



Neutral Citation Number: [2023] EWHC 381 (Fam)

Case No: FD22P00725

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/02/2023

Before :

MRS JUSTICE THEIS DBE

Between :

	H	<u>Applicant</u>
	- and -	
	E	<u>Respondent</u>

Mr Jason Green (instructed by **Best Solicitors**) for the **Applicant**
Mr Richard Little (instructed by **National Legal Service**) for the **Respondent**

Hearing dates: 20th & 21st February 2023
Judgment: 23rd February 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 23rd February 2023 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE THEIS DBE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

Mrs Justice Theis DBE :

Introduction

1. This matter concerns the father's application under the Child Abduction and Custody Act 1985 (incorporating, by Schedule 1, the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the '1980 Hague Convention') for the return of two children, X age 7 and Y age 5, to Sweden. That application is opposed by the mother, she relies on the defences of acquiescence under Article 13 (a) and grave risk of harm under Article 13 (b), including the inadequacy of the protective measures offered by the father.
2. The mother does not pursue her defence of child's objections under Article 13, having had the opportunity to consider the Cafcass report from Ms Dunlop who had the opportunity to meet the children on 6 January 2023. Ms Dunlop concluded that whilst X expressed a preference to stay here, neither child objected to a return to Sweden.
3. If a return order is made the mother's position is she would return with the children, but would not bring Z, an older half sibling from the mother's previous relationship. Z would remain living here between the care of her mother and his father. On return, she would make an immediate application seeking an order to permit her to return to live in this jurisdiction with the children.
4. This matter was listed for two days. The preparation of the case on behalf of both parties fell below what this court would normally expect to see.
5. Contrary to PD27A paragraph 4.2 the bundle contained unsigned versions of the statements of the parties. The father's first statement appeared to still be in draft format, with requests for more information on certain matters still left in the statement in brackets. There was no reason why statements that should have been signed sometime ago (the latest one of the father's was dated 8 February 2023) were not in the bundle.
6. At the start of the hearing there seemed to be an expectation on behalf of the father that the court would hear oral evidence about matters, some of which were generally referred to in the statements and some information not even mentioned in the written evidence. Paragraph 3.8 of *The Practice Guidance: Case Management and mediation of International Child Abduction Proceedings* 13 March 2018 sets out the parameters regarding oral evidence in these cases and the issue was recently considered by Moylan LJ in *Re B (Children) (Abduction: Consent: Oral Evidence)(Article 13(b))* [2022] EWCA Civ 1171. The procedure for an order under the 1980 Hague Convention is essentially a summary procedure, with oral evidence only being given in limited circumstances, not to fill in gaps that could have been provided for in the written evidence. After further consideration, no application was made for oral evidence to be given, or for any further written evidence to be submitted.
7. The case management order of Morgan J dated 23 November 2023 provided for the filing of a composite schedule of the protective measures indicating the areas of agreement and disagreement. The father's statement listed the protective measures he was offering but the mother failed engage in protective measures until this hearing started. Whilst I understand her overarching case to be that no package of protective

measures would be sufficient to mitigate the grave risk of harm under Article 13 (b), her non-engagement has meant that a part of this hearing has been taken up exploring the protective measures, which could easily have taken place at an earlier stage.

8. It is matter of regret that none of these matters were picked up at the pre trial review hearing on 18 January 2023 and drawn to the courts attention. If they had, focussed case management directions would have enabled this hearing to proceed more effectively. Rule 1.3 Family Procedure Rules 2010 requires the parties to help the court to further the overriding objective in rule 1.1; this includes assisting the court with case management to enable the court to deal with the matter expeditiously, fairly and proportionately. That was not done in this case.

Relevant background

9. The parents met in 2014. The mother had a child from an earlier relationship, Z age 12. The mother moved into a property occupied by the father and they formed a relationship.
10. According to the mother, when she was pregnant with X in 2014, they separated due to the father's abusive behaviour. She went to a refuge and remained there from October 2014 to May/June 2015. The mother states she resumed her relationship with the father after the birth of X, as he promised to change.
11. The father was made bankrupt in 2015 and they moved to Sweden in the same year. Around this time, the father had a relationship with another woman and has a child 10 months younger than X who he does not have any contact with.
12. When the mother was pregnant with Y she alleges the father was physically abusive to her including attempting to strangle her, pulling her hair, punching and kicking her. She also alleges sexual exploitation and incidents of coercion and control. She has provided photographs of bruising which she alleges was caused by the father. During the hearing she was able to access the 'meta data' and date the photographs as having been taken in early April 2022. The mother also alleges the father was physically and emotionally abusive to X and Y, which included locking the children in the basement.
13. These allegations are denied by the father and he states the photographs produced by the mother relate to an incident when she had injuries caused by a trampoline and he produced email exchanges in February 2022, referring to such a claim. The mother denied being involved in any incident with a trampoline. No written translation was provided of the emails relied upon by the father, which are in Swedish and the attachments were not produced, despite the court giving the father additional time to be able to do that. Mr Green informed the court the father had been unable to access his email account due to password difficulties.
14. The parties married in August 2017 in Sweden.
15. The family moved back to the United Kingdom in 2018 and then returned to Sweden in 2020.
16. The mother and children came to the United Kingdom for a holiday on 10 June 2022. The mother informed the father on 15 June 2022 that she intended to remain here.

17. There were message exchanges between the parties which the mother alleges demonstrates that in July 2022 the father accepted the mother's wish to remain here with the children, going as far to say that he would inform the children's schools in Sweden that they had moved.

18. The messages state as follows:

13 July 2022

Father *'I don't mind agreeing to them living in UK but if u fuck me or do anything shady I'M going to war with u please don't take it wrong way but I'm telling you straight...'*

21 July 2022

Father *'Wen are we gonna tell school and other places u moved because they start soon'*

Mother *'I will email [X] and [Z's] school'*

Father *'ok I can do it. So shall we say u moved at end of this month as a date'*

Mother *'Yeh'*

Father *'OK kl does it still feel like the right decision'*

Mother *'yes'*

Father *'Ok end of month u officially moved from Sweden agreed'*

Mother *'OK let me know what you emailed them'*.

There is then an exchange of messages on **21 July 2022** where the mother says she has got an interview for a job and the father congratulates her. He then sends a message on **22 July 2022** as follows: *'As soon as u know their schedule I wanna buy tickets for them straight away already bad enough your expecting me to wait till Christmas'*

19. Based on the father's position in the messages the mother registered the children to attend school here and with a GP. They started attending schools in September 2022 and attending medical appointments through their GP.

20. According to the mother, it was not until 16 October 2022 that the father sought X's return to Sweden. The mother considers that is related to pressure from the father's family and his concern about the lack of progress regarding contact.

21. On 16 October 2022 (the day before the date of this application) the parties exchanged messages when the father says for the first time that he wants one child and *'we swap that's fair'*, the mother responds *'I have agreed to shared custody. I agree to go to mediation to come to a middle ground'*. The mother then refers to the children being with the father during the school holidays and that she does not wish to split the children and that she is at work. The father then messages *'Unfortunately you don't*

have an option.’ ‘U need to give up [X]’ ‘I can send u the court papers your going to the royal court of justice highest court in the country they also asked me if you want to press charges i said no. But if you fight me I’m fighting back do not play with me. ‘If u don’t agree and I win ur gonna be in a very bad position better just give me [X] because wen I win in court you gonna have no say about where they live. I want good for u I want u to be happy but you need to give me [X] u not having both kids.’

22. These proceedings were issued on 9 November 2022, although the application is dated 19 October 2022. Directions were made on 23 November 2022, which included providing for video contact to take place between the children and the father. A pre trial review hearing took place on 18 January 2023 which just provided for generalised updating statements.
23. In her second statement, the mother sets out her concerns about the way the father has behaved during periods of contact, contravening the terms of the 23 November 2022 order which adds to her concern about whether the father will comply with the undertakings he has offered.
24. The father offers a number of protective measures by way of undertakings in the event of the children’s return, they can be summarised as follows:
 - (1) To pay £1,000 per month to the mother for day to day expenses for a maximum period of three years and the first month to be paid in advance prior to her return.
 - (2) To provide a property for the mother in Sweden, rent free.
 - (3) To pay for return flights for the mother and children.
 - (4) Not to remove the children from the mother.
 - (5) Not to use or threaten violence against the mother.
 - (6) Not to intimidate, harass or pester the mother.
 - (7) Not to communicate with the mother other than for the purposes of communicating with the children.
 - (8) Not to support any criminal prosecution of the mother arising out of these proceedings and removal of the children.
 - (9) To pay the mother’s solicitors fees for her to obtain a local solicitor in Sweden to help her access legal advice should she wish.
 - (10) Not to issue any without notice applications or to have a hearing on these matters within fourteen days of the mother’s return to Sweden.
 - (11) To comply with these undertakings for three months or until a court or tribunal in Sweden makes an Order to the contrary.
25. During the course of this hearing additional information was made available. The father provided written evidence of his financial circumstances, his income, expenses

and savings and proposed that the children and the mother could return to the home they lived in prior to their removal and he would live elsewhere. In response to requests on behalf of the mother he also said he would provide additional financial support to cover such matters as household, car and travel costs subject to his ability to be able to afford them.

26. The mother was able to source the meta data to date the photographs of her bruising. The father was not able to access the emails or attachments to the emails attached to his second statement dated 6 January 2023, although it looks like they were able to be printed in early January 2023.
27. An email was sent to the Central Authority to enquire about the likely timescales for any assessment in Sweden as suggested by Ms Dunlop, with a response of between 3 – 4 months.

Legal framework

28. The mother accepts that the children’s habitual residence was in Sweden prior to 15 June 2022 and she wrongfully retained them without the father’s consent. Article 12 of the 1980 Hague Convention requires the court to return the children, unless the mother can establish one of the exceptions under Article 13 of the 1980 Hague Convention.

29. Article 13 provides as follows:

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

30. As regards Article 13 (a) whether or not a parent has acquiesced is a question of fact. As Mr Green has helpfully set out in his skeleton argument, the cases have developed a number of principles which help guide that factual enquiry that he summarises as follows:

(1) Acquiescence is unlikely to be established if the left behind parent does not know that the removing parent has committed an act that would be considered to be wrongful for the purposes of the Convention – *Re A (Minors) (Abduction: Acquiescence)* [1992] 2 FLR 14 at 29, *Re S (Abduction: Acquiescence)* [1998] 2 FLR 114 at 122;

(2) Written statements said to amount to acquiescence must be expressed in clear and unambiguous terms – *Re A (supra)*;

(3) Absence of court action does not necessarily indicate acquiescence – *Re F (A Minor) (Child Abduction)* [1992] 1 FLR 548.

(4) An application for custody in the ‘home’ state strongly suggests that there has been no acquiescence – *Re A (Minors: Abduction)* [1991] 2 FLR 241 at 247;

i. Seeking to agree arrangements or otherwise to resolve issues concerning the child by mediation or other methods of compromise will not be regarded as acquiescence – *P v P (Abduction: Acquiescence)* [1999] 2 FLR 818;

ii. Acquiescence, once given, cannot be withdrawn, however as Lord Donaldson held in *Re A (supra)* at 30:

“...an apparent acquiescence, followed immediately by a withdrawal, may lead the court to question whether the apparent acquiescence was real, or whether it was the product of emotional turmoil which could not reasonably be interpreted as real acquiescence. That apart, the only relevance of time which elapses between acquiescence and a purported withdrawal of the acquiescence is in the context of the exercise of a discretion whether to return the child...”

In *P v P* [1998] 1 FLR 630 Hale J (as she then was) said, at 635:

"This case has all the hallmarks of what no doubt frequently occurs in these cases, of parents seeking to compromise a situation, allowing the abducting parent to remain in the country to which he or she has gone provided the wronged parent is satisfied as to the other matters which are in issue between them. Only if there were such a concluded agreement could it be said that there was clear and unequivocal conduct such as to fall within the exception....it would be most unfortunate if parents in this situation were deterred from seeking to make sensible arrangements, in consequence of what is usually an acknowledged breakdown in the relationship between them, for fear that the mere fact that they are able to contemplate that the child should remain where he has been taken will count against them in these proceedings. Such negotiations are, if anything, to be encouraged. They should not therefore necessarily fall within the exception or necessarily lead to the conclusion as a matter of fact that there was a subjective state of mind that was wholly content for the child to remain here."

31. When considering whether acquiescence is established, consideration will be given to the actions of the respondent parent in addition to those of the applicant (*Re H (Abduction: Child of 16)* [2000] 3 FCR 404, [2000] 2 FLR 51).
32. Unlike consent, once given, acquiescence cannot be withdrawn (*Re S (Abduction: Acquiescence)* [2008] 2 FLR 293).
33. As regards Article 13 (b) the leading decisions are *Re E (Children)(Abduction: Custody Appeal)* [2012] 1 AC 144 and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10. In *Re E* Baroness Hale made clear at paragraphs 31- 37:
 - (i) The burden of proof lies with the person opposing the return [32].

- (ii) No need for elaboration or gloss to the reference to ‘grave risk of harm’; by its terms it is of ‘restricted application’ [31] the risk must be grave [33].”
 - (iii) There was recognition that the term ‘physical or psychological harm’ are not qualified but they ‘gain colour’ from the alternative ‘or otherwise’ placed ‘in an intolerable situation’. Whilst accepting a child will have to put up with a certain amount of ‘rough and tumble, discomfort and distress’ there are some things that it is not reasonable to expect them to tolerate. These include physical or psychological abuse or neglect and can include exposure to such behaviour [34].
 - (iv) The analysis under article 13 b is looking to the future; the situation there would be if the child is returned to the home country which is not necessarily the same as being returned to the person seeking the child’s return. The situation the child will face on return depends on the protective measures that can be put in place [35].
 - (v) Where the allegations relied upon are contested Baroness Hale stated as follows [36] *‘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’*. As has been later stated by Moylan LJ in *Re C (Children)(Abduction: Article 13b)* [2019] 1 FLR 1045 this does not mean no evaluative assessment of the allegations could or should be undertaken, with due caution being factored in when conducting a paper evaluation.
34. If one or more of the defences are made out, that is not of itself determinative of the application, and a discretion arises.
35. Baroness Hale dealt comprehensively with the nature and exercise of this discretion in *Re M* [2008] AC 1288 at paragraphs [42] – [45].

“[42] In Convention cases, however, there are general policy considerations which may be weighed against the interests of the child in the individual case. These policy considerations include, not only the swift return of abducted children, but also comity between the contracting states and respect for one another’s judicial processes. Furthermore, the Convention is there, not only to secure the prompt return of abducted children, but also to deter abduction in the first place. The message should go out to potential abductors that there are no safe havens among the contracting states.

[43] My Lords, in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances

which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare. I would, therefore, respectfully agree with Thorpe LJ in the passage quoted in para [32] above, save for the word 'overriding' if it suggests that the Convention objectives should always be given more weight than the other considerations. Sometimes they should and sometimes they should not.

[44] That, it seems to me, is the furthest one should go in seeking to put a gloss on the simple terms of the Convention. As is clear from the earlier discussion, the Convention was the product of prolonged discussions in which some careful balances were struck and fine distinctions drawn. The underlying purpose is to protect the interests of children by securing the swift return of those who have been wrongfully removed or retained. The Convention itself has defined when a child must be returned and when she need not be. Thereafter the weight to be given to Convention considerations and to the interests of the child will vary enormously. The extent to which it will be appropriate to investigate those welfare considerations will also vary. But the further away one gets from the speedy return envisaged by the Convention, the less weighty those general Convention considerations must be.

[45] By way of illustration only, as this House pointed out in Re D (Abduction: Rights of Custody) [2006] UKHL 51; [2007] 1 AC 619, para 55, "it is inconceivable that a court which reached the conclusion that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation would nevertheless return him to face that fate." It was not the policy of the Convention that children should be put at serious risk of harm or placed in intolerable situations. In consent or acquiescence cases, on the other hand, general considerations of comity and confidence, particular considerations relating to the speed of legal proceedings and approach to relocation in the home country, and individual considerations relating to the particular child might point to a speedy return so that her future can be decided in her home country."

Submissions

36. On behalf of the mother, Mr Little accepts the burden rests with the mother to establish either of the defences.
37. Regarding acquiescence he places reliance on the messages attached to the mother's statement.
38. At the time of the messages, in July 2022, the father knew that the mother's actions were wrongful, his message on 13 July refers to 'going to war' with the mother. In saying that, Mr Little submits, demonstrates the father knows he has the option of taking steps. What the father sets out in the messages is clear, unambiguous and relates to the children. He volunteers to inform the school and suggests a date to tell the schools when they moved stating 'end of month u officially moved from Sweden agreed'. These are not messages that relate to an attempt at reconciliation/negotiation/mediation, the language used is clear and the father in his message on 22 July 2022 states 'As soon as u know their schedule I wanna buy tickets for them straight away already bad enough your expecting me to wait till Christmas' which is clearly in the context of the children living here and visiting the father for

contact. The mother relied on the father's messages and took steps to register the children in schools here, with a GP and also make arrangements for contact with the paternal family, such as the paternal aunt. The children started attending school here and attending medical appointments. It was not until 16 October 2022 that the father raised, for the first time, the suggestion that only [X] should return.

39. Mr Little rejects any generalised suggestion by the father that not all the relevant messages are included. The copy messages produced by the father, it is accepted, pre date the exchanges relied upon by the mother.
40. As regards grave risk of harm, Mr Little relies upon the allegations of domestic abuse, which he submits are serious and longstanding. They are detailed in the mother's statement, supported by the photographs showing the extent of the bruising and what the children reported to Ms Dunlop about the way the father behaved towards them. Mr Little relies on the fact that the mother does not speak Swedish, has no support in Sweden by way of family or a wider network of support. He submits if she returned she would be isolated and dependent on the father and because of the background of domestic abuse the children would be exposed to physical or psychological harm and/or would be placed in an intolerable situation due to the impact on the mother of the situation she would be in as their main carer. He submits the treatment by the father of the whole family founds the characterisation of the risk as grave.
41. As regards the protective measures, Mr Little submits in the circumstances of this case the court cannot place any great weight on them due to the behaviour of the father and the consequent lack of trust that he would comply with the undertakings. He relies on the father's behaviour during recent contact, which he submits is in direct contravention of Morgan J's order and is particularly concerning, as it is when the spotlight of the court is on the situation. Additionally, he relies on the father's previous convictions showing a willingness not to comply with the law. As regards the protective measures he submits it is revealing that, according to the mother, the father has offered a property opposite the family home where he lives, which shows no understanding of the allegations of domestic abuse made by the mother.
42. In the event that either or both of the defences are established, Mr Little submits there are compelling reasons why the court should exercise its discretion and not order a return of the children to Sweden, He acknowledges the strong policy considerations in play. This was a deliberate removal of the children from their jurisdiction of habitual residence followed by their retention in this jurisdiction. However, he submits there are strong welfare factors to weigh in the balance including the separation of the children from Z. They have lived together as one household since their birth. Neither X or Y speak Swedish and Y's apparent enthusiasm for Sweden needs to be looked at in the context of his young age and limited understanding. The children are relatively settled her, established in their schools and are in more settled accommodation.
43. In his submissions on behalf of the father, Mr Green sets the context of this application, namely the mother's deliberate and deceitful removal of the children from Sweden, which appears to have been done in conjunction with the maternal grandmother and aunt. The text messages between 10 – 15 June 2022 seek financial support and engage in affectionate messages with the father.

44. He submits the messages relied upon by the father where when the father was under pressure amounting to duress regarding the mother's wish to stay here, however Mr Green accepts that is not what the father alleges in his written evidence. The reference in the father's text to '*go to war*' cannot equate with the father knowing that the removal was wrongful. He submits the texts when looked as a whole demonstrate a father trying to negotiate the return of the children to Sweden and do not found any acquiescence by the father.
45. Turning to the issue of grave risk of harm, he submits the allegations of domestic abuse made by the mother are not supported by any independent evidence, such as reports to the police. Whilst the children did add some support for what the mother alleges to the Cafcass officer that has to be viewed in the context of them having been in the care of the mother and the concerns expressed by Ms Dunlop about them being exposed to the mother's narrative, with the consequence that what they say should carry little weight with the court.
46. Mr Green submits that even if the court does accept there is such a grave risk the comprehensive protective measures offered by the father reduces those risks so that the children and the mother can return. He rejects the submissions that the father's undertakings can't be relied upon. There are no threats of violence in the texts, the convictions are many years ago and the allegations regarding contact are disputed. He submits the protective measures offered provide a comprehensive package that the court can rely upon.
47. Turning to the issue of discretion, in the event that either or both of the defences are established, Mr Green submits there are compelling reasons why the discretion should be exercised in favour of a return order being made. The policy considerations are powerful due to the circumstances. At the date of the removal the children were settled living in Sweden; attended school, were in receipt of active medical care and thought they were visiting the United Kingdom for a holiday. That was what the early texts from the mother conveyed until challenged by the father.
48. Mr Green submits Ms Dunlop's report raises significant welfare issues concerning the children's schooling, in particular Y's attendance levels, homework not being done and the mother's lack of engagement. The concerns raised in the report regarding the children being subject to the mother's narrative, the impact on their views about seeing their father means that his ability to maintain his relationship with the children would be at risk if they remain living here. The report highlights what aspects of life in Sweden the children miss, in particular for X regarding the paternal grandmother. This is not a case where the mother has been the primary carer; prior to June 2022 the family lived in the same home and the father shared in the caring tasks.

Discussion and decision

49. There is no issue regarding the context of this application. The mother removed the children from Sweden with the father's agreement under the guise of a holiday. That was not the mother's intention, it was a pre-planned move without the knowledge of the father who was exercising his custody rights at the time.
50. The 1980 Hague Convention was devised to deal with this type of situation, knowing that such actions are harmful to children. In such circumstances the 1980 Hague

Convention requires, under Article 12, for the court to order the children to be returned, unless one of the defences under Article 13 is established. Even if they are, there is a discretion to consider whether a return should still be ordered.

51. The burden of proving either or both defences is on the mother. The legal framework is not in issue between the parties.
52. Having considered the content of the text messages relied upon by the mother, the steps taken by her in reliance on those message, and the time lapse before the father raises those issues again I have concluded that the defence of acquiescence is established for the following reasons:
 - (1) Looked at in the context of all the evidence, I am satisfied that at the time the father sent the message on 13 July 2022 setting out that he agreed to them living here he did so in the knowledge that the removal was wrongful. He referred in that message to *'going to war'* and understood the need to inform the schools.
 - (2) The father volunteered in a message to inform the schools in Sweden of the move and even suggested the effective move date as the end of the month. Shortly afterwards, the father sent a message about arrangements for contact and Christmas.
 - (3) Taken as a whole the messages are clear and unambiguous and relate to the children, with the father initiating certain actions (such as informing the school) consistent with the children's long term move. There is no suggestion of ongoing negotiation by the father. His messages are wholly consistent with his agreement that the children are going to remain living here with the mother.
 - (4) The mother acts on the father's messages and takes the steps regarding registering with the school and GP here.
 - (5) The messages in October are not part of any continuing negotiation. They are separate and in the context of the father about to issue these proceedings.
53. Turning to the issue of grave risk of harm, I am satisfied this defence is made out and having considered the protective measures, they do not, in my judgment sufficiently reduce that risk for the following reasons:
 - (1) The allegations of domestic abuse are serious and long standing. Whilst the court needs to consider them at their highest it should also, where appropriate, undertake an evaluative analysis having regard to the summary nature of these proceedings.
 - (2) There are a number of features in this case that provides support for what the mother alleges. First, it has not been denied that the mother was in a refuge between 2014 and 2015, although the father states the mother formed another relationship at this time. Second, in his own evidence the father accepts arguments between the parties and the need, if they did argue, for him to *'go to the garage and come back in the evenings, things would then be okay'*, although stating they only argued on limited occasions. Third, the meta data regarding the photographs of the bruises are not challenged. They demonstrate very serious injuries to the

mother when the parties were living together in April 2022. The father's account of the injuries being caused by a fall from a trampoline two months previously in February 2022 lack credibility and are wholly inconsistent with the photographs, which are more likely to be consistent with the mother's account of domestic abuse. Finally, the accounts given by the children, even taking into account their exposure to the mother's narrative, provide support for the father behaving in a way that frightened them. Such was the level of concern by Ms Dunlop she considered there needed to be a referral and/or an assessment by the authorities in Sweden before any return order being made.

- (3) As a consequence of this history of domestic abuse, both in terms of the seriousness and the period of time the alleged behaviour relates to, the children would be exposed by physical and psychological harm and be placed in an intolerable situation due to the impact on them of the father's behaviour and the impact on the mother of such behaviour on her being able to provide care for them in such circumstances.
- (4) As well as the history and future risk of domestic abuse the circumstances include that the mother would be socially isolated, in a country where neither she nor the children speak the language very well, there is no established support network away from the paternal family and the mother would be largely dependent on the father.
- (5) Whilst it is right the protective measures proposed by the father are extensive they do not, in my judgment, manage the risk I have identified exists in this case. I agree with Mr Little, that having regard to the background there is a real risk that the father would not abide by those undertakings. Whilst making all due allowance for the difficult situation the father was in, the text he sent to the mother on 16 October 2022 was revealing, effectively threatening her with these proceedings, referring to the '*bad position*' she is going to be in and if he won she would have no say about where the children live. Whilst the court can't resolve the differences between the parties about how contact has gone since the order dated 23 November 2022, the behaviour described by the mother is not inconsistent with the way she alleges that father has behaved towards her in the past. Also, whilst some years ago, the father has a history of a general disregard for the law through his criminal convictions and the evidence demonstrates limited, if any, understanding by him of the impact on the mother of his alleged behaviour.
- (6) As regards the protective measures themselves it is of note, after the father was aware of the serious allegations made by the mother regarding his behaviour, he proposes a property in close proximity to where he will be living. Whilst I acknowledge he changed his position on that issue it demonstrates no insight into the impact of his alleged behaviour on the mother, which also raises issues about his ability to abide by any undertakings.
- (7) The level of concern by Ms Dunlop was such that she considered a reference to and/or an assessment should be undertaken by the authorities in Sweden as to whether the children can return safely.

(8) I have carefully weighed in the balance the wider resources available for the mother and children in Sweden, the fact that the father does appear to have some financial security and an ability to pay the level of financial support he proposes, that he has, in principle, accepted the extra financial requests made by the mother regarding financial support and any adjustments regarding the location of any housing in the event of a return.

54. Having found both defences established, I now turn to the issue of discretion.
55. I do weigh the policy considerations very heavily in the balance in this case. The actions of the mother in this case are precisely the actions the 1980 Hague Convention was designed to prevent. I agree with the characterisation by Mr Green of the mother's actions as being deliberate and deceitful.
56. I also consider that, inevitably, the children have been exposed to the mother's narrative in an concerning way as demonstrated by the way Y spoke to Ms Dunlop about what the father was alleged to have done and the way X expressed herself. However, it is right to acknowledge despite that both X and Y were able to say positive things to Ms Dunlop about Sweden, and in the case of X about the wider paternal family.
57. On the other hand, in my judgment, there are other, more magnetic considerations. The basis upon which I have considered the Article 13 (b) defence being established and the extent of the exposure to the harmful physical, emotional and psychological impact of serious domestic abuse on the mother and the children. The children are settled here, are doing well in the care of their mother and the concerns expressed by their school need to be seen in the context of the different school age in Sweden, the mother's accommodation difficulties and work commitments. The children have a strong sibling relationship with Z, they have shared a home with him since birth, if returned they would be separated from him which would be a significant loss for them and adversely impact on their welfare. The children's relationship with their father can be maintained through contact being provided for in an order which, in principle, the mother does not oppose.
58. Having stood back and considered the factors set out above, I have reached the conclusion the courts discretion should be exercised in a way that the father's application is refused.