domestic abuse case the risk established might be of emotional abuse rather than a risk of death or serious physical injury.

- (b) The evidence establishes on the papers so that the judge is satisfied on the balance of probabilities that there is no grave risk. This may be because the nature of the allegation taken at its highest simply could not establish a grave risk of harm or other intolerable situation or because the evidence in relation to the alleged risk is sufficiently clear on paper that a clear adverse conclusion can be reached. No Art 13b protective measures are then required.
- (c) The judge can on the papers confidently discount the allegation that there is a grave risk of harm. Forensically this would suggest the evidence is insufficient to determine on balance it does not in fact exist but is sufficiently weak (lacking in substance and detail, based on unreasoned and unreasonable assumptions perhaps) that it is not established. For the purposes of the summary process that Hague Abduction Convention cases involve the space between this category and (b) above may not be very large. Confidently discounting allegations in practice thus requires a fairly clear forensic evaluation of the evidence which concludes the allegations really are without substance. No Art 13b protective measures are then required.
- (d) The court cannot confidently discount the allegations as the evidence is of such substance and detail or the allegation is based on reasoned or reasonable assumptions such that it should take the allegations at their highest and determine that the grave risk of harm threshold is passed. This approach is consistent with the legal burden

which lies on the Respondent to establish the defence. In practice this means those cases which evidentially fall between ‘confident discount’ and ‘sufficient detail and substance/reasoned and reasonable assumptions’ will fall into this bracket (assuming the court does not feel compelled to embark on a factual determination) however unsatisfactory this might feel and however close it feels to reversing the burden. The court must then consider protective measures and the nature, extent and effectiveness of them are a matter for evaluation for the court having regard to all the circumstances, in particular where on the spectrum of risk (it having crossed the Art 13b threshold) the assumed risk falls. It seems in this category there would exist a spectrum of cases with some falling closer to the nature and extent of risk being of maximum severity where protective measures might not be capable of ameliorating the risk through to cases where the assumed risk of harm only just pass the Art 13b threshold whether because of the nature of the assumed harm or the extent of the assumed risk. In these cases, the courts evaluation of the protective measures will encompass more flexibility in terms of the range of protective measures required and the way in which the court approaches how effective they need to be.

As an example-will an undertaking alone be sufficient, or should that undertaking be lodged with a court in the country of origin or does there need to be an order registered in the courts of the country of origin or an order made by the court of origin in like terms?

- 31 In many cases of domestic abuse, and consistent with the UKSC guidance in Re E, the court may swiftly be led to (d) because it will be clear on reading the evidence that neither (a), (b) or (c) is obviously available as an approach, although as the authorities demonstrate even in domestic abuse cases the evidence may be sufficiently clear to enable the court to adopt one of those other approaches Where the grave risk is said to arise from other factors

the availability or not of other approaches may be more nuanced. The obvious advantage that remains of the ‘Taking them at their highest’ approach and why no doubt it should remain the starting point for many if not most cases is that it can lead rapidly to an answer because the focus on protective measures will often enable the court to conclude that a package of **effective** protective measures will ameliorate the risk and so negate the 13b exception.

- 32 This approach avoids the binary approach where if one does not feel there are reasoned and reasonable assumptions on which a 13b finding is to be based one falls into the confidently discounted bracket. That approach is more consistent with the need to protect the children which would be undermined by the binary approach.
- 33 If, of course, the Art.13(b) defence is established taken at its highest and if the protective measures cannot ameliorate the risk to a satisfactory level, this exception is established.
- 34 In the event that an exception is established, the approach to the exercise of the resulting discretion is set out in *Re M (Abduction: Zimbabwe)* [2007] UKHL 55, where the House of Lords confirmed that the discretion is at large; where policy considerations which accompany the Hague Convention will be weighed in the balance, along with any factors relating to the exception which has been established, and any welfare considerations which go to support either a non-return or a return. It has been recognised that in cases where the grave risk of harm exception has been established, it is quite difficult to envisage a situation where the Court would in the exercise of its discretion order a return, nonetheless. So the discretion on an Art.13(b) defence of this sort is more notional or more theoretical than real.
- 35 Regarding the child’s objections, the approach is comprehensively set out in the judgment of Black LJ in *Re M* [2015] 2 FLR 1074. That has been further endorsed by the Court of Appeal subsequently. In summary, the position is this. The gateway stage should be confined to a straightforward and fairly robust examination of whether the simple terms of

the Convention are satisfied, in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.

Whether a child objects is a question of fact. The child's views have to amount to an objection. An objection in this context is to be contrasted with a preference or wish. The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child's views, or objections, are one factor to take into account at the discretion stage.

- 36 There is a relatively low threshold requirement in relation to the objections defence. The obligation on the court is to take account of the child's views, nothing more. At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times, bearing in mind that the Convention only works if, in general, children who have been wrongfully retained or removed are returned and returned promptly, but once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are authentically the child's own, or the product of the influence of the abducting parent, the extent to which they might be ameliorated upon return, the extent to which they coincide with, or are at odds with, other considerations which are relevant to the child's welfare after Article 13b. It is important in considering the discretion though to bear in mind those factors identified by Baroness Hale in *Re M*, not only in relation to the factors to be taken account of in relation to a child's objections but also the welfare considerations, to the extent that one is able to determine them within the confines of a summary hearing such as this, but also the policy considerations which underpin the Convention, which include the swift return of abducted children, comity with other countries, judicial processes and deterring abductions; in this case, Russia a signatory

to both the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention.

37 The outcome of the exercise of a discretion in relation to two children does not necessarily mean that the outcome will be the same for each of the children, because, in particular in this case in relation to child's objections, the nature and strength of the exception may differ as between the children, and the application of welfare considerations may also differ as between children, and so it is not necessarily the case that the outcome will be the same for both children in this case.

38 The father's case is set out in detail in his statements and supplemented by the skeleton argument, and I do not intend to read into this judgment lengthy extracts from those statements, but I have read them and bear them in mind. The way that he puts his case, his particular emphasis at this stage, anyway, although perhaps it was less so in his statements, was very much focused on the risks to AS of overriding his wish to remain in England with his father and the potential consequences for him, given the psychiatric or vulnerability which he experienced from 2021 through 2022. Ms Rushworth explored that with the CAFCASS officer and laid considerable emphasis on that, and it seems to me that that is an important component of this case, in particular in relation to child's objections, but also in relation to 13b, and also in relation to the welfare component of the discretion, which does come into play.

39 But, as I have said, the nature of his concerns are broader than that. In particular, he identifies risks that arise from the mother's behaviour towards the children. He suggests that the mother may have some mental health condition which underpins dysregulated behaviour which causes her to deploy corporal punishment and physical discipline with AS and to behave in an emotionally abusive way, and he is concerned that were AS to return to that household, particularly on the back of an unwelcome return, that AS's challenging

behaviour would lead to an even greater risk of the mother deploying such discipline or being subject to such emotional outbursts which included, in his statement, the mother threatening to kill herself in front of the children and threatening to kill AS; not admitted by the mother but that is the sort of level at which the father places his concerns.

40 In addition, he refers to the maternal grandfather having used physical punishment to AS when he was little, and it is right that when the father initiated a child protection inquiry by Westminster Children's Services, when they spoke to AS, he told them about confrontations with the mother and her using physical punishment upon him, although he himself did not seem to rate it as being terribly serious on the spectrum, saying that it was 2 or 3 in terms of how much it hurt him, but that is the nature of the allegation the father makes, and the mother acknowledges that she has, or there has been at least one occasion when she has hit him and another occasion when the grandfather has.

41 The other strands of the father's case, in relation to Article 13b, is, in particular, what the father in his statement included under the subheading, "Risks of death and torture and removal from family" and these are the risks which he associates with the fact that he has been critical of the Putin regime, and has gone into print, and has attended anti-war demonstrations, including with MS, and perhaps with the other children, whilst in England, and so he fears that there will be repercussions, or there may be repercussions, for his children in Russia. He points to the case of a child removed into care from a dissident in Russia as an example of the sort of risks which may be associated with this. Of course, it goes hand in hand with this, that a return of the children to Russia will be without their father and that their relationship with him, if they were to return, would be attenuated because of his inability to travel to Russia, given the risks to himself arising out of his political activism.

42 In relation to “child’s objections and grave risk”, the father’s evidence, and his submissions, rely not only on what he himself knows but on the material contained in the psychiatric reports, the CAFCASS report and what the mother herself acknowledges in terms of the impact in particular on AS of being separated from him and returning him to the care of the mother. He puts his case that what AS has said to Ms Huntington is very plainly much more than a preference; it is a clear and strong preference which, in terms, amounts to an objection. He says that the basis of AS’s objections emanate from the views of a boy who is sufficiently old and mature to come to reasoned decisions about these sorts of matters and that the basis of his objections are a very clear preference for life in London but, most importantly, for life with his father, and that the other side of the coin, of a return to his mother, is something which would be very unwelcome from AS’s point of view, given the strength of the bond between himself and his father.

43 The mother’s case is also set out in her statement; a very detailed and lengthy statement, so long in fact that I confess I have not been able to read it all in the limited time which has been made available, and rightly so, in a one-day case of this sort. It contains a huge amount of detail which no doubt would have been interesting to read but I am afraid the time simply has not enabled me to digest all of it and I have had to focus on reading those parts of it which seem to me to contain the core of the mother’s case.

44 The mother does not accept that there is an Article 13b grave risk of harm in any respect but she has offered, effectively, soft landing measures in order to address some of the concerns which have emerged in the course of this case but also in order to support a sensible return of the children, and so she has offered not to prosecute the father, or not seek his prosecution in Russia in relation to the abduction. She makes a proposal in relation to how the return should be facilitated. She makes clear that she supports contact in Europe and, in submissions, identified that orders made in Russia could be registered in this court, which

would promote contact in this country, and she identifies that there are proceedings currently in train in Moscow in which the questions of the children's residence and contact could be or will be litigated.

45 As I say, in relation to the Article 13b risks, she submits that in fact none of the limbs of that are made out in relation to the risk of physical and emotional abuse allegedly perpetrated by her and the maternal grandfather. She says that the father's actions in returning MS illustrate that he himself does not consider that to be a serious risk; why would he be happy with staying contact for AS if he considered there was a real risk? She points to the fact that neither AS or VS identified to the CAFCASS officer, or indeed to Westminster, anything which met the level at which safeguarding concerns would genuinely arise, and she says that to an extent it is clear that AS has been coached about some of it, in that he could not remember himself the incident when his grandfather is supposed to have hit him but frankly said that he had been told about it.

46 In relation to the psychiatric or psychological harm, she says that if one looks at the psychiatric reports which emanated from the period of time when AS had psychiatric support, it is clear that his position had settled and improved over the period of talking therapy that he had, and the limited medication that he had initially, and that there is no basis for suggesting now that he is in need of psychiatric support or would be at risk of a significant collapse in his mental wellbeing. He has not had any need for psychiatric support in England, there is no medical evidence from the father to suggest that he is currently vulnerable, and her position is that if he were to return and were to need some support to overcome his unhappiness with a return, that he could continue with the support that he had previously from the counsellor and psychiatrist.

47 In relation to the other risks arising out of the Ukraine war, again the mother relies on the fact that MS was returned to Russia, to question how serious that risk is, and she also refers

to the fact that the father took MS to an anti-war demonstration in London and then returned her to Russia, suggesting that the father cannot have been that concerned about MS to have done that, but, more generally, Mr Bennett, on the mother's behalf, points to the absence, really, of any evidence at all that there is a risk to the children in Moscow being affected by the war currently being waged in Ukraine by Russia and that there is no evidence at all from the father that he himself has been targeted as a result of his being a dissident, and still less that there is any evidence that the children have been targeted as a result of their father's dissidence.

48 In relation to the child's objections defence, the mother submits that the evidence does not establish that VS objects and, in any event, that his age means that it is not such that any views should be taken into consideration. In relation to AS, she sensibly acknowledges that he does object and she acknowledges that his age and degree of maturity are such that they should be taken into consideration, but in relation to the discretion, she makes the point that there are some questions which arise as to his emotional maturity, given the CAFCASS officer's evidence, there are questions over the extent to which he has been influenced by his father, and the nature of his objection is a strong preference rather than inherently objecting to Russia. In fact she points to the fact that he has much that is positive to say about his life in Russia, and Mr Bennett relies on the welfare advantages to AS of a return, given that he will be reunited with his mother, his siblings, and into a city of culture and schooling and a friendship group with which he is familiar, and in addition to those, heavy reliance is placed on policy considerations in this, as it is a hot pursuit case.

49 The additional evidence which seems to warrant some reference at this stage includes the school reports, the psychiatric report and the CAFCASS reports, and I shall refer in a little detail to those as they represent to some extent independent evidence in relation to matters which bear upon the Article 13b and the child's objections defence in comparison to the

parents' statements, which obviously contain much that is relevant and material to these issues but much of which is in dispute and incapable of resolution in the context of this case.

50 The letter that the father wrote on 26 February 2023, the day before the retention, says this (I paraphrase):

“I hope this letter finds you well. I wanted to revisit the topic of where our children should live and express my thoughts on the matter after spending two weeks with them here in London. (I observe That in itself would suggest that there was no settled agreement as to where they should live.) During their visit I have seen a marked improvement in their emotional wellbeing. They are more cooperative, less aggressive, and generally much happier. It is clear that they enjoy being in the UK and have expressed a desire to live here permanently. As their father, I share this desire and believe it would be best for our children to live in the UK. I would love for us to co-parent our four children and provide them with the best possible upbringing”.

That letter should be read against the backdrop that the father had not seen his children for seven months and, inevitably, the children would have been very happy to see him and to be in an exciting city such as London.

51 A further email a few minutes later refers to the reasons why he thinks it best for AS and VS (AS and VS) to stay including emotional wellbeing, schooling issues, safety of living in Moscow as the Russian/Ukraine conflict continues to spill over, that the mother had previously stated she did not intend to move out of Russia until the end of the school year, that he was fully committed to taking care of them, and, *“Once you make your decision to move, we can discuss where we can all live together as co-parents”*, He says *“Please rest assured that AS and VS love and need you and I will not restrict their time with you”*.

52 I should also refer to a text exchange between the parents in relation to AS, which I think is March or April of 2021, which has the mother saying, “He is losing motivation to live”; the father saying, “He has depression and needs the help of psychiatrists. He won’t cope without tablets”. “His appointment with a psychiatrist is coming up soon [this is the mother] but I disagree that tablets are the solution. Until now the psychiatrist said that

tablets are not needed” and the father saying, “Well, AS is definitely getting worse. He is saying he doesn’t want to live and so on”. The mother says, “I think, yes, he is getting worse; the divorce that you have started”.

53 Not long after that exchange, the psychiatric input began, and there is a series of medical reports, which I think commences on 27 May 2021, which includes the following:

“The parents have not been living together since June 2020. The patient began to obsess more on his dad, called him, turned on speaker during the call to talk to his dad before bed. When dad comes over, the patient’s behaviour changes. He is rude to him, sometimes cries, asks to leave. Ten days ago after a minor conflict he trashed his room. The patient has been sensitive since childhood.From the age of 3 the patient attends an international school. Last year [*which would seem to coincide with the separation*] teachers started complaining about his behaviour.The relationship with his sisters began to deteriorate after the birth of the third child in the family. The patient was beating her. Mother is afraid for her younger brother because of the patient’s anger. In February 2021 they saw a psychotherapist. He stopped offending his brother after this conversation [*there must be a translation error there*]”.

54 On his examination, the psychiatrist says that in terms of what AS said:

“He says that he is upset. His birth parents are planning to change the school, ‘I’m worried, I don’t want to move’. There are no suicidal tendencies, says goodbye with clear relief. Recommendations as initial therapy. Half a tablet of Adaptol three times a day [*it seems to be a minor tranquilliser used in ADHD and anxiety cases*]”.

In June of 2021, another report says:

“There are positive trends. Two weeks after taking the medication reported they would probably stay in the same school. Saw a psychotherapist three times. It is reported that the patient has become calmer, more active socially, but a week ago he pushed his mother hard, protested because he wants to take money from his piggy-bank”.

“Objective status”, which I think is the examination:

“The mood is calm, more calm immediately. Says that he was awarded first place. The patient says he does not like his brother and sister,

‘They’re pestering me so much. They’re impossible’. The patient regrets the conflict with his mother. There are no suicidal tendencies. Recommendation that the children were not told about the parents’ divorce before a trip they were to take with the father”.

He was then to stop taking Adaptol but to continue with psychotherapy.

55 On 7 October 2021, a further report:

“Dynamic consultation. A deterioration in condition during the last month, in August. The patient learned from his father that the parents were getting divorced and would live separately. There were outbreaks of aggressive behaviour. The patient moved to another school. He does not like it there. According to his mother, he returns from his father in a more aggressive mood. Objective status: calm mood. He said that he is worried about his parents, tries to help his mother and wants to visit his dad. He does not like the new school. The teachers are rude and the food is bad. The patient is easily distracted. Positively speaks about past communication with the psychologist. There are no suicidal tendencies. Examination plan, psychotherapy sessions. No need for drug therapy”.

56 In January 2022, a further report:

“Against the background of deteriorating family relationships, the difficult behaviour increased. Teachers say the patient does not want to study and does not do homework. He had not visited the psychotherapist for the past three months. The patient is calm, easy to engage. The mood is calm, smiles, talks willingly. He says that he continues to worry about his parents and begins to fiddle with his mask. At first the patient says he does not know whether he needs a psychologist. Then he says that a psychologist is probably needed to help him understand himself. The patient reports that the mood was not great, but he misses the previous school and does not want to learn. There are no suicidal tendencies. Psychotherapy was to continue. No need for drugs”.

April 2022:

“He had not had sessions with a psychotherapist as it was too far. Without his mother’s permission he agreed with his dad he would stay with him. Dad is listening to him. Mother is asking whether it would be healthy to let the patient stay with his father. Objective status, patient’s mood is calm, he communicates willingly, smiles, says he is getting used to the school. Says that sometimes he is sad, falls out with his mother because of little things, says, ‘She is just angry at a lot of things now and I feel like she has a go at me’. Also says, ‘Dad has a young woman and mum doesn’t like her, and I don’t. Mum wants to go to Canada, and I want to go to England or Dubai’. The patient agrees with the need to

engage with a psychotherapist. No suicidal tendencies. No need for drug therapy. Psychotherapy sessions recommended”.

June 2022:

“Patient living with his mother for the last week. Mother worried about how the child will be affected by the father’s move to another country. Everything is going well with the patient’s studies. Patient’s mood is calm. He is willing to communicate. Happy that he has finished his studies. Patient says that he is no longer sad about the old school and has settled. No suicidal tendencies. No need for drug therapy. Psychotherapy sessions recommended”.

September 2022:

“The father is in London. According to the mother, this helped to improve the relationship with her son. Patient continues to be interested in tennis. Complains he is bored at school. Spends a lot of time talking with his online friends. Objective status: the patient looks a little tired. Mood is calm, polite and calm. Communicates willingly. Patient says it is all the same with mum. Happily tells me about summer camp and new friends. Reports that he looks tired because he did not sleep much. He did not go to school, because of a high temperature. Patient says he does not want to leave because of friends here. No need for drug therapy”.

57 So that is the medical picture up to September 2022. The CAFCASS officer saw both boys on 19 April 2023, so they would have been in England about eight or nine weeks at that point. She liaised with, or tried to liaise with, their schools and with Westminster Social Services. VS’s school replied to her after she had seen VS and they reported that he had spoken openly in school about wanting to stay in England and has also said he is going to Moscow to see his mother. The school is aware from the father that he had been reluctant to speak with his mother. He was considered to present with a maturity level slightly above his chronological age. Nothing was received from AS’s school. Westminster Children’s Services: the summary of that is that AS disclosed to the social worker he had been hit multiple times by his mother, the most recent being Christmas 2022 and he rated them 2 to 3

out of 10 on a pain scale. Both children reported that they loved their mother and were looking forward to their time with her. I think the mother travelled over to England after their retention in order to spend time with the boys; I think that must be a reference to that. Whilst they did not feel unsafe in the care of either parent, they were worried about being punished when with their mother.

58 Turning then to what was the product of the interview of Ms Huntington with the boys, she saw them briefly with their father before speaking with AS individually for an hour and 15 minutes and then VS for 40 minutes. She subsequently had some communication with the father in relation to what VS had said in terms of his complaint that AS was being aggressive to him and that his dad was not listening to him. There was also some communication over whether AS might want to write to me, and I think the father was given some advice about that, but Ms Huntington did not receive a letter from AS to me, and she also received information from the father that VS had said he wanted to stay in the UK if his mother were able to visit or live in the UK.

59 In relation to her meeting with AS, she said that he was confident, articulate and talkative and that he did not have any nerves about speaking to her. She said he appeared dismissive of some aspects of his life in Russia, in particular the time he spent on tennis, but he spoke of his love of sports and video games, telling her that he had engaged in significantly more gaming time in Moscow than in England, where he prefers to play football. He spoke positively about his international school but complained that the subsequent school he attended offered poor education and inedible food, but he did say he had benefited from being taught to stick up for himself there.

60 He spoke about how he had lost trust in his mother in keeping the parental separation a secret from him for one-and-a-half years, which seems curious that he blamed his mother, and also curious that he times it to one-and-a-half years, but he was also angry with his

father but appeared appeased by his father's subsequent promise not to lie or keep secrets from him. He described his mother as caring and enjoyed spending time with her children, but it was marred by his argumentative relationship with her in relation to gaming time, but he said he had a good relationship with her and shared a sense of humour. He described his father as calm and determined, that his father, "Is one of the most important people to me in the world" and he said they have a really, really good relationship, and he reached up above his head to demonstrate the extent of their bond, and this is something that Ms Huntington emphasised in her oral evidence in illustrating how important AS rated his father as a figure in his life. I infer from that description, both within the report and how Ms Huntington described it, that AS views his father as being a significantly more important figure in his life than his mother.

61 She said AS appeared to appreciate his father's parenting style, particularly his tendency to explain why he is asking AS to do something rather than forcing him. In relation to his relationship with VS, AS said he thought their relationship had improved and that VS now likes spending time with him. AS described limited interaction with MS when they lived together but described a developing friendship growing over the telephone. AS said, he greatly misses his baby brother NS, describing how he watched him develop from birth and referring to him as "the best baby in the world". When asked about life in Russia, he described that and a shared care arrangement, living between his mother and father, and said that he had found his father's absence very difficult after he moved to England. He described a difficult relationship with his grandfather. He portrayed a generally agreeable view of life in Moscow, where he said he had friends and participated in extracurricular activities. He said the only thing keeping him in Russia was that he liked living with his mother, whereas the negative aspects were the political regime in Russia, the propaganda, sanctions and the small apartment and having to share a room.

- 62 AS described how he knew he was coming to England for a holiday, but he described that, “Every day I stayed here it got better and better” and that spending time with his father and his re-discovered appreciation of football, “Were the things that got me to stay”. He said that his father had given him the idea to stay in England and that he had agreed. He spoke positively still about his calls with his mother and that it had been fun to hang out with her when she visited England. He had been sad to see her leave. He said he did not want to return to Russia, because he did not feel safe there any more, and when asked about staying in England, he replied, “Splendiferous, amazing, super, fantastic, fabulous”.
- 63 When asked specifically about these proceedings, he said that the reasons he did not want to return were his relationship with his father, the football training he can access in England, his aversion to returning to his Russian State school and his wish to attend the English school identified for him. He was anxious that I should listen to his wishes and feelings. He said he missed his siblings a lot but still wished to stay in England. He suggested that VS could perhaps return to Russia or that his parents could have two children each in their care, which he considered fair. He wanted to spend time with both of his parents and was aware that his father is not able to visit Russia. He seemed to think that there was nothing stopping his mother from moving to England. He said he would feel terrible if I decided that he should return to Russia, saying, “There’s nothing in Russia I don’t have here, but there are so many things that I don’t have in Russia”. He said his mother and siblings were transportable and he scaled his strength of feelings with regard to his wish to stay in England as 10 out of 10 and said he wanted to live for himself, not for his mother.
- 64 VS was different. He came across as feeling nervous and reticent. The CAFCASS officer used a tool to encourage him to engage. He said he lives with his dad, AS and the cat but he does not know who he is going to live with next. He was clearly preoccupied with this, telling me that he has been thinking about it the whole time he has been in London and still

does not know. He spoke of his mum, sister, younger brother, dog and fish, when asked about people he did not live with and who meant a lot to him, and he confirmed that he missed them.

65 He had little understanding of the circumstances of his move to England. He was aware he had lived in Moscow and had come to spend time on holiday with his father, but he was not sure how it had changed. He thought his father had decided but was not sure why. He felt not too good and not too bad about this. The not too good aspect was that he does not see his mother. The not too bad aspect was that he gets to spend more time outside and he appreciates the more challenging learning environment of the English school he attends versus his Moscow nursery. He shared that he was friends with his whole class in Moscow, but he only has one friend in England. He was not sure what he had hoped for and respected his family.

66 He said of his mother that she is more nice and understands and believes him when AS hits him. He described a positive relationship with his mother, and he contrasted this with AS and his mother's more difficult relationship, which he described as argumentative. He described his dad as nice but not always, appearing to relate this to a stricter parenting style. He characterised his relationship with AS as tricky but spoke of getting on well with MS and talked about his younger brother NS with particular affection. He also spoke about his nanny, Alma, as an important person to him, spoke positively about his life in Moscow, "I had my small brother and I got to see him; I had way more friends". He had missed his father then and considered that, before his father moved to England, their relationship had been a bit better. He said the best thing about England for him was the warmer weather and the worst thing was his father's lack of understanding of AS's behaviour towards him.

67 When speaking about these proceedings and what should happen, he said, "I don't know where I want to go". He reiterated there being good and bad aspects to a return, his wish to

see his mother but his dislike of his Russian school and his worry about sharing a room with AS again; not uncommon for children of this age. When asked about a magic wand, he said he wanted his parents to reunite.

68 Ms Huntington's view, and it was confirmed in her oral evidence, was that AS presents with a strong and explicit wish to remain in England, and she considered it amounted to an objection to a return to Russia. He was clear that his primary basis was his relationship with his father, which he acknowledged prioritising above all else, including his relationship with his mother and siblings. She thought this was a response to his sense of loss and unhappiness with regard to his father's absence from his everyday life following his father's move to England. She considered that his views were genuinely held and derived from his own experience, although it was evident that his decision to remain arose out of a conversation with his father when the father made the suggestion of staying to him.

69 She was clear that a return to Russia would be without his father, and this would have an adverse impact on him. In her oral evidence she emphasised the priority he gave to his relationship with his father over that of his siblings and his mother, and she said that it would be particularly tough losing that everyday relationship with the father. She described how he was visibly deflated when she told him there was a good chance that he would be returned to Russia, and she thought that there would be challenges in how he would respond to it which the mother would need help within terms of adjusting her parenting style. However, she did say that when she gave her indication to him, he did not respond badly or aggressively or with an outpouring of emotion as some children do, but she was clear he would find it hard to make that adjustment again.

70 In relation to VS, and I am not surprised, given what I have read in terms of the content of her discussions with VS she said he was more ambivalent in his position and said that he did not know what he wanted to happen, noting both positives and negatives. His balanced

perspective felt authentic and genuine, she said, but she also said that she got the impression that he experienced a sense of loss in respect of his familiar life in Russia: his mother and a wish to reunite with her. She said she had not had the opportunity to speak with his school after they had indicated that he had said he wanted to remain in England, but it did not change ultimately her overall position in relation to his balanced and his ambivalent view about what should happen in the future.

71 In terms of maturity, she said AS was intelligent, articulate and confident. She questioned his emotional maturity at some level, given his alignment with his father and some of the reasons he expressed for remaining in England, and she said that she is mindful that his idolisation of his father is also likely to influence his degree of emotional maturity and his ability to balance and consider the importance of all his familial relationships, but overall she said his maturity was commensurate with his age, namely 12 years old, and thought that weight needed to be attached to his views, bearing in mind the context in which they were formed. She said in relation to VS, that he presents with a level of maturity slightly above his chronological age of 6 but he is a young child, and this was evident in his uncertainty in what he wanted to happen.

72 So looking at the exceptions then, first of all child's objections, issue 1, age and degree of maturity. It is appropriate to take account of the views of AS, given his age, and the views of Ms Huntington, but also the content of what he said. He clearly is of an age and a degree of maturity consonant with his chronological age that it is appropriate to take account of his views. He is able to talk positively about England but also positively about Russia. This is not a boy who is entirely aligned with his father and has rejected Russia outright, or indeed his mother outright, so although there are some issues in relation to his idolisation of his father which are bound, it seems to me, to impact on his emotional maturity, his views do justify weight being given to them.

- 73 VS is a different kettle of fish. He is only, I think, just 6. It is clear he is caught in the middle of a parental conflict, as AS is, and there are things he likes about being with his dad and his brother in London and there are things he likes about the life that he was familiar with in Moscow, but a boy of his age is not in a position to consider his future in the short, medium or long term in any meaningful way. He would, not surprisingly, be living life pretty much in the present and, for a just 6-year-old, I do not think that his age and degree of maturity, either cognitively or emotionally, justify taking account, really, of his views for the purposes of the child's objections defence.
- 74 Does the child object? AS clearly does. It is a strong preference to live with his father. In times gone by that might have been said not to be an objection to returning to Russia but in this day and age, and rightly so, a very strong preference or a strong preference to remain with one parent in one country can have, as its obverse side, an objection to returning to another country and to resume the life that they had in that country. In this case, whilst I bear in mind that an objection has to be distinguished from a preference or a wish, in terms of the preference that AS expresses, it is towards the upper end of the spectrum of preference such that I consider it does amount in this case to an objection, and the mother herself acknowledges that.
- 75 For VS, it seems clear to me on the basis of what he told Ms Huntington, that that would not on its own have amounted to an objection. He was ambivalent. What he said since to his father and to school have to be taken at face value. If he said them, he said them - there is no reason to suppose he has not - but the context in which he has said them are unknown and for a six year-old, if he is living in the present, then perhaps that is what he wants to do in the present, but the time he spent with Ms Huntington and the tools that were deployed to help him express his views seem to be a far more reliable gauge of what he may want, and

what he may want is his parents to get back together, but that is not going to happen and, not surprisingly then, he feels a conflict as to what he wants.

76 What is more familiar to him seems to be his life with his mother, his sister, his baby brother, his nursery and friends in Moscow, but, of course, why would he not like being with his dad in London with his older brother. It is no surprise that he should like that, but that does not amount to an objection to returning to Moscow. I think that VS, in particular, could be pretty easily transferred back to Moscow and would resume a life with his mother and sister and baby brother and, if necessary, a return to the unchallenging classroom of his nursery without, really, any upset at all, although, of course, he might miss his father and he would miss his brother if AS were to remain, but that does not amount to an objection. So the child's objections exception would not be established in relation to VS. In relation to AS though, it is, which brings one on to the question of discretion.

77 I shall look at the issues of discretion now, but I will return to them when I deal with Article 13b as well. Firstly, the nature and strength of AS's objection: its nature is, as I say, a strong preference based on his powerful attraction to a father whom he idolises. That carries with it its own weight, but it is different to an objection to a return to his mother's care or a return to Russia itself, although he has concerns about Russia which, not surprisingly, perhaps align with his father's own views of Russia and their disapproval of the invasion of Ukraine and the suppression of dissidence and the authoritarian regime and the consequences for protesters. But one has to look at his objection as being a strong preference and to look at the other side of it, which is that he does not reject his mother's care or his life in Moscow because of any inherent flaws or faults in them – in fact he sees positives in them – and there is the evidence from the school.

78 The school report acknowledges that AS had not dedicated himself to his studies as he might, or as a parent would hope, and nor had he behaved towards teachers in the respectful

way which parents would hope, but, on the other hand, he was regarded as somebody who had settled into the school and had made a group of friends and was participating in social and sporting activities in a positive way, which mirrors what he had said to the psychiatrist about how he was settling at school.

- 79 Reverting back to the nature of his objections, as I say, this is very much a case of preference, and strong preference, with him identifying positives about life with his mother, his siblings and some aspects of other attributes of life in Russia, whilst also being strongly critical of aspects of the regime in Russia and strongly positive in relation to his father.
- 80 The extent to which the views are authentic, or AS's objections are authentically his own, or the product of influence of the abducting parent, Ms Huntington sees them as by and large being authentically AS's own, and the only caveat which one puts on that - and it derives from Ms Huntington's evidence as much as anything - is that he idolises his father. He had not seen his father for seven months. He is a child who has a good relationship with a parent and for that parent, and particularly a boy of AS's age, where the draw towards a father might be strengthening, as the father role model becomes stronger for him, and where his attachment to his mother may be lessening somewhat, particularly in the context of this where, as in thousands of homes up and down this country – and no doubt across the world – arguments over time spent gaming resulted in AS and his mother clashing. It is hardly surprising when one takes all of that into account that the draw towards his father is a powerful one, but that does mean that one has to look at his views as being moulded to some extent, not consciously by the father necessarily but, nonetheless, formed in that environment of having missed his father very much over the last seven months and being delighted to be reunited with him, and being delighted to be in an exciting city like London, and for him to use the words “splendiferous”, “superb”, “exciting” is not really a surprise in that context, but I think one has to bear in mind, as I say, the sense of loss that AS must have

had from his father and how pleased he is to be reunited, and also the timescales that we are talking about.

81 AS has not yet been here for, I think, three months. When he saw the CAFCASS officer he had been here for eight or nine weeks. That might be long for a honey honeymoon but honeymoon it might be. This is not a case where AS has lived the life in England for six months, 10 months, a year, and has formed views and put down roots in a way which suggests he has acclimatised to a new life and has decided, with the benefit of perspective, that it is a life that he chooses over the alternative life. His views are formed in that crucible of excitement at being reunited with his father, and I take that into account in ascribing weight to them.

82 To what extent might his views be ameliorated upon a return, or might it entrench his views or, indeed, harmfully impact on his psychological or psychiatric wellbeing? Undoubtedly there is a risk that he will be very upset by a return to Russia. If he thought that he was going to return and not see his father for another seven months, that would, I am sure, undermine not just his happiness but his psychological wellbeing, and he clearly does have a degree of vulnerability in that regard, which is evident from the psychiatric reports, so that would have to be addressed. Happily, it seems both of the parents have been able in the past to acknowledge this and to obtain appropriate support for him.

83 Would his objections ameliorate to any significant extent? Depending on what the framework was in relation to maintaining his relationship with his father, it seems to me likely, given the progression of his views over time as between Spring 2021 and September 2022, that he is a boy who is capable of adjusting. Again, he would have the benefit of seeing his mother, his baby brother, who he seems to adore, his sister, who he perhaps undervalues or does not see so much of a value in that relationship again, and he would be back into a social milieu and school which he is familiar with, so I think to some extent his

objections would ameliorate, although the underlying desire to be with his father is one which probably would not. Issues to do with football or dissidence or others would probably fade into the background as he would adjust to the life he had in Moscow, but the underlying attraction to his father would remain.

84 The policy considerations in this area are of considerable weight, given that this was a retention after a period of agreed holiday, with the father appearing to take unilateral action, and considered unilateral action. This was not a case of a teenager, as we often see, arriving in this country after a period of months, if not years, saying, “I really would like to go and live in England; I really want to live with dad” and ultimately the teenager arriving and saying, “I’m not going back”. This was the father’s decision, taken in the light of his children’s happiness at being in England with him. It seems to me that that decision was an unwise decision on his part, perhaps more motivated by his own evaluation of what would be good for him and the boys rather than a more detached perspective which would have required careful consideration being given to the whole of the family and, if necessary, it being put before a court.

85 The children say they were delighted to be with him after a two-week holiday. For that to form the basis, or any part of a decision to retain the children, it seems to me to be unwise, and so the policy considerations of promoting the return of children to their country of habitual residence – and long habitual residence – after a foreign holiday is a strong one in this case. The policy considerations of deterring abduction is also a strong one in the context of a very hot pursuit case and in a situation where the Russian courts have been engaged dealing with the divorce, albeit I think not necessarily in relation to the children at that stage, but where the Russian courts are now seized of an application relating to the children, the issue of comity also carries significant weight.

86 Before finalising my reasoning on discretion, I will deal with the grave risk of harm issue, as that, in particular, engages the issue of the impact on AS of a return. The father's case in his statements was pitched at a very high level, particularly in relation to the risks to the children arising out of his dissident activities, where it was characterised, as I say, as risk of death, torture or removal from family. That was a poor choice of phrasing, given the lack of evidence underpinning it. I do not doubt for a moment, and there is evidence in the father's own statement – it is in other forms of news reporting – that those who are vocal opponents of the Putin regime, and are vocal opponents of the war, can sustain consequences of that, including, in some cases, the risk of death, disappearance, imprisonment or removal from family, but given that there is no evidence at all from the father that he is being targeted, or that the children have been the target of anything in Moscow, as far as I can tell from the information, there is not even any suggestion that anything has been said at school that would indicate that people are aware of their father's opposition and that the children are being targeted as a result. The use of such language is unfortunate, particularly if it is repeated within the environment of the household and where the children might pick that up.

87 So as things stand, and on the evidence before me, whilst I accept that there is a generic risk to any individual who opposes the Putin regime, or is a dissident, particularly those who make public that in the news or by attendance at demonstrations, there is nothing which identifies a particular risk to these children arising out of it, and they have lived in Russia, I think, for a year since the invasion and eight months since the father's article was published. So it seems to me that I can confidently discount that aspect of risk relating to the father's dissident status. In relation to the risk of war spilling over to Moscow, that seems to me to be a very, very remote prospect, unless the war were to somehow expand into a general conflagration involving other countries. The risk of Moscow being subjected to a military attack which would put the children at risk in any direct way is so remote as to not qualify to amount to a grave risk. It is a very remote theoretical risk, it seems to me, at the moment,

notwithstanding the drone crashing on the roof of the Kremlin the other day. So that I confidently discount.

88 In relation to the question of the mother's treatment of the children, I confidently discount that as well as falling within the categorisation of grave risk of harm: the use of physical punishment, or corporal punishment, in this country is frowned upon, although I think not yet outlawed, and other countries have different attitudes to it. What was described by AS to Westminster, and what has been described by VS, do not seem to me to amount to much more than the sort of confrontation often encountered between young people and their parents, particularly in times of high stress – parental separation is plainly about the most obvious example – combined with the developing independence of an adolescent, and given what AS said to Westminster, but also his characterisation and his description of life with his mother, it seems to me that this is no more than unfortunate, perhaps sometimes unpleasant, parental conflict rather than anything which could be characterised as a serious risk of physical or emotional abuse.

89 The father's reference to incidents in which the mother has threatened to kill herself in front of the children do not seem to be evidenced anywhere else from AS or VS. The psychiatric report on her does not confirm any mental health disorder, and additionally the threat articulated by the father in his statement, that the mother threatened to kill AS, is not referred to by AS. The overall picture which VS and AS give of their mother, and which emerges from school reports, the psychiatric reports and the statements is of, at its highest, an occasionally conflictual relationship, which is within the normal parameters of parental/teenager dynamics, it seems to me, so that I confidently discount as a risk. The grandfather seems to be a relatively peripheral figure and any risks which attached to him fall into the category which I have just identified.

90 The issue which is of more substance is the question of the impact on AS of a return. It is clear that the situation in early 2021, when the parents were living separately, although I had understood the children were not aware of the separation, was such that it clearly had a significant impact on AS such that the parents were exchanging those text messages in which AS was expressing deep unhappiness to the extent that the parents were saying he was threatening to kill himself, although I am not sure entirely of the context in which those threats or expressions of suicidal ideation were articulated. The psychiatric evidence suggests that AS's adjustment disorder – if that was what it was ultimately diagnosed as – was linked to his situation, i.e. his parents' separation and his unhappiness at that, the change in schools, and then feeding into that later his father's disappearance from his life when he moved away from Russia.

91 So it is clear, as I think I have said earlier, that AS has a vulnerability in that regard, and one has to acknowledge, given his objections, that that vulnerability may be activated again by a return to Russia against his will. However, it seems overall to me that that risk is a limited one, given the progress he made in psychotherapy, and it seems to me particularly that it will be ameliorated if he knows both that the Russian court will listen to his mother and father and to him in terms of where he wants to live, and it will be ameliorated if he knows that he is able to see his father again on a regular basis, including in England or in Europe, ultimately with the Russian court to determine if he is returned, but given the material from CAFCASS, his school and his psychiatrist, it seems to me that whilst I cannot completely discount the risk of there being a psychological impact, or indeed a psychiatric impact, on AS, it is not at a level which, with the protective measures which can be put in place in terms of ensuring that psychiatric support is available to him, and that his parents give him a message which is a positive one, in terms of his future relationship with his father, that this is a risk which can be managed and which falls below the Article 13b threshold for grave risk of harm.

92 This is not a boy whose psychiatric or mental health is such that he is required any treatment at all in England. There is no medical evidence from a GP or otherwise to suggest that a return to his mother's care in Moscow would cause such a significant deterioration in his mental functioning that the grave risk of harm threshold could be evidenced, so this is a case where one has to acknowledge a risk, given the background, but a risk which is, it seems to me, limited, given his underlying robust mental health and the measures that the parents can take to protect him and address any adverse consequences, which it seems to me, when one takes those together with the amelioration of his views, which will be affected by being reunited with his mother, his baby brother, his sister, would all mean that the Article 13b risk is not one which rises above the threshold in this case.

93 Turning back then, having dealt with those issues, to the final outcome of the discretionary evaluation, given what I have said about the risk to AS in welfare terms being limited and there being advantages to AS in welfare terms in being reunited with his family unit and extended family and his return to a familiar culture and country, taking those into account and taking account of the weight which must be given to the Convention considerations in this case, and taking account of what I have said about AS's objections, whilst I hear his voice and his plea to live with his father in England, overall they do not carry sufficient weight overall to outweigh the policy considerations and the advantages to AS of returning to Russia to allow the Russian courts to determine his future in a considered and holistic fashion, hopefully where all of the competing arguments of his mother and father and the benefits of England or Russia, or Canada, and the advantages and disadvantages of being separated from his siblings, can all be appropriately weighed up.

94 So in those circumstances, in relation to VS, as no exception is made out, I order his return forthwith to Russia, and in relation to AS, although the child's objection exception is

established, I exercise my discretion in order to return him to Russia along with his brother.

That is my judgment.

CERTIFICATE

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