Neutral Citation Number: [2025] EWHC 323 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD24P00569

Royal Courts of Justice
Strand
London, WC2A 2LL

5 February 2025

Before:

Mr Justice Harrison

(**In Private)**

Re V (A Child) (Abduction: Return following Interim Removal from Taking Parent)

APPROVED JUDGMENT

Mr Brian Jubb (instructed by Freemans solicitors) appeared on behalf of the applicant father

The respondent mother appeared in person

Hearing dates: 4 and 5 February 2025

Introduction

1. I am concerned with a nine year old girl to whom I shall refer as 'V'. V and her parents are Ukrainian nationals.

2. V's father ('the father') applies for her to be returned to the jurisdiction of the Netherlands under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'). The application is resisted by V's mother ('the mother').

3. The father is represented by Mr Brian Jubb of counsel, instructed by Freemans solicitors. I am grateful to Mr Jubb and to his instructing solicitors for the clear, helpful and sensitive way in which the case has been presented.

4. The mother is unrepresented. Although her command of English is good (to the extent that she was able to address the court in English with considerable fluency), she has been assisted by a court-appointed interpreter. At hearings before me on 22 and 23 January 2025 I asked her whether she would like me to make contact with a duty solicitor under the scheme operated by the Child Abduction Lawyers Association. On each of these occasions she made it clear that she did not wish to have any legal assistance.

Background

5. The parties met in 2007. They are both musicians. They married in 2010. V was born in 2015. The family lived together in Kyiv until approximately 2020 when the parties divorced.

6. At the time of the divorce, the parties agreed that V would live with the mother, but no custody orders were made.

7. Following the Russian invasion of Ukraine in 2022, the father moved to live in the Netherlands. He has lived there since that time with his new wife and their young son who is now aged two and a half. I understand that he has permission to remain in the

Netherlands until 2026. I am not sure what the immigration situation will be beyond that.

8. In June 2022 the mother and V came to England. They moved into a flat in South London owned by the maternal grandfather. He was living there with his partner and several other residents.

9. At some point the parties came to a written agreement that V would live with the father in the Netherlands between 21 July 2023 and 1 September 2024. It is the father's case that, notwithstanding the written agreement, the parties in fact agreed that V would stay with him for a longer period. In my judgment, nothing turns on this issue, although I consider that the father's case is likely to be correct having regard to the WhatsApp message to which I refer below.

10. V in fact commenced living with the father in April 2023 when the mother brought her to the Netherlands earlier than had been agreed (the mother has not challenged this in her evidence). She moved into the home occupied by the father, his wife and her baby half-brother.

11. Following her arrival in the Netherlands, V attended two different schools. She was first enrolled in school on 12 June 2023 and registered in Amsterdam on 21 June 2023.

12. The father's evidence, which the mother does not challenge, is that:

> '[V] was fully integrated into life in Amsterdam, she loved school, had a large group of friends, and attended swimming lessons. [V] also attended a Ukrainian school …, hand-craft club and English lessons, as well as enjoying all of the amenities that Amsterdam has to offer, including the Nemo science museum, which is [V]'s favourite.

13. On 14 September 2024 the mother came to stay in Amsterdam; the father believed she was relocating there. The parties came to an arrangement whereby the mother would have weekly visits with V, but not initially overnight stays.

14. On 28 September 2024, it was agreed that V would stay overnight with the mother for the first time. After receiving V into her care, however, the mother removed her from the jurisdiction. She sent the father a WhatsApp message shortly after 5pm saying that she and V were in another jurisdiction, adding: '*We'll handle custody issues through the court. Have a good evening*.' Calls from the father went unanswered and so he reported the matter to the police. It is the mother's case that the father refused to abide by the parties' original agreement that V would return to her care after 1 September 2024; therefore she decided to take unilateral action.

15. The mother and V first went to France. According to the mother they stayed at a refuge centre in Paris occupied by 40 people. On 7 October 2024 they travelled to Ukraine to acquire a passport for V. On 28 October 2024 they came to England, returning to live at the home of the maternal grandfather and his partner.

16. On the mother's own case, the accommodation with her father was wholly unsatisfactory. She says of her father: '*He is very abusive, always had a problems (sic) with alcohol and kicked my mother, that's why they got divorced in 2000*.' Despite so saying, on the mother's own case, after she first came to England in 2022 she would leave V overnight with her father at weekends as she had a boyfriend at the time.

17. In his statement, the father set out a number of serious concerns he has had about V's welfare since her arrival in England. He said:

> "[V] remains living with [the mother] at maternal grandfather's flat ... I have been informed by the maternal grandfather's partner .. that [V] is often left home alone for extended periods, which is deeply troubling. On 15 November 2024, [the grandfather's partner] called me to express her concerns about [the mother's] alarming and abusive behaviour towards her and the maternal grandfather. She told me that [the mother] instructed [V] to say "fuck you" to both her grandfather and [his partner].
>
> I am extremely worried about [V]'s wellbeing in this environment. I know that the [the mother] has a history of mental health issues and has been under the care of her grandfather, who is a psychiatrist. On 25 November 2024 after being served with the court documents, [the mother] messaged me and said she is "mentally ill". [The mother] then goes on to say "Hello, we're still in the UK and not receiving any support from the government. I'm not working

and have nothing to feed [V]. We need about 30 euros a week just for food. Mate, we've basically been left on the street here, hungry and without documents. I've reached out to the Ukrainian embassy, but they're silent for now. Essentially, we're stuck here like in prison." I responded to say she could return [V] to me, and [the mother] replied "This is a concentration camp, not even a prison. In prison, they feed you and it's safe. Mate, do you think I'm crazy? We're literally going to starve to death here, and I could be physically harmed." [the messages are exhibited to the statement]

…

On 1 January 2025 … the partner of [V]'s grandfather called me. She told me that [V] hadn't eaten anything for three days. She put the camera on and showed me [the mother]'s empty fridge, and [V], who looked very dishevelled and in a bad way. [The mother] stayed nearby but refused to speak. [The partner] told me that [the mother] doesn't allow them to share food with [V]. I'm extremely concerned for [V]. [The partner] has confirmed that she called the police and I understand the police visited and issued [the mother] a fine. They then returned the following day to check on [V]. On 3 January 2025 [the partner] told me that [the mother] was very angry after the police visit and she took [V]. I was worried all day, but [V] was eventually returned in the evening. [The partner] also told me that [the mother] left [V] in the park alone a few days before. Neighbours saw her and helped her to find the way home. [V] must have been terrified.

[The partner] has further informed me that [the mother] told her a few times during their quarrels that she would kill [V] and herself. I believe [the mother] is having a mental health crisis and [V] could not be in a more dangerous position. The police told [the partner] that they were going to refer the matter to social services. I contacted them myself and was told they would open a file and investigate but that it would take time. [The mother]'s phone has been switched off and I have not been able get hold of her for weeks. Then on 4 January 2025 [the mother] suddenly unblocked her phone, and I was finally able to speak to [V]. I am so worried about her, and I feel utterly helpless. On 6 January [the mother] sent me a further concerning message which says "I only have £120 from renting out [an apartment]. One day, I didn't feed [V] because I was cleaning up everything around, and the next day, the police were called twice, in the morning and in the evening. If I don't feed her, she'll be sent to a children's home, and I'll be sent to prison. I don't accept anything from alcoholics, nor does she - they are dirty and drunk. We spend about £7-8 a day, and I eat once a day." [this further message is also exhibited].

18. In the mother's most recent statement, in response to the father's assertion that she suffers from mental health issues, she describes herself thus: "*I am very emotional and sometimes couldn't keep my emotions under my control, and could harm another people's feeling with my behaviour*." She goes on to describe her past difficulties with her mental health. It appears that she received hospital treatment in 2003 after arguing with her mother, taking her pills and threatening to kill herself. She suffered 'a nervous breakdown' in 2012 during her Masters Degree when she received

treatment for two weeks. She had 'another nervous breakdown' in 2019, around the time of her divorce from the father and was treated for three weeks (although she was told she did not have any specific mental illness).

19. In response to the father's statement that "*I am extremely worried about [V]'s wellbeing in this environment [i.e. at the home of the paternal grandfather]*" the mother says, with commendable frankness, "*I am totally agree with his statement*" (sic). She goes on to say that she is currently unemployed without social help from the state and living "*in [a] horrible environment*" with just a small income from Ukraine. Her visa to remain here expires in May 2025, but she says that she is planning to return to Ukraine "direct" after the hearing on 5 February 2025.

20. These proceedings were issued on 19 November 2024. They came before Garrido J without notice on 21 November 2024. A passport order was made and directions were given with a further hearing listed on 4 December 2024.

21. On 4 December 2024 DHCJ Markham KC made various orders including for Cafcass to prepare a report in relation to V's wishes and feelings by 17 January 2025. The mother was directed to make V available to speak to the Cafcass Officer at a time and place to be arranged by the officer. In the event, the mother failed to do so. As the appointed officer, Ms Alison Baker, put it in a risk assessment prepared by her on 10 January 2025 pursuant to section 16A of the Children Act 1989:

> "On 19/12/2024 I contacted [the mother] numerous times by telephone, text, email and letter, all to no avail. In my letter to her dated 19/12/2024 I let her know that I wanted to meet with [V] at a Cafcass office on 09/01/2025… Similarly, my efforts to contact [the mother] this week (beginning 06/01/2025) have proved unsuccessful."

The mother's failure to engage resulted in a situation whereby Ms Baker was unable to complete her report by 17 January 2025, as had been directed.

22. On 2 January 2025 the father's solicitors informed Cafcass that the father had serious concerns about V's welfare: he had been contacted the day before by the maternal

grandfather's partner who informed him that V was being neglected by the mother. He understood that the police were going to be called.

23. On 3 January 2025 the father reported his concerns directly to children services at the London Borough of Croydon.

24. On 7 January 2025 Cafcass received a report from V's school setting out the school's "*growing concerns*" about the mother's presentation in school and mental health. V had been absent from school on the first day of term and the school had made a report to the police. The report from the school included the following information:

> "[V] is a quiet child but speaks well and shows a good understanding of life skills. In her pastoral check ins she has been quite open about her Mum's behaviours and has always said she is happy with mum and feels safe.
>
> Mum is difficult to communicate with. She does not answer direct questions and will just stare at you. When she needs to ask a question, she comes in asks it, but will not elaborate on anything. Mum has randomly turned up to school at strange times wanting to collect [V] and has been told no has she could not explain why she wanted her.
>
> The school does have concerns around mother's mental health and her random behaviours she is displaying. [V] has said sometimes mum will walk up and down a road several times, for no reason. She said she feels safe and likes living with Grandfather and mum, although Grandfather is not always around due to his work."

25. On 8 January 2025, V's case was allocated to a social worker at the London Borough of Croydon, Ms Marni Wilson-Bryce. She visited V at school that day. Ms Baker summarised the meeting in her section 16A report as follows:

> "[V] told the Social Worker that (a) she missed her dad and wanted to live with him, (b) she has been left 'home alone' (in England), (c) her grandfather and the neighbours that live in the property with them drink alcohol a lot, (d) that she witnessed a fight between her mother and her grandfather's partner which the police attended, and (e) during the Christmas holidays she did not eat for 2 days" [V] is therefore physically and emotionally vulnerable in consequence of the risk and stress she has been experiencing in her current home environment"

Ms Baker added that the mother's own description of V's grandfather could have implications for V's emotional, physical and psychological welfare.

26. On 22 January 2025, the matter came before me at what was intended to be a pre-trial review. At this hearing, I made a decision to direct, pursuant to section 5 of the Child Abduction and Custody Act 1985, that V be accommodated in foster care by the London Borough of Croydon. I did so as I considered that that V was at risk of suffering significant harm in the care of her mother in the form of neglect and emotional harm and potentially a further abduction. I came to this conclusion on the basis of:

(a) The section 16A risk assessment prepared by Ms Baker.

(b) An oral report I received from Ms Wilson-Bryce who was in the process of preparing an assessment under section 47 of the Children Act 1989 (this has now been completed and the information conveyed orally by Ms Wilson-Bryce is contained in the written assessment dated 23 January 2025). As Ms Wilson-Bryce records:

(i) On 8 January 2025 V reported to her that while "her mum seemed 'normal' at first" she then "started doing 'weird' things including switching off the light in the one room the two of them occupy in their house shared with the maternal grandfather, his partner and other third parties leaving V in the dark and cleaning to a degree that appeared obsessive".

(ii) V reported that the mother puts her middle finger up at her when V suggests that she may be abnormal.

(iii) V reported that the police and neighbours have told her that the mother needs to go to hospital but her mother has denied this.

(iv) V witnessed a fight between the mother and the grandfather's partner. She described the latter picking up a rock to use against her mother (although it was not used). The police were called.

(v) V reported excessive consumption of alcohol in the household (although not by her mother, whom she said does not drink alcohol).

(vi) V also reported that there were two days when she was not fed at all (the mother accepted to Ms Wilson-Bryce that this happened once, explaining that she had been busy cleaning plates and pots).

(vii) V reported being left alone at home while the mother went to the shops (the mother accepts this).

(viii) The mother was cagey with Ms Wilson-Bryce about her own father's consumption of alcohol, answering 'hmmmm' when asked about it. She said that she was receiving just £300 per month but had stopped claiming universal credit, the belief in Ukraine being that 'if you do not work you do not eat'.

(ix) During a home visit on 8 January 2025 Ms Wilson-Bryce observed the grandfather's partner pouring a brown alcoholic liquid into a cup and drinking it.

(x) During a further meeting on 15 January 2025 V rated her feelings about school as ten out of ten, whereas home was rated as just one. She told Ms Wilson-Bryce that she did not want to be there saying that although her mother had been 'ok' there had been some times where she was 'weird'. She also said that she was looking forward to seeing her father. She said that if she felt sad or concerned she would speak to either her dad or a teacher at school.

(c) The background circumstances of the case outlined by the father which were significantly corroborated by (a) and (b), and

(d) The mother's own presentation at court: I gained the impression that she was not engaging rationally with the process and that, based upon what she told me, one of her main priorities was the retrieval of her passport. The mother left court suddenly before the hearing concluded stating that she needed to collect V as otherwise she would be standing on the street.

I directed that the matter should return to court the following day, 23 January 2025.

27. V was collected from school by Ms Wilson-Bryce. She had already been told by the school that the outcome of the court hearing was that she would be staying overnight

in foster care. She told Ms Wilson-Bryce that she had been surprised by this but was okay about it. She had spoken to her father the day before on video; she said she was happy to speak to him and missed him. By contrast, she said that she did not want to have contact with her mother. She wanted to emphasise how much she loved her school.

28. After spending the night in foster care, V spoke to a teacher at her school who reported the conversation to Ms Wilson Bryce. She had spent a nice evening at the foster home; she did not want to see her mother and felt 'great' about this; she was very happy to be coming to school; she wanted to know when she could speak to her father.

29. On 23 January 2025, I directed that V should remain accommodated by the London Borough of Croydon until the conclusion of these proceedings.

30. Although Ms Baker was unable to prepare a written report in time for this final hearing, she informed the court that she was able to meet V on 27 January 2025 and report orally. In those circumstances, I directed that there should be a further hearing on 28 January 2025 to enable Ms Baker to give oral evidence as to her meeting with V. I made clear that, while I would permit limited questions to be asked of her on that day, the substantive cross-examination would be adjourned to 4 February 2025 to allow the parties time to consider what Ms Baker had to say and prepare any questions they might have for her.

31. On 28 January 2025, Ms Baker, as I had directed, gave oral evidence in relation to her meeting with V the previous day. I directed the father's solicitors to prepare a note of Ms Baker's evidence which was to be provided to the mother and to me.

32. Ms Baker's evidence was that V communicated the following to her:
    (a) She loved her present school where she has friends and can learn.
    (b) The mother had taken her first to France, then Ukraine and finally to England. She did not know she was coming to England.
    (c) She liked England and the English language.

(d) She had lived with her father for a time and that she did not really get on with her step-mother or her half-brother.

(e) She liked her father. She liked being alone with her father - just the two of them.

(f) In her letter to the judge she said she would like to live with her father in England but if not then she would like to live with her mother in England.

(g) The reason she was not living with her mother was that her mother needs help as she was "a bit crazy".

(h) When asked about how she felt about returning to the Netherlands she said she would be sad because she would not be at her school in England. She said of her school in Holland that did not like the school.

(i) On a scale of 1 – 5 she graded the various options as follows:

- School in England – 5
- School in the Netherlands – 2
- Living with father – 4
- Living with mother – 3

(j) She would like to live in a really big house and have her own room and "loads of books".

(k) She was "not really" missing her mother and did not express a wish to speak to her.

(l) She asked when she would be seeing her father and was told she would see him after the meeting.

33. Ms Baker described V as being confident and candid during her meeting but it was of some concern to her that V did not appear to understand why she was staying with foster carers. Ms Baker did not detect any parental influence in V's expressed wishes and feelings.

34. Ms Baker again gave evidence on 4 February 2025. She confirmed the accuracy of the note of her previous oral evidence that had been prepared. The mother's only question to her was as to whether she had met V only once, which Ms Baker

confirmed. In response to questions from Mr Jubb, Ms Baker stated that she did not get the impression that V had struggled to give answers to her. She appeared confident and candid. She did not give the impression that she was holding anything back.

35. On 4 February 2025 I also heard evidence from Ms Wilson-Bryce. She provided an update in relation to V since 23 January 2025 when she had previously given evidence to the court. She had spoken to V on 27 January 2025 when V told her that she had had a good weekend at the foster carer's home. She described a period of video contact she had had with the father the previous Thursday as 'wonderful' and expressed her view that she was happy she had seen him. She was looking forward to seeing him in person later that day. V told Ms Wilson-Bryce that she did not have any worries. She made it clear that she did not wish to see or speak to her mother.

36. Ms Wilson-Bryce told the court that she had received information on 28 January 2025 from V's teacher. V had told her that she had 'a great time' with her father the previous day. She said she was not happy about the possibility of seeing her mother, commenting that she kisses her too much which V does not like. She was worried that she might be taken back to live at the home of the maternal grandfather where she did not wish to be. She was also worried that the mother might take her away, and appeared to be aware that the mother was planning to return to Ukraine.

37. On 4 February 2025 Ms Wilson-Bryce received a further update from the teacher. V spoke positively about seeing the father the previous day. She seemed embarrassed that she had a foster carer and was worried about what her friends would think if they knew. She told her teacher that she was happy about the thought of living with her father and again made clear that she does not want to see or speak to her mother.

38. Ms Wilson-Bryce told the court that on 30 January 2025 one of her colleagues had spoken to the mother who said that she was planning to return to Ukraine and that she would be going forever. The mother had been offered contact by video or the possibility of writing a letter to V, but she had declined both options.

39. At the start of the hearing on 4 February 2025 I made enquiries in relation to the contact which V had had with her parents since the matter was last at court. The mother told me that despite being offered contact by video and email she had decided not to take this up for what she called 'personal reasons'. She did not wish to tell me what those personal reasons were. She also indicated to me that she did not wish to have such contact with V, considering that it was not the right time.

The law

Overview of the 1980 Hague Convention

40. The aims and objectives of the 1980 Convention are recorded in its preamble and in Article 1. They can be summarised as follows:

    (a) To protect children from the harmful effects of being subject to a wrongful removal or retention.

    (b) To ensure the prompt return of abducted children to the country of their habitual residence.

    (c) To respect rights of custody and rights of access held in one Contracting State in other Contracting States.

    One of the ways in which the Convention is intended to secure its objectives is by deterring would-be abductors from wrongfully removing or retaining children.

41. The welfare of the child is not 'the paramount consideration' under the 1980 Convention. However, the preamble records the general principle that '*the interests of children are of paramount importance in matters relating to their custody*'. In *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 it was held by the Supreme Court that each of the following is '*a primary consideration*' in Convention proceedings:

    (a) The best interests of the children subject to the proceedings;

    (b) The best interests of children generally.

Wrongful removal

42. In order to engage the machinery of the 1980 Hague Convention, it is necessary for the applicant to demonstrate that the child has been subject to either a wrongful removal or a wrongful retention.

43. Article 3 of the Hague Convention provides that:

> "The removal or the retention of a child is to be considered wrongful where:
>
> (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
>
> (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
>
> The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

44. Article 5(a) provides that "*for the purposes of the Convention 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence".*

Habitual residence

45. Habitual residence, despite being of central importance to the concept of a wrongful removal, is not defined in the 1980 Hague Convention. It has been considered by the Supreme Court on a number of occasions since 2011. In *Re B (A Minor: Habitual Residence)* [2016] EWHC 2174. Hayden J summarised the principles, a summary later adopted with one modification by the Court of Appeal in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105. I have regard to all of the principles in that summary (as amended). In particular:

(a) The habitual residence of a child corresponds to the place which reflects *some*

degree of integration by the child in a social and family environment. It is not necessary for a child to be *fully* integrated before becoming habitually resident. The requisite degree of integration can, in certain circumstances, develop quite quickly. It is possible to acquire a new habitual residence in a single day.

(b) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. The factual enquiry must be centred throughout on the circumstances of the child's life that are most likely to illuminate his habitual residence.

(c) The meaning of habitual residence is 'shaped in the light of the best interests of the child, in particular on the criterion of proximity'. Proximity in this context means 'the practical connection between the child and the country concerned'.

(d) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent.

(e) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her. The younger the child the more likely this proposition is to be true.

(f) Parental intention is relevant to the assessment of habitual residence, but not determinative.

(g) It will be highly unusual for a child to have no habitual residence. Usually a child will lose a pre-existing habitual residence at the same time as gaining a new one.

(h) It is the *stability* of a child's residence as opposed to its *permanence* which is relevant.

46. In *Re B (A Child) (Habitual Residence)* [2016] UKSC 4, Lord Wilson drew an analogy between the process by which habitual residence transfers from one jurisdiction to another and the operation of a see-saw. He did so to illustrate the point that a change of habitual residence is likely to take place seamlessly such that an

existing habitual residence will be lost at the same time a new one is gained. As to the length of time needed for a transfer to take place, Lord Wilson, whilst declining to provide formal guidance on the issue, set out the following 'expectations' at para 46:

> (a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;
> (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and
> (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it.

47. These expectations were highlighted by Moylan LJ in *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659. By contrast, however, in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105 Moylan LJ held that Lord Wilson's see-saw analogy needs to be approached with some caution. He stated at paragraphs 61 and 62 that:

> "while Lord Wilson's see-saw analogy can assist the court when deciding the question of habitual residence, it does not replace the core guidance given in *A v A* and other cases to the approach which should be taken to the determination of the habitual residence. This requires an analysis of the child's situation in and connections with the state or states in which he or she is said to be habitually resident for the purpose of determining in which state he or she has the requisite degree of integration to mean that their residence there is habitual.
>
> Further, the analogy needs to be used with caution because if it is applied as though it is the test for habitual residence it can, as in my view is demonstrated by the present case, result in the court's focus being disproportionately on the extent of a child's continuing roots or connections with and/or on an historical analysis of their previous roots or connections rather than focusing, as is required, on the child's *current* situation (at the relevant date). This is not to say continuing or historical connections are not relevant but they are part of, not the primary focus of, the court's analysis when deciding the critical

question which is *where* is the child habitually resident and not, simply, *when* was a previous habitual residence lost." (emphasis in the original)

48. A crucial element of the 'core guidance' to which Moylan LJ referred is that '*The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment*'. In *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659 at para 41 Moylan LJ added this important qualification:

> 'It is clear, however, not only from *Proceedings brought by A* itself but also from many other authorities, that this is a shorthand summary of the approach which the court should take and that "some degree of integration" is not itself determinative of the question of habitual residence. Habitual residence is an issue of fact which requires consideration of all relevant factors. There is an open-ended, not a closed, list of potentially relevant factors.'

After citing from *Proceedings brought by A* , *Re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] AC 1038 and *Re R (Children) (Reunite International Child Abduction Centre and others intervening)* [2015] UKSC 35, Moylan LJ continued at paras 45 and 46:

> 'I refer to the above, not to put forward any gloss on the meaning of habitual residence… but simply to demonstrate that "some degree of integration" is not a substitute for the required global analysis.
>
> I would add that, self-evidently, a test of whether a child had "some degree of integration" in any one country cannot be sufficient when a child might be said to have *some* degree of integration in more than one State. This is why, as referred to in my judgment in *Re G-E (Children) (Hague Convention 1980: Repudiatory Retention and Habitual Residence) [2019] 2 FLR 17* ... at [59], the "comparative nature of the exercise" requires the court to consider the factors which connect the child to each State where they are alleged to be habitually resident.'

The Article 12 obligation to return

49. Where a child is subject to a wrongful removal or retention and an application for the return of the child is lodged within a year, Article 12 of the Convention provides that the court must order the return of the child forthwith.

The Article 13 exceptions

50. Article 12 has to be read in conjunction with Article 13 which provides that:

> ”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…”

Article 13(2): child objections

51. Of the various exceptions in Article 13, the only one which might be potentially relevant in this case is that which is contained in the second paragraph of Article 13: the ‘child objections’ exception.

52. The leading authority on the child’s objections exception - at least so far as the so-called ‘gateway’ stage is concerned - is *Re M (Republic of Ireland) (Child’s Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26. As to discretion, the leading authority is *Re M (Children) (Abduction: Rights of Custody)* [2007] UKHL 55. .

53. In *Re Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490 (Fam) at paragraph 50, Williams J summarised the relevant principles to be derived from both of the *Re M* cases as well as the later decision of *Re F (Child’s Objections)* [2015] EWCA Civ 1022 as follows:

i) The gateway stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.

ii) Whether a child objects is a question of fact. The child's views have to amount to an objection before Article 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.

iii) The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child's views are one factor to take into account at the discretion stage.

iv) There is a relatively low threshold requirement in relation to the objections defence, the obligation on the court is to 'take account' of the child's views, nothing more.

v) At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times bear in mind that the Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.

vi) Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are authentically the child's own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which are relevant to the child's welfare, as well as the general Convention considerations.

The same summary appears in the judgment of MacDonald J in *B v P* [2017] EWHC 3577 (Fam).

54. As Williams J also pointed out at paragraph 51 of *Re Q & V* , in some cases an objection to a return to one parent may be indistinguishable from a return to a country.

55. Although in *Re M (Republic of Ireland)* the Court of Appeal distinguished an objection from a preference or wish, they did not set out a positive definition of the term. No such definition is to be found in the 1980 Hague Convention or in the Explanatory Report. The French language version of the Convention uses the reflexive verb '*s'opposer*' in this context, a verb which can be translated as either 'to object' or 'to oppose'. At paragraph 77 of *Re M (Republic of Ireland)* Black LJ offered the following guidance:

> "I am hesitant about saying more lest what I say should be turned into a new test or taken as some sort of compulsory checklist. I hope that it is abundantly clear that I do not intend this and that I discourage an over-prescriptive or over-intellectualised approach to what, if it is to work with proper despatch, has got to be a straightforward and robust process. I risk the following few examples of how things may play out at the gateway stage, trusting that they will be taken as just that, examples offered to illustrate possible practical applications of the principles. So, one can envisage a situation, for example, where it is apparent that the child is merely parroting the views of a parent and does not personally object at all; in such a case, a relevant objection will not be established. Sometimes, for instance because of age or stage of development, the child will have nowhere near the sort of understanding that would be looked for before reaching a conclusion that the child has a degree of maturity at which it is appropriate to take account of his or her views. Sometimes, the objection may not be an objection to the right thing. Sometimes, it may not be an objection at all, but rather a wish or a preference."

56. *Re F (Child's Objections)* [2015] EWCA Civ 1022 the Court of Appeal was critical of the introduction of glosses to the meaning of the word '*objection*' including the introduction of the concept of '*a Convention objection*' or the suggestion that for these purposes what needs to be established is '*a wholesale objection*'. Black LJ made clear that:

> "Whether a child objects is a question of fact, and the word "objects" is sufficient on its own to convey to a judge hearing a Hague Convention case what has to be established; further definition may be more likely to mislead or to generate debate than to assist."

57. So far as the exercise of discretion is concerned, in *Re M (Children) (Abduction: Rights of Custody)* Baroness Hale emphasised that once the gateway is crossed,

discretion is '*at large*': it is not the case that a return can only be refused in exceptional cases. At paragraph 43 she said:

> "… 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."

At paragraph 46 she added:

> "In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child , courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. 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 her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances."

Parties' positions

58. In order to assist the mother, Mr Jubb prepared a detailed opening note which he arranged to have translated into Ukrainian. He submits that this was a clear case of wrongful removal. He further submits that none of the Article 13 exceptions are met and accordingly the court must make an order for V's return. Alternatively, he submits that any discretion should be exercised in favour of making a return order.

59. The mother did not find it easy representing herself. Her main submission related to the need for her passport to be returned to her as she wished to travel back to Ukraine

by the end of the week, telling me that her present accommodation is about to come to an end imminently. I enquired whether she agreed with or opposed the father's application for V's return to the Netherlands and she told me that she preferred not to say and to leave the decision up to the court.

Discussion and conclusions

Habitual residence

60. I am entirely satisfied that as at 28 September 2024 V was habitually resident in the Netherlands:
    (a) She had been living there for 17 months;
    (b) I accept the father's unchallenged evidence as to the schools she attended and her integration in that jurisdiction;
    (c) By contrast, V had no settled home in England. Her only previous home had been at the maternal grandfather's flat which on the mother's own evidence was wholly unsatisfactory;
    (d) It is not suggested by the mother that after starting to live with the father V had retained any meaningful integration in England apart from the fact that the mother herself remained living there with the maternal grandfather;
    (e) It is noteworthy that on the mother's case, after removing V from the Netherlands her first thought was to try to settle in France. Moving to England was her second choice and only alighted upon after her initial plan did not work out.

Rights of custody

61. I am satisfied that the father had rights of custody in relation to V at the time of her removal.

62. I have been provided with evidence that under Article 141 of the Family Code of Ukraine both the father and mother have equal rights and obligations towards their child regardless of whether they are married to each other. The dissolution of a marriage does not affect those rights.

63. Pursuant to Article 16 of the 1996 Hague Convention:

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.
(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.
(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

64. After V moved from Ukraine to England and Wales, the existing parental responsibility which the father had as a matter of Ukrainian law will have subsisted. In any event, as a matter of English law the father had parental responsibility by virtue of section 2(1) of the Children Act 1989, which provides that:

> "Where a child's father and mother were married to **…**each other at the time of his birth, they shall each have parental responsibility for the child."

65. After V ceased to be habitually resident in England and Wales and became habitually resident in the Netherlands, the father's existing parental responsibility will again have subsisted.

66. It is beyond question that the father was 'actually exercising' his rights of custody at the time of the removal. V was living with him. The father had made it clear that he wished this to continue.

67. The removal was surreptitious and non-consensual. It was clearly in breach of the father's rights of custody and therefore wrongful.

Article 13(a)

68. I am satisfied that Article 13(a) is not engaged in this case. The mother did place some reliance upon the parties' written agreement to the effect that V would be living with the father for a period of 13 to 14 months and no longer. It is clear that she started living with him sooner than the agreement provided for. I have seen a WhatApp message from the mother in which she referred to an agreement for V to live with the father for up to two years. Although undated, its context means that it must have been sent some time after V was already living in the Netherlands. Even

on the mother's own case, she accepts that at the time she removed V, the father was most definitely not consenting to her being removed from the Netherlands; it is for this reason that she decided to act unilaterally and surreptitiously. Any advance consent he may have given prior to V coming to live in the Netherlands was not subsisting as at that date.

Article 13(b)

69. A recital to the order made on 4 December 2024 makes clear that it does not appear that the mother is relying upon the grave risk exception. I do not consider myself bound by that but have concluded independently that there is no evidence at all from which the court could find that Article 13(b) was satisfied. There is no suggestion that V is at any risk living with her father and indeed she has spoken fondly about him and expressed a wish to resume living with him. By contrast, the evidence does suggest that V would be at risk were she to return to live with the mother at the home of the maternal grandfather. Given the mother's intention to return to Ukraine this is not in any event a possibility.

Article 13(2): objections

70. V has not expressed an objection to returning to the Netherlands. She made clear to Ms Baker that she would prefer to live with the father than the mother. As reported by Ms Wilson-Bryce she told her teacher on 4 February 2025 that she was happy at the thought of living with her father. This was said following her two recent meetings with him in person. In my judgment, in so stating it is likely that V will have meant that she was happy about the idea of living with him in the Netherlands. This represents a shift in her position from when she spoke to Ms Baker on 27 January 2025.

71. The evidence given by Ms Wilson-Bryce is corroborated by V's description of her relationship with her father to Ms Baker. She made clear that she likes being with him and spoke fondly about a holiday they had spent in Greece. She particularly likes spending time alone with her father, being lazy and watching videos.

72. When asked by Ms Baker on 27 January 2025 about her relationship with her step-mother and brother, V initially described the former as ‘evil’ – especially towards her brother. By way of example she said that she made her brother clean up when he spilt something. She clarified that what she meant was that her step-mother could be annoying rather than evil. In my judgment, V’s feelings about her step-mother reflect a normal sense of jealousy which children living in blended families sometimes feel at having to share a parent with a step-parent and/or a step-sibling.

73. It is right to record that V has also been very clear in her discussions with different professionals including her teacher, Ms Wilson-Bryce and Ms Baker that she loves her present school and does not wish to leave it. She told Ms Baker that her preferred outcome would be to live with her father in England (which would enable her to remain at her school) and that her second choice outcome would be living in England with the mother. V said to Ms Baker that she would feel sad if she had to return to the Netherlands because it would mean leaving her school. She said that while she had friends at her Dutch school, she found the lessons and exercises hard. In my judgment, V's strong positive feelings towards her school in England are likely to stem from a combination of factors including her recollection of school being difficult in Amsterdam and her English school feeling like a refuge from the turbulent home life she was experiencing at the home of the maternal grandfather.

74. By contrast with V suggesting to Ms Baker the possibility that as a second choice she could live with the mother in England, she has also repeatedly stated to professionals that at the present time she does not even wish to speak to her mother, let alone live with her. She has also expressed a fear at the prospect of being made to go back to the maternal grandfather’s home and embarrassment about being looked after by a foster carer.

75. Weighing up all of the evidence, I am satisfied that V does not object to returning to the Netherlands. She has expressed a strong preference for her English school over her school in Amsterdam. If she could wave a magic wand, she would craft a solution for herself which allowed her to remain at that school while living with her father and not living at the home of the maternal grandfather. Such a solution does not exist.

76. If I am wrong in that conclusion, I am very clear that this is a case where I should exercise my discretion in favour of ordering a return:

(a) This was a surreptitious abduction from the person who was fulfilling the role of primary carer at the time. In those circumstances the policy of the 1980 Hague Convention must carry significant weight.
(b) The father took prompt action in issuing proceedings and therefore the weight to be given to Convention policy is not diminished by the passage of time.
(c) V's expressed wishes can only carry slight weight in the balancing exercise. At the age of 9, despite her maturity, she is a young girl. Her ideal outcome is one which does not exist.
(d) It is very clearly in V's interests to return to the Netherlands and resume living with her father. She has expressed the view that she is happy at the prospect of living with him. The evidence is that she enjoyed a period of stability in her life when she was with him. Her life since coming to England has been wholly unstable to the extent that she has lived in a home environment which has placed her at risk and led to her being removed to foster care.
(e) In view of the mother's stated position that she will shortly be returning to live in Ukraine, remaining in England is not a viable option in any event. It would require V to stay in foster care (a situation she has said she finds embarrassing). There is no reason for her to do so when she can go back to her home with a loving father.

77. I will therefore make an order for V to return to the Netherlands with the father. The father has said that he wishes to return at the end of this week to allow V the opportunity to say goodbye to her friends. His passports and V's can be returned to him immediately. The mother wishes to have her passport and other documents so that she can travel to Ukraine. She should provide her flight details to the father's solicitors. Her travel documents can then be returned to her by a process server at the airport. The port alert will need to be varied to enable these departures to take place.

78. Throughout my dealings with this case, I have been concerned about the mother's health. It is inappropriate for me to attempt to diagnose her from the bench, but I gained the strong impression that she may be suffering from depression and that she would benefit from seeking therapeutic support. I would strongly urge her to take steps to consult a doctor and follow any recommendations they may have. I have no doubt that she loves V and that her daughter also has a love for her and wants her to get well and stop behaving in ways perceived by V as 'weird' and 'crazy'.

79. The mother has an important role to play in V's life as she grows up. I appreciate that she finds the prospect of having contact with her at present difficult, but I very much hope that she will feel able to do so in the near future. V needs to maintain that relationship and will be reassured by speaking to her mother that she is well and that she is thinking of her. I am confident that the father will be alive to V's need for that relationship to be promoted.

80. I hope too that the father will take on board the comments V has made about her school in Amsterdam and that he will explore with the school how the situation could be improved for V.

81. Going forward, any disputes about V's welfare will be for the courts in the Netherlands to resolve. I hope that, before going to court, the parties will take steps to resolve matters by agreement or in mediation.