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Case No: FD25P00333

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2025

Before :

JAMES EWINS KC
SITTING AS A S.9(4) DEPUTY HIGH COURT JUDGE

- -

Between :

F	**Applicant**
- and -	
M	**Respondent**

- -

Prof. George KC and Natasha Miller (instructed by **Osbornes Law**) for the **Applicant father**
Michael Gration KC and Mani Singh Basi (instructed by **Dawson Cornwell**) for the **Respondent mother**

Hearing dates: 17 – 19 November 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 November 2025 by circulation to the parties or their representatives by e-mail and by later release to the National Archives.

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JAMES EWINS KC SITTING AS A S.9(4) DEPUTY HIGH COURT JUDGE

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

Mr James Ewins KC DHCJ :

JUDGMENT SUMMARY

1. This case is about a Ukrainian father's application for the return of his 3-year-old daughter, Y, from England to Ukraine under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In January 2024, Y's mother brought her to England under the Homes for Ukraine scheme with the father's agreement, on the basis that this would be a temporary move prompted by the war. Since then, Y has settled in East Anglia: she and her mother obtained visas, housing, state benefits, medical care and nursery education, and have formed family and community ties here.

2. The parents' relationship later broke down and the father says the mother is now keeping Y in England against the terms of their original agreement. I have decided that from November 2024 the mother was indeed "retaining" Y in England, because by then the father had clearly asked for Y's return and she had refused, but that by that time Y's habitual residence – her main home – had already become England rather than Ukraine. On that basis, the father's application for return under the Hague Convention cannot succeed as a matter of law.

3. In case I am wrong about habitual residence, I have also considered whether there would be a "grave risk" to Y if I ordered her return to Chernihiv, a Ukrainian city close to the Russian border that has suffered repeated and serious attacks during the war. I have concluded that the current risks of death, serious injury and psychological harm to this very young child and her primary carer are too great. I have therefore refused to order Y's return and indicated that the father should consider using other legal routes to maintain and develop his relationship with his daughter.

INTRODUCTION

4. This is an application made by the father (whom I shall refer to as "F") pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the 1980 HC") for the summary return to Ukraine of his daughter, Y, born on XX April 2022, so a little over 3 ½ years old. The application was lodged and issued in the English court on 12 June 2025. The respondent is Y's mother, (whom I shall refer to as "M").

SUMMARY FACTUAL BACKGROUND

5. F is age 31 and serves in the Ukrainian military as a diver. M is age 26. They are both Ukrainian nationals, who were born and grew up in Ukraine. They married in May 2018 and lived together in Chernihiv, Ukraine. Chernihiv is a city in northern Ukraine, about 150km north of Kyiv and roughly equidistant from the borders with Belarus (c.90km to the west and north) and Russia (c.90km to the north-east).

6. On 24 February 2022, Russian military forces invaded Ukraine from Belarus, Russia and Crimea and Chernihiv was under siege until April 2022, during which time the city was blockaded and subject to heavy bombardment. At this time, M was pregnant with Y and M and F travelled to western Ukraine for M to give birth. Y was born on XX April 2022. F returned to Chernihiv after Y's birth and M and Y followed a short time later in May 2022.

7. In late 2022 or early 2023, F's mother, and F's sister (Y's paternal aunt), who also lived in Chernihiv, found a sponsor, were granted visas and travelled to live in East Anglia, England.

8. As a result of the security situation in Chernihiv, and following an agreement between F and M, in November 2023 M and Y applied for and were granted visas under the UK Homes for Ukraine scheme. These visas are due to expire on 8 November 2026, although applications may be made to extend them (but not, I was told, until 31 days before their expiry). On 25 January 2024, F obtained a 1 year notarial permit which would facilitate M and Y crossing the Ukrainian border without F being present. On 30 January 2024, M and Y travelled from Ukraine to England where they initially lived with the same sponsors who had accommodated F's mother and sister in East Anglia. It is not disputed that the parties agreed that M and Y could come to England, however the terms of that agreement are not agreed.

9. Upon arrival in East Anglia, M opened a bank account, registered herself and Y with a local GP and applied for Universal Credit. M found work at a local gym and subsequently began to take English lessons.

10. M and Y returned to Ukraine to visit F from 27 February 2024 to 12 March 2024 and again from 19 May 2024 to 13 June 2024. Upon their return to East Anglia in mid-June 2024, M applied for social housing. The process took about 1 ½ months and M and Y moved into rental accommodation on 31 July 2024. M was unable to continue working at the gym because of the hours, although she occasionally covered shifts for a friend.

11. M returned to Ukraine again to see F, this time without Y, from 24 August to 5 September 2024.

12. After M returned to England, Y started at the local nursery in East Anglia in October 2024.

13. The parties' relationship was becoming increasingly strained and in November 2024 M filed divorce proceedings in a District Court of the city of Chernihiv (although she did not travel to Ukraine to do so). She also made an application that F pay child maintenance for Y and an order for maintenance was made on 21 November 2024.

14. In late 2024, Y's nursery staff informed M that Y needed additional support, which they could only offer on 2 days per week. An assessment process was started but was terminated before its conclusion for reasons which are disputed. Y eventually stopped attending nursery in February 2025 because the staff there were unable to meet her needs.

15. On 17 December 2024, F applied to the Children's Department in Ukraine for a decision as to how he could participate in Y's upbringing, but the Department of Children's Affairs decided, in a decision communicated to F on 23 December 2024, that they could not assist because Y was located outside Ukraine.

16. On 20 January 2025, F applied to the District Court of Chernihiv for orders regarding Y including, I am told, a return order. On 22 January 2025, the District Court of Chernihiv appears to have accepted F's application and commenced proceedings. I

was informed that those proceedings, which appear to have been by way of a (possibly) successful appeal against the decision of the Children's Department, are ongoing although making little progress. I was told that a recent hearing on 7 November 2025 was adjourned because of the illness of one of the lawyers involved.

17. On 11 July 2025, M received confirmation that Y had a place in the nursery at a local primary school from September 2025, where she started on 3 September 2025, attending Monday to Friday 8.30am to 3.30pm.

18. F continues to serve as a diver in the Ukrainian military and is not permitted to leave Ukraine. M and Y continue to reside in social housing in East Anglia. Y attends nursery. M is not currently working.

SUMMARY PROCEDURAL BACKGROUND

19. On 12 June 2025, F made an application under the Child Abduction and Custody Act 1985 for Y's summary return, and proceedings were served on M on 26 June 2025.

20. On 10 July 2025, F made an application within these proceedings to attend hearings in England remotely.

21. At a directions hearing before Harrison J on 16 July 2025, directions were made for the filing of evidence, a PTR and attendance at future hearings and for Y's passport and travel documents to be held by M's solicitors. Interim indirect contact arrangements were recited.

22. The timetable for the provision of evidence slipped a little by the time of the next hearing on 8 September 2025, when Harrison J made orders for a PTR and a final hearing and extended the time for the remaining evidence to be filed and served. The order made on that occasion recited the court's decision not to order a CAFCASS report, M's confirmation that she would not be relying on settlement and the court's determination not to join Y.

23. F subsequently applied on 14 October 2025 to extend the time for his statement to be filed and an agreed order was filed in advance of the PTR which had been listed for 21 October 2025. The agreed order, approved by Harrison J, provided for the extension sought by F and confirmed that the final hearing remained listed on 17, 18 and 19 November 2025, with interpreters to attend.

24. At 10:30 on the morning of the first day of the hearing, 17 November 2025, an application was filed on behalf of M seeking permission to file and rely upon evidence by way of confirmation of return tickets booked by M for the trip to Ukraine in Feb-March 2024, entries in her Universal Credit journal and letter referred to in Universal Credit journal. This application was unopposed, and I admitted the evidence.

25. Therefore, when the hearing began the following evidence had been filed and served:

    i) a statement from F's solicitor at Osbornes Law, dated 12 June 2025;

    ii) a first statement from M, dated 22 July 2025;

iii) a first statement from F, dated 15 August 2025;

iv) an answer and second statement from M, dated 9 September 2025;

v) a second statement from F, dated 24 October 2025; and

vi) the further evidence from M, referred to at ¶24 above.

26. Neither party sought to adduce oral evidence and therefore relied on the written evidence referred to above, which I have read.

27. At the hearing, M attended in person with an interpreter and F attended remotely, also with an interpreter.

28. In advance of the final hearing, I was provided with position statements from Prof. George KC and Natasha Miller, instructed by Osbornes Law on behalf of F, and from Michael Gration KC and Mani Singh Basi, instructed by Dawson Cornwell on behalf of M. I am grateful to counsel for the thoroughness and clarity with which they argued their respective client's cases, and for their helpful submissions as to the applicable law.

THE PARTIES' CASES

29. I will summarise the parties' respective cases and arguments here in order to identify the factual and legal issues between them that I am required to determine.

30. F's case, set out by his solicitor in her statement at ¶3, is that "The parents agreed in 2024 that due to the security situation in Ukraine, [Y] and her mother should travel to England on a temporary basis". This is consistent with what F had said in his statement to the court in Ukraine, contained within the application filed by him on 20 January 2025, in which he stated "At the beginning of 2024, in connection with the deterioration of the security situation in Ukraine, constant worries, the parties made a joint decision on the departure of the wife and daughter abroad namely to Great Britain. The specified country was chosen precisely because [F's] mother… had been living in Great Britain for the past two years and she agreed to help [M] with…[Y]".

31. In F's first statement he stated at ¶3, "My wife and child went to England on a temporary basis and for their safety"; and at ¶5 "I wanted [M] and Y to be safe…". In his second statement at ¶6.a. he said that "the trip to England was clearly intended as a temporary respite from the war". F also said, at ¶10 of his second statement, that before M and Y left, he agreed with M that, "she would return to Ukraine after three months, by which time, we had hoped the situation in Ukraine would have improved".

32. Prof. George argues on behalf of F that, in sending a WhatsApp message on 19 July 2024, the translation of which reads *"Bring her, for f*** sake, I'll find a nanny and when I can, I'll look after [Y]."*, F was requesting M to bring Y back to Ukraine and in refusing to do so M was wrongly retaining Y in England. Alternatively, he argues that the wrongful retention took place on 23 November 2024 when F sent a further WhatsApp message to M which reads *"...I don't know if there is any point in appealing to your common sense... I just ask you to bring me my beloved [Y]. I want to see her, raise her, and do everything I can to give [Y] the best life possible. [Y] will*

always be safe with her father…". Prof. George argues that, at the latest, M's wrongful retention of Y occurred on 25 January 2025 when the 12 month notarial permit for Y to travel abroad expired. Prof. George also suggests that M's applications in November 2024 for a divorce and for maintenance for Y were unequivocally incompatible with the agreement that had been reached to allow Y to go temporarily to England and for married life to resume upon her return.

33. Prof. George argues that M was not entitled, pursuant to the agreement reached before they left, to use her unilateral assertions as to the ongoing security situation in Ukraine (i.e. that it was not safe to return) to extend or prolong F's consent to Y remaining in England. On the contrary, he argues, F was entitled under the agreement to change his mind and require that Y return to Ukraine immediately as he did in July and November 2024. Therefore, Prof. George argues, M wrongfully retained Y in England from 19 July 2024, from 23 November 2024 or from 25 January 2025 at the latest.

34. In reply, Mr Gration denies that Y's continued residence in England constitutes a "retention" under Art.3 of the 1980 HC. He bases this argument on M's evidence at ¶6 of her second statement as to the terms of hers and F's agreement, namely *"[F] and I discussed that our child's safety was our top priority and we agreed that Y and I would travel to England and stay there until it was safe to return to Ukraine – this was our agreement"*. Mr Gration argues that the condition within this agreement was no more specific than *"until it was safe to return to Ukraine"*, that it was open-ended with no fixed return date and that it would be wrong to impute any further terms or detail to the agreement.

35. Consequently, he argues, M was entitled to disagree with F as whether it was in fact safe to return without such a dispute constituting a breach of his rights of custody in respect of Y. On the contrary, such a disagreement was a parenting issue about how to apply the agreement, which concerned the exercise, not the breach, of F's rights of custody. Therefore, W's refusal to return Y to Ukraine pending resolution of the disagreement was not a retention under the 1980 HC. If it were construed as being a retention, he argued, that would give improper primacy to F's rights of custody because it would give him, in effect, a power of veto to terminate their earlier joint decision which was to allow Y to stay in England *"until it was safe to return to Ukraine"*.

36. Mr Gration argued that the dispute as to whether it was safe to return could and should be resolved by the court of competent jurisdiction, weighing up the best interests of Y. This was what, Mr Gration argued, F was effectively doing by making an application to the District Court of Chernihiv for orders regarding Y, including a return order.

37. Second, Mr Gration argues that, if there was a retention, Y was habitually resident in England by that time and therefore any retention was not wrongful for the purposes of the 1980 HC, because it was not a breach of his rights of custody in Ukraine. This argument is put forward whether the date of any such retention was 19 July 2024 or later.

38. In response to this argument, Prof. George denies that *"until it was safe to return to Ukraine"* formed an express condition of the parties' agreement. He further argues

that Y's habitual residence had not changed from Ukraine to England by July 2024, November 2024 or January 2025. He emphasised various factors which, he said, demonstrated the strength of her ongoing ties to Ukraine and the temporary nature of Y's and M's presence in England, including the parties' joint intention that Y would at some point return to Ukraine.

39. Third, Mr Gration argues that if (i) there was a retention, and (ii) the retention was wrongful, then the exception in Art. 13(b) applies, in that there is a grave risk that Y's summary return would expose her to physical or psychological harm or otherwise place her in an intolerable situation. He relies on the current conflict in Ukraine, specifically as it currently affects the city of Chernihiv, and the risk to Y and M if they were required to return there now of serious injury or death, or of other psychological harm from the trauma of being proximate to and witnessing the fear and consequences of sirens, income enemy missile and drone attacks. Mr Gration places reliance on the inherent and uncertain risks posed by enemy action which were risks of a different order to those experienced in everyday life and against which no protective measures could protect Y.

40. In reply, Prof. George stresses the need to avoid generalisations about the conflict in Ukraine, advises caution as to reliance on newspaper articles or (possibly selected) second-hand accounts of the situation on the ground in Chernihiv. He emphasises F's own evidence that "life goes on" in Chernihiv, including for members of M's family who have chosen not to relocate away from Chernihiv or Ukraine. Prof. George also emphasises that the Chernihiv region is large, is home to about a million people and so the actual casualty figures in relation to the specific location to where M and Y would return are statistically very low.

41. Prof. George argues that the protective measures sought by M did not address the safety-based issues she relied upon under Art.13(b) but were more akin to "soft landing" provisions. These are not in dispute, he says, save as to the provision of a car. He says that F would agree to an internal re-location if the situation worsened. Mr Gration argues that M cannot be criticised for not seeking protective measure to guard against a risk that it is impossible to guard against.

THE ISSUES

42. As a result of these arguments, the issues I have to decide are:

    i) What was the agreement reached between F and M by which M brought Y to England?

    ii) Whether M's refusal to permit Y to return to Ukraine was a 'retention' within the meaning of Art.3, and if so when that occurred?

    iii) Where was Y habitually resident on the date of any retention, being July 2024, November 2024 or January 2025?

    iv) Is the Art.13(b) defence made out?

LEGAL FRAMEWORK

43. Article 3 of the Hague convention states:

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. As to whether or not the agreement that Y move to England is capable of giving rise to a 'retention' within the meaning of Art.3, I was invited by Mr Gration to consider the Court of Appeal decision of Re NY (A Child) (1980 Hague Abduction Convention) (Inherent Jurisdiction) [2019] EWCA Civ 1065, which was an appeal against a decision of MacDonald J. The factual finding of MacDonald J was referred to at ¶8 of that decision, namely that

"*the evidence does not tend to support an express agreement to return to Israel in the event the move was not a success having been reached prior to their departure from Israel (in) November 2018.".*

45. Moylan LJ concluded at ¶58,

... The judge did not find that there was any agreement which provided for a limited or temporary stay in England or which meant that NY's retention in England from 10th January 2019 (or any other date) was contrary to any such agreement. As a result, the mother's decision to remain in England with NY was not a unilateral decision which repudiated the father's rights of custody.

59. The consequence of this conclusion is that, in my view, the answer to the issue set out in paragraph 2(a) above is that what happened in this case did not amount to a retention which falls within the scope of the 1980 Convention at all. There is also no other basis on which what happened could come within its scope, even prima facie as Mr Jarman sought to contend. To adopt again what Lord Hughes said in In re C, at [42] (see paragraph 44 above), there was no breach of rights of custody such that the 1980 Convention "cannot bite". To make clear, this is not because of any issue of consent (to the alleged retention) but because of the judge's conclusions as to the basis on which the family moved to England."

46. I was also referred to JM v RM EWHC 315 (Fam) [2021] in which Mostyn J stated,

[31] This has not been an easy issue for me to resolve. I have with some hesitation decided that Mr Jarman is correct. It seems to me that a wrongful act of retention, whether anticipatory/repudiatory (i.e. happening before the due date for return), or

actual (i.e. happening after the due date of return), requires there to be, as a matter of fact, a clearly agreed due date of return. I believe that every reported case about retention has involved a finite period away with a due date of return. In my opinion it is implicit in the concept of wrongful retention, as referred to in Arts 1, 3, 12, 13, 14, 15 and 16, that the wrongful act must take place within, or immediately following, an agreed finite period of care by the retaining parent.

47. I was further referred to the decision of Peel J in Z v Z [2023] EWHC 1673 (Fam), at ¶15:

15. Mostyn J in JM v RM [2021] EWHC 315 (Fam) referred to the need for "an agreed due date for return". I do not read him as stating that there must in every case be fixed calendar dates. Each case must be judged on its specific facts. Thus, for example, rather than a specified calendar date, the agreed or anticipated date for return may be referable to an agreed crystallising or triggering event, the precise date of which is unknown to the parties at the time of departure. In this case the due date for return was at the conclusion of the treatment, the precise timing of which was unknown when they flew to England and, in the event, has not yet come to pass. But it seems to me that there must be some ingredient to indicate that the departure from one country to another is intended to be temporary rather than permanent or potentially permanent, even if the precise date of return is not fixed. Thus, it is hard to conceive of a wrongful retention where the departure from the outward country is agreed to be open ended with no determining or triggering event; I endorse the observations of Mostyn J at para 32. In each case, the court will have to do the best it can on the available information to determine the relevant date.

48. With regard to the question of habitual residence, the starting point is the judgment of the ECJ in Mercredi v Chaffe C-497/10, [2012] Fam 22, paragraph 56:

"The concept of 'habitual residence' must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a member state – other than that of her habitual residence – to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that member state and for the mother's move to that state, and second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that member state. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case."

49. In In re F (A Child) [2025] EWCA Civ 911, Moylan LJ said, at ¶40

40 The judge stated that "the burden of establishing habitual residence in Colombia lies with the mother". Although we heard no submissions on this issue, I address it briefly because it is possible that the judge's reference to the burden being on the mother was one of the elements which led her to apply the wrong approach. In my view, it is not helpful to refer to the burden of proof in this context. I quote below what Baker LJ said in In re X (A Child) [2022] EWCA Civ 1423; [2023] 4 WLR 46 ("In re X") about it not being "simply ... an adversarial issue". This is because the

court has to decide where the child was habitually resident at the relevant date to determine its jurisdiction and habitual residence does not have a default position in the absence of it being established. Each party will, if there is a dispute, inevitably be contending for different countries (or in unusual circumstances, one party might be contending that the child has no habitual residence) and the court will have to decide between them, applying an objective analysis.

41 As Baker LJ said in In re X, at para 65 when addressing a submission as to the burden of proof under the 1980 Convention:

"Mr Gration submitted that the structure of the Convention is that the burden of proving that there has been a wrongful removal or retention under article 3 lies on the applicant and, where established, the burden then shifts to the respondent to prove one of the defences under article 12 or 13. Habitual residence, however, is not a matter that arises simply as an adversarial issue on which the judge adjudicates between the parties' respective arguments. The question of habitual residence goes to the heart of the court's jurisdiction to order the child's summary return under the Convention. Having identified the date on which the child was retained in this country, it was then necessary for the court to establish whether it had jurisdiction by examining the evidence to determine his habitual residence at that date."

50. And at ¶58, Moylan LJ said:

58 The determination of habitual residence is not a formulaic exercise because it requires a broad consideration of the child's and the family's circumstances and because different factors will be present in different cases with the same factor being more significant in one case than another. Accordingly, as was said in the case of HR, at para 54, "guidance provided in the context of one case may be transposed to another case only with caution". With those caveats, I set out the following elements (which are not intended to be exclusive) drawn from the cases:

(a) "The identification of a child's habitual residence is overarchingly a question of fact": In re B (SC) [2016] AC 606, at para 46. It is "focussed on the situation of the child": In re A [2024] 4 WLR 49, at para 54(v) and In re R [2016] AC 76, at para 17. It is an issue of fact which requires the court to undertake a sufficient global analysis of all the relevant factors. There is an open-ended, not a closed, list of potentially relevant factors;

(b) As set out, for example, in Proceedings brought by HR [2018] Fam 385, at para 41: "In addition to the physical presence of the child in the territory of a [member] state, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent …";

(c) Factors of relevance, as set out in Proceedings brought by HR, at para 43, and reflected in many other domestic cases, include: "the duration, regularity, conditions and reasons for the child's stay in the territory of the different [member] states concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those member states";

(d) The intentions of the parents are also a relevant factor and there is no "rule" that one parent cannot unilaterally change the habitual residence of a child: In re R, at para 17;

(e) As set out in In re R, at para 16, it is "the stability of the residence that is important, not whether it is of a permanent character" but there "is no requirement that the child should have been resident in the country in question for a particular period of time" because habitual residence can be acquired quickly: e.g. A v A [2014] AC 1, at para 44;

(f) The "degree of integration of the child into a social and family environment in the country in question" is relevant, In re R, at para 17. It is clear that "full integration" is not required, "In re B (SC)", at para 39, but only a degree sufficient to support the conclusion, when added to the other relevant factors, that the child is habitually resident in the relevant state;

(g) The relevant factors will reflect the age of the child (see Mercredi v Chaffe (Case C-497/10 PPU) EU:C:2010:829; [2012] Fam 22, paras 53–55; A v A, at para 54(vi), and In re LC [2014] AC 1038, at para 35). Accordingly, "[the] social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned": A v A, at para 54(vi);

(h) The court is considering the connections between the child and the country or countries concerned: A v A, at para 80(ii), In re B (SC), at para 42, and Proceedings brought by HR, at para 43. This is a comparative analysis as referred to, for example, in In re M [2020] 4 WLR 137, at para 60, In re B (EWCA) [2020] 4 WLR 149, at para 86, and In re A, at para 46. As observed by Black LJ in In re J, I repeat:

"What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence."

An example of this is seen in In re B (SC) in which Lord Wilson JSC, at para 49–50, referred to the factors which pointed to the child having "achieved the requisite degree of disengagement from her English environment" and those which pointed to the child having "achieved the requisite degree of integration in the environment in Pakistan".

51. Article 13 of the Hague Convention states that:

'Notwithstanding the provisions of the preceding Article, the judicial or administrative body 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 –

... 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.

… In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.'

52. The Guide to Good Practice: Part VI, Article 13(1)(b), published in 2020 by the Hague Conference on Private International Law ("the Guide to Good Practice"), states:

"[35] The wording of Article 13(1)(b) also indicates that the exception is "forward-looking" in that it focuses on the circumstances of the child upon return and on whether those circumstances would expose the child to a grave risk.

[36] Therefore, whilst the examination of the grave risk exception will usually require an analysis of the information/evidence relied upon by the person, institution or other body which opposes the child's return (in most cases, the taking parent), it should not be confined to an analysis of the circumstances that existed prior to or at the time of the wrongful removal or retention. It instead requires a look to the future, i.e., at the circumstances as they would be if the child were to be returned forthwith. The examination of the grave risk exception should then also include, if considered necessary and appropriate, consideration of the availability of adequate and effective measures of protection in the State of habitual residence…

[61] The grave risk analysis associated with the circumstances in the State of habitual residence must focus on the gravity of the political, economic or security situation and its impact on the individual child, and on whether the level of such impact is sufficient to engage the grave risk exception, rather than on the political, economic or security situation in the State generally. Assertions of a serious security, political or economic situation in the State of habitual residence are therefore generally not sufficient to trigger the grave risk exception. Similarly, (isolated) violent incidents in an unsettled political environment will typically not amount to grave risk. Even where the facts asserted are of such a nature that they could constitute a grave risk the court must still determine whether protective measures could address the risk and, if so, the court would then be bound to order the return of the child."

53. A summary of the key principles is given by Baker LJ in Re IG (A Child) (Child Abduction: habitual residence: Article 13(b)) [2021] EWCA 1123:

46. The leading authorities remain the decisions of the Supreme Court in Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27, [2012] 1 AC 144 and Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10, [2012] 2 AC 257. The principles set out in those decisions have been considered by this Court in a number of authorities, notably Re P (A Child) (Abduction: Consideration of Evidence) [2017] EWCA 1677, [2018] 4 WLR 16 and Re C (Children) (Abduction: Article 13(b)) [2018] EWCA Civ 2834, [2019] 1 FLR 1045. Since the hearing of the present appeal, this Court has handed down judgments in another appeal involving Article 13(b), Re A (A Child) (Article 13(b)) [2021] EWCA Civ 939 in which Moylan LJ carried out a further analysis of the case law. I do not intend to add to the extensive jurisprudence on this topic in this judgment, but merely seek to identify the principles derived from the case law which are relevant to the present appeal.

47. The relevant principles are, in summary, as follows.

(1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".

(2) The focus is on the child. The issue is the risk to the child in the event of his or her return.

(3) The separation of the child from the abducting parent can establish the required grave risk.

(4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish 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 establish how the child can be protected from the risk.

(5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.

(6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.

(7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.

(8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.

(9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance.

(10) As has been made clear by the Practice Guidance on "Case Management and Mediation of International Child Abduction Proceedings" issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks.

48. In his judgment in the recent case of Re A, Moylan LJ (at paragraph 97) gave this warning about the failure to follow the approach set out above in paragraph (4):

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

54. I was referred in particular to the decision of the Supreme Court in Re E [2011] UKSC 27:

31 Both Professor Perez-Vera and the House of Lords referred to the application, rather than the interpretation, of article 13. We share the view expressed in the High Court of Australia in DP v Commonwealth Central Authority (2001) 206 CLR 401, paras 9, 44, that there is no need for the article to be "narrowly construed". By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or "gloss".

32 First, it is clear that the burden of proof lies with the "person, institution or other body" which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will of course be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.

33 Second, the risk to the child must be "grave". It is not enough, as it is in other contexts such as asylum, that the risk be "real". It must have reached such a level of seriousness as to be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm.

34 Third, the words "physical or psychological harm" are not qualified. However, they do gain colour from the alternative "or otherwise" placed "in an intolerable situation" (emphasis supplied). As was said in In re D [2007] 1 AC 619, para 52, " 'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'". Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to

the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. Mr Turner accepts that, if there is such a risk, the source of it is irrelevant: e g, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.

35 Fourth, article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home. Mr Turner accepts that if the risk is serious enough to fall within article 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.

55. In Uhd v McKay [2019] EWHC 1239 MacDonald J, in considering the Art.13(b) exception, said at ¶70:

[70] In the circumstances, the methodology articulated in Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27, [2012] 1 AC 144, [2011] 2 WLR 1326, [2011] 2 FLR 758 forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10, [2012] 2 AC 257, [2012] 2 WLR 721, [2012] 2 FLR 442), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.

56. Addressing the particular circumstances brought about by the war in Ukraine, in Q v R [2022] EWHC 2961 (Fam) Williams J said at ¶54:

It seems to me one has to avoid generalities, and in so far as is possible evaluate the particular risk to this particular child in a return to this particular area, rather than to apply a general or a broad brush; one must apply a rather more detailed and finer brush to this. Of course, if it were suggested that E were to return to Izyum or one of the other areas which has just been liberated, or which may soon be more directly in an area of active war, would plainly bring with it a grave risk of harm. However, when a return is to somewhere quite different, that requires a different consideration.

57. In M v F [2024] EWHC 1689 (Fam) Hayden J said as follows concerning a party's reliance on Foreign, Commonwealth and Development Office advice, at ¶44

44. ... I do not consider that the FCDO advice comes close to supporting the weight Ms Renton places upon it. It is inevitably the case that foreign travellers face a different and heightened risk from that of Ukrainian nationals who have lived, daily, with the challenges and privations of war for some time and have adapted their lives in response to it. ...The risk matrix is, therefore, wholly different for UK nationals.

The guidance is prepared for an entirely different purpose from the exercise that I am engaged in here. Whilst it may have some place in the broader evidential canvas, it most certainly does not assume the elevated role Ms Renton contends for it. Neither would the FCDO expect their guidance to be used in the way that Ms Renton asserts it should be. It is not written with this in mind...

58. In Re G and B (Children) (Abduction: Settlement: Grave Risk: Ukraine) [2025] EWHC 795, Mr Justice Harrison drew from the recent Ukraine authorities that the matters of potential relevance to the issue of risk under Article 13(b) include:

(i) the part of Ukraine to which the child is to return;

(ii) the age of the child;

(iii) the circumstances of the parents;

(iv) whether the child's primary carer is the person who wishes the child to return; and

(v) the overall circumstances of the child both in this jurisdiction and in Ukraine.

This is not intended to be an exhaustive list.

59. Specifically as to protective measures, I note what was said in Z v D [2020] EWHC 1857 (Fam), by MacDonald J at ¶29:

[29] With respect to the second question, namely determining whether protective measures can meet the level of risk reasonably assumed to exist on the evidence, the following principles can be drawn from the recent Court of Appeal decisions concerning protective measures in Re GP (A Child) (Return Order: Habitual Residence) [2017] EWCA Civ 1677, [2018] 4 WLR 16, sub nom Re GP (A Child: Abduction) [2018] 1 FLR 892, Re C (Children) (Abduction: Article 13(b)) [2018] EWCA Civ 2834, [2019] 1 FLR 1045 and Re S (A Child) (Hague Convention 1980: Return to Third State) [2019] EWCA Civ 352, [2019] 2 FLR 194:

(i) The court must examine in concrete terms the situation that would face a child on a return being ordered. If the court considers that it has insufficient information to answer these questions, it should adjourn the hearing to enable more detailed evidence to be obtained.

(ii) In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance.

(iii) The issue is the effectiveness of the undertaking in question as a protective measure, which issue is not confined solely to the enforceability of the undertaking.

(iv) There is a need for caution when relying on undertakings as a protective measure and there should not be a too ready acceptance of undertakings which are not enforceable in the courts of the requesting State.

(v) There is a distinction to be drawn between the practical arrangements for the child's return and measures designed or relied on to protect the children from an Art 13(b) risk. The efficacy of the latter will need to be addressed with care.

(vi) The more weight placed by the court on the protective nature of the measures in question when determining the application, the greater the scrutiny required in respect of their efficacy.

60. As to the exercise of discretion, I have considered what was said in Re M and Another (Children) (Abduction: Rights of Custody) [2007] UKHL 55; [2008] 1 AC 1288:

"That when exercising the discretion under the Convention there were general policy considerations, such as the swift return of abducted children, comity between contracting states and the deterrence of abduction, which might be weighed against the interests of the child in the individual case; that the Convention discretion was at large and the court was 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; that the weight to be given to the Convention considerations and to the interests of the child would vary enormously, as would the extent to which it would be appropriate to investigate such other welfare considerations; that it did not necessarily follow that the Convention objectives should always be given any more weight than any other consideration; and that the further away one got from the speedy return envisaged by the Convention the less weighty those general Convention objectives must be, since the major objective of the Convention could not be met."

61. I have also reminded myself of what was said in Re D (Abduction: Rights of Custody) [2006] UKHL 51; [2007] 1 AC 619:

"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"

ANALYSIS AND FINDINGS

WHAT WAS THE AGREEMENT REACHED BETWEEN F AND M BY WHICH M BROUGHT Y TO ENGLAND?

62. I remind myself at the outset that my enquiry is necessarily taking place in the context of summary proceedings. I have not heard oral evidence and neither party's written contentions have been tested by cross-examination. That said, the parties have each provided statements and put forward evidence as to what was in fact agreed.

63. First, it appears clear to me that the agreement in this case was clearly intended to be temporary. It formed no part of either party's evidence that it was their intention when they left in early 2024 for Y and M's stay in England to be permanent. Despite the fact that F's mother, who had been in England since end 2022/beginning 2023 and had by November 2023 made known her plan to stay permanently in England after the war, neither M nor F discussed much less agreed such a plan, nor have I read any evidence to suggest that it became their intention subsequently. The few passing

comments in WhatsApp messages that alluded to the possibility were, I find when viewed in context, no more than speculation or pipedreams. The temporary nature of Y's stay is reinforced by the fact that M asserts that it was to last *"until it was safe to return"*. This is important because it distinguishes this case from the factual basis of Re NY – see ¶44 above. In the words of Peel J in Z v Z at ¶47 above, to found a case for a retention there needed to be *"some ingredient to indicate that the departure from one country to another is intended to be temporary rather than permanent or potentially permanent, even if the precise date of return is not fixed."*. There was such an ingredient here and I therefore do not accept that it was entirely open-ended. It was more akin to an *"open return"* ticket (in which return is very much contemplated, although on an unspecified date) than a simple "one-way" ticket.

64. Second, there is agreement between F and M that the initial decision to allow Y to travel to England with M was based upon concerns for her safety – see ¶30 and ¶34 above. On 23 November 2024, in a WhatsApp message to M, F stated *"It is precisely for [Y]'s safety that she is in England, and if I know that my daughter is in danger here, I will extend her permission myself."* This aligns with the basis of Y remaining in England either *"until it was safe to return"* or with reference to F's hope that the situation would improve. I nonetheless accept Mr Gration's submissions, with which Prof. George did not disagree, that parents do not always make careful plans as lawyers might. Consequently, I accept that it is hard to identify, and wrong to try and impute, further specific detail or terms to the parties' agreement. Specifically, I am not persuaded that F is right to state that he put a fixed term of three months on the agreement in early 2024, or at all. It appears to me on the evidence I have read that this is more likely something he wished, with hindsight after M had applied for a divorce, that he had included. I draw this conclusion from the first mention of such a specific period being in a WhatsApp message that he wrote on 24 November 2024, shortly after M filed for divorce, in the context of a message which also sates *"All this will be decided by a lawyer"*. It may nevertheless be, as they respectively contend, that F had 'respite' in mind when he agreed to Y's temporary relocation to England, while M had a more objective concept of 'safety' in mind as a triggering event. But if that is right, then there was not agreement on that issue and I cannot and do not construe their agreement either way. It did not contain either a fixed term of three months of a condition that it lasted *"until it was safe to return"*.

65. I therefore conclude that, however imperfect it may be, the parties' agreement was no more precise than an agreement that Y could travel to England temporarily, without a fixed date of return, but nonetheless with agreement that her return in due course was referable to a hope or fact of improved safety in Chernihiv. However, that it is not possible to identify a more precise, agreed crystallising or triggering event does not, in my judgment, detract from the underlying temporary nature of the agreement.

66. Third, because I find that it is not possible to impute into the agreement the precise terms contended for by Mr Gration, i.e. *"until it was safe to return"*, I cannot accept his submissions that M was entitled retain Y in England until she considered, or a court of competent jurisdiction had decided, that *"it was safe to return"*. I accept Prof. George's submission that to do so would be to elevate such a term to a status it does not have.

67. Fourth, it follows that because there is no specific precise, agreed crystallising or triggering event, it remained open and was not unreasonable for either party to bring the undefined temporary agreement to an end after a relatively short period of time. Whether this is framed as F being allowed to *"change his mind"* as Prof. George submitted, or simply as a result of the imprecise nature of the agreement, does not change this conclusion.

WHETHER M'S REFUSAL TO PERMIT Y TO RETURN TO UKRAINE WAS A 'RETENTION' WITHIN THE MEANING OF ART.3, AND IF SO WHEN THAT OCCURRED?

68. It follows from my finding at ¶67 above that, if F withdrew his consent to the temporary agreement and effectively communicated that to M, and M subsequently declined to return Y to Ukraine, that would constitute a 'retention' within the meaning of Art.3. The question is whether F did so, and when.

69. As set out above, I am invited by Prof. George to find that, in sending the WhatsApp message on 19 July 2024, *"Bring her, for f*** sake, I'll find a nanny and when I can, I'll look after [Y]."*, F was requesting that M bring Y back to Ukraine and that in refusing to do so M was wrongly retaining Y in England. As with any individual WhatsApp message, context is crucial. I was shown three screenshots of messages (and translations of the same), one of which is clearly dated 19 July 2024, the others of which have no date but which were agreed by both counsel to be from around the same date. They show that M was, as Mr Gration told me she accepted, struggling as a single mother. I read evidence of her seeking medical help in February 2024 because she *"felt very down, stopped feeling joy… a lot of people suggested I might have depression"*. I understand she took anti-depressants for *"a little over 2 months"* and although she then stopped, she has since resumed taking them. She was expressing frustration and anger at her situation. Equally, F was expressing frustration and anger at his situation, in which he had no desire to desert the military whom he served, but equally wanted to see his daughter. Both parties' messages were fraught and their use of expletives was understandable in that context. However, it is in that highly emotionally charged, fraught and angry context that I am asked find F's words be a clear communication of his revocation of his prior consent to Y staying in England, triggering a retention under the 1980 HC. I do not find this his words can be given that construction or significance in this context. My finding is reinforced by the fact that there is no evidence of other communication in the days or weeks immediately after that message, on WhatsApp or otherwise, following up on that allegedly formal request.

70. The next communication relied upon by F as showing a clear request that M return Y to Ukraine is a further WhatsApp message dated 23 November 2024 at 10:02 pm. Referring again to the context, the message began with F saying that Y could go to a private kindergarten in Ukraine which he could afford to pay for. He then referred to a lawyer dividing the value of their car (a reference to him having recently received notice of M's divorce application). F then states:

I am thinking rationally. (You have destroyed the man who once loved you.) ([Y]'s interests are important to me right now, and I know that my daughter will be better off living with me.) Perhaps you have forgotten, [M], that we once lived together and

that I know how you behave, both in general and towards my daughter in particular. I don't know if there is any point in appealing to your common sense... ***I just ask you to bring me my beloved [Y]. I want to see her, raise her, and do everything I can to give [Y] the best life possible. [Y] will always be safe with her father.*** *I cannot give you any guarantees, [M], just as you have given me no guarantees (you took my daughter away from me and I have not seen [Y] alive since spring, although you know, [M], that what I wanted and want most of all is for [Y] to be with me). I can repeat what I said before: I will give permission for [Y] to leave when she is in Ukraine and only for a specific period, for example, two to three months, and it will be stated that you are obliged to bring [Y] back to her father and, if you fail to do so, you will compensate me. All this will be decided by a lawyer. It is precisely for [Y]'s safety that she is in England, and if I know that my daughter is in danger here, I will extend her permission myself.* ***[emphasis added]***

71. This message has a very different context and tone to the earlier one. It is, as F states, more rational. In it, F says *"I just ask you to bring me my beloved [Y]".* He goes on to suggest what arrangement could be made on her return, including F giving further temporary, specifically time-limited permission for Y to leave Ukraine if F considered her to be in danger there.

72. However, within a couple of hours, F messaged M further and offered:

I'll pack [Y's] things and send them to my mother's address. If you want to order anything for [Y], let me know and I'll put it in the package,

73. I do not think that this necessarily detracts from the seriousness of his previous request. It was merely an offer of practical short-term assistance. And this was quickly followed with two further messages in which F stated:

I'm not interested in listening to or reading what you write, and your opinion doesn't matter to me… I said that I would provide for [Y] completely, we won't need anything from you.

74. On balance, I find that this was a serious, clear communication of F's revocation of his prior consent that Y stay in England which, as I found at ¶67 above, F was quite entitled to do. Therefore, since M did not respond to that request within a reasonable time frame by agreeing to return Y to Ukraine and making practical arrangements to do so, I find that she was retaining Y in England within the terms of Art. 3 from 23 November 2024.

WHERE WAS Y HABITUALLY RESIDENT ON THE DATE OF ANY RETENTION, BEING NOVEMBER 2024?

75. I have set out the relevant law above. I remind myself that it is not helpful to refer to a burden of proof in what is an issue of fact which requires me to undertake and demonstrate a sufficient global analysis of all the relevant factors in the old (Ukrainian) and new (English) lives of Y – of which there is an open-ended, not a closed, list – which might have a bearing on Y's habitual residence. I must consider those factors which indicate the requisite degree of disengagement from her Ukrainian environment and those which point to her having achieved the requisite degree of integration in the environment in England.

76. I note that, due to Y's age in November 2024 (2 ½ years old) much of her social and family environment is shared with M, on whom she is dependent, and so M's level of integration is also relevant. I set out the relevant positive and negative factors as follows, with reference to the position as at November 2024.

77. Factors connected to Ukraine:

i) Y was born in Ukraine and speaks Ukrainian and Russian. She spent the first 21 months of her life in Ukraine and therefore has her roots in Ukraine. Her habitual residence was certainly Ukrainian before she came to England.

ii) M is Ukrainian by birth and nationality.

iii) F is Ukrainian by birth and nationality and remains in Ukraine, unable to leave because he is fighting for the Ukrainian military in a war against Russia. The bulk of Y's wider family remains in Ukraine, including her maternal grandmother, her maternal aunts and uncles, her paternal great-grandmother and her paternal cousins. This gives Y an enduring strong family connection to and heritage in Ukraine.

iv) By November 2024 Y had been in England for 10 months (about 1/3 of her life), of which she had spent c.5 weeks on visits back to Ukraine. She had therefore spent the majority of her life in Ukraine, although that was during the earlier as opposed the most recent part of her life.

v) Y speaks Ukrainian and many of M's and Y's acquaintances/friends in England were other Ukrainian nationals, thus Y's identity, even in England, remains firmly Ukrainian.

vi) I do not consider that M's use of the Ukrainian courts to apply for a divorce or child maintenance is a factor relevant to the issue of Y's habitual residence.

78. Factors connected to England:

i) As I have found, M and Y's stay in England was only ever agreed to be temporary.

ii) As a result of her parents carefully planning, including granting a 12 month travel permit, upon arrival in January 2024, M and Y's immigration status in England was immediately secure, with the prospect of renewal/extension in due course, making her presence in England stable.

iii) Y returned to Ukraine twice in February and May 2024 by way of visits with return tickets but had not been back for 6 months by November 2024. Her most recent lived experience was predominantly in England.

iv) M had an English bank account, was in receipt of Universal Credit, was taking English classes, had found employment on arrival (although was not employed at that time) and Y and M were enrolled with a local GP, all of which reinforced the stability of Y's (through M's) residence and her social integration. The fact that M raised the possibility of Y attending a dentist in

Ukraine for reasons of cost and familiarity does not detract, from Y's perspective, from this integration in England.

v) Y was living in stable social housing in England with M, having moved in on 31 July 2024; Y's paternal grandmother and aunt lived nearby, providing a degree of family integration into the locality.

vi) Y was enrolled at and was attending Cathedral View Childcare Nursery since in October 2024; this shows integration her into the local social environment. I do not find that this was mitigated in November 2024 by the difficulties she subsequently faced there.

vii) Y celebrated her second birthday in England in April 2024, and had a party attended by family and friends; by November 2024 Y (through M) had formed a circle of friends from the local Ukrainian community, providing further family integration into the locality.

viii) Y and M were engaging with activities within her local community, including going swimming, to trampoline parks, playgrounds and going on playdates with other children, providing further examples of social integration.

ix) Although Y's stay was, as I have found, ultimately temporary, she would be likely to have perceived her residence in England to be stable and relatively permanent.

x) M's ties to Ukraine had weakened with the breakdown of her relationship with F; Y's relationship with F was suffering from the necessity of having indirect contact only with F, weakening her day-to-day integration with Ukraine.

79. Weighing up these lists, I have formed the clear view that as at November 2024 the factors that connected Y with Ukraine, whilst strong, were mostly concerned with her heritage and background, whereas those which connected her with England were to do with her immediate lived experience, that is to say her current residence at that time. I acknowledge that the fact that many of M's and Y's acquaintances/friends in England were other Ukrainian nationals does suggest a lack of integration, however, this is mitigated by the fact that Y was at nursery with what would have been a wide variety of local children and that would have integrated her and M with other non-Ukrainians in East Anglia.

80. I emphasise that Y's current situation did not (and does not) derogate from her Ukrainian nationality or heritage, which remains intact wherever she may reside, so the two are not in tension in my determination of her habitual residence. Nonetheless, because I am considering Y's habitual residence and whether it has changed from Ukraine to England, I must focus on those factors which may demonstrate her current disengagement with residence in Ukraine and those factors which may demonstrate her integration in England.

81. I also refer to the parties' intentions. Whilst I have found that her parents agreed that Y's stay in England would be temporary (i.e. a "return" not a "one-way" ticket) I have also found that it had no defined end-date (i.e. an "open-return"). It is in this context that I am in no doubt that, despite F's real desire to see Y and despite his genuine

frustration, anger and sadness that he could not, he wanted Y to feel settled in England for so long as she was here. And even when he wanted her to come home, he wanted her to feel settled until she did. This is demonstrated by the message referred to at ¶72 above and his offer of practical short-term assistance to her even after he asked M to bring her home, which is a tribute to his parenting. I therefore find that the parties' intentions do not mitigate or detract from Y's lived experience.

82. Balancing the factors set out above, I have concluded that they demonstrate the requisite degree of Y's disengagement from her Ukrainian environment and the requisite degree of her integration in the environment in England by November 2024, such that her habitual residence had by then changed from Ukraine to England.

83. Since, as at November 2024 when the Art. 3 'retention' occurred, Y was habitually resident in England, a wrongful retention did not take place at that date, or at all.

IS THE ART.13(B) EXCEPTION MADE OUT?

84. Whilst my finding as to habitual residence means that there has been no wrongful retention, I will nonetheless consider the issue of the Art.13(b) exception on the basis that it formed a central part of the evidence and submissions before me and to explain to the parties what decision I would have reached had I not reached the conclusion above as to habitual residence.

85. I have set out above the law that I must apply. I am not dealing here with a situation in which I must take allegations of risk at their highest. I remind myself that my assessment of risk must be reasoned and reasonable and based on an evaluation that includes consideration of the relevant admissible evidence that is before the court in a manner corresponding to the summary nature of the proceedings. I take on board the warning given by Williams J in Q v R at ¶56 above, that I must avoid generalities, and evaluate the particular risk to this particular child upon a return to this particular area at this particular time, taking a forward-looking perspective to that risk.

86. In the context of the war in Ukraine, I remind myself of the non-exhaustive list of factors set out by Harrison J Re G & B at ¶58 above, namely:

i) *the part of Ukraine to which the child is to return*: Chernihiv city is to the north of Ukraine, relatively close to the borders with Belarus and Russia; it was besieged at the outset of the war and has suffered numerous direct attacks at various times since. Whilst bearing in mind the approach taken by Hayden J to FCDO reports, and making sure I keep then in context, I note that Chernihiv is a long way away from the safer areas of Ukraine, such as Lviv, and sits firmly within the "red zone".

ii) *the age of the child*; Y is 3 ½ years old. Her safety is entirely dependent upon her adult carers, predominantly M, since F is serving in the Ukrainian military.

iii) *the circumstances of the parents*: M lives in England and is fearful of the danger posed by living in or near Chernihiv. F is a diver in the Ukrainian military and has an understandably more robust tolerance of the risks posed by the war.

iv) *whether the child's primary carer is the person who wishes the child to return*: M is the primary carer of Y and does not wish to return.

v) *the overall circumstances of the child both in this jurisdiction and in Ukraine*: Y is safe and secure in England. The overriding downside of being here is that she does not have direct contact with F when he not undertaking his military obligations. I will consider in greater below the circumstances were she to return to Chernihiv, since this forms the substance of M's case in support of the Art.13(b) exception.

87. There is conflicting evidence regarding the level of risk posed by returning to live in Chernihiv. The evidence I have seen includes F's statement that M has "grossly exaggerated the situation in Ukraine and in particular Chernihiv." Referring to the fact that M visited Ukraine on three occasions after she moved to England with Y, F states that if M genuinely believed she was in danger there, she would not have made those visits, two of which were with Y. His evidence is that:

"…families with children, remain in Ukraine and have adapted their lives to the current circumstances. Life continues, and essential services, schools, and recreational facilities remain operational. People have become resilient and no longer reacts with alarm to the sound of sirens…"

88. He went further and stated that M (and presumably Y too) *"was not under any immediate danger"* when she was in Chernihiv, although he also referred to missiles passing overhead while she was there. His case is that:

"The town [Chernihiv] is safe compared to other parts of Ukraine. It is not a primary target of enemy attacks. Whilst drones and rockets pass through Chernihiv, they are generally directed toward other areas that are of interest to the Russian military."

89. F also relies on the fact that many Ukrainians, including members of M's family, have not left the country, or Chernihiv specifically, and states,

If conditions in Chernihiv were genuinely as unsafe as she alleges, then no doubt they would have sought refuge abroad under the visa schemes. Their decision to remain in Chernihiv demonstrates that it is safe despite the ongoing conflict. There is no reason why Y will not be safe in Ukraine.

90. M, on the other hand, is extremely fearful of returning with Y to Chernihiv. She vividly recalls a siren going off and hearing an approaching missile while she was there with her mother, brother and F in August 2024 and described her visceral fear and instinct to protect Y, even though she was not there with her. She relies upon numerous newspaper reports of missile and drone attacks not only in the Chernihiv region (which I note appears to extend to locations over 100km from the city and so not all of which are directly referable to the situation in Chernihiv city) but also specifically in the city itself, including in residential areas and causing damage to schools and a hospital. Such attacks have continued in recent days, as I am aware from Mr Gration's written submissions and the news more generally. Less than a month ago, on 21 October 2025, the BBC reported that:

The Ukrainian city of Chernihiv is in total blackout following what the authorities describe as a "massive" assault by Russian missiles and drones, with hundreds of thousands of people affected.

Across the wider Chernihiv region, four people are reported to have been killed as residential neighbourhoods were struck in the town of Novhorod-Siverskyi.

Ten others were injured, including a 10-year-old girl.

The country's most northerly region is the latest to be hit in an intensifying series of attacks on civilian infrastructure as Russia targets energy supplies, the rail network, homes and businesses in its full-scale invasion of Ukraine.

91. M also relies on messages sent to her by friends who are living in Chernihiv city, who give accounts of the missile and drone attacks that are taking place. Whilst it is suggested by Prof. George that these may be a selective, he is not in a position to challenge the truth of them, and he does not do so (although I note that neither were they tested by any cross-examination).

92. I cannot and do not attempt, in these summary proceedings, to establish the truth of individual incidents reported in newspapers or the media or by M's friends of bombings, cruise or ballistic missile or drone attacks, noting what was said by Hayden J in M v F at ¶40, *"… it is a universal feature of war that truth is its first casualty"*. I cannot however discount them to the extend of F's case that *"There is no reason why Y will not be safe in Ukraine"*. On the contrary, I find that there is every reason to be concerned about Y's safety were she to return to Chernihiv now. It is relatively close to the Russian border and it cannot be denied that it has been and remains a target for Russian aggression. That may not be at the same level of other cities or regions in Ukraine, but the evidence shows that the enemy aggression directed at Chernihiv city is real and significant and ongoing.

93. Indeed, F accepts as much in relation to a specific attack that took place in April 2024, in respect of which he says:

The hospital was bombed around 17 April 2024. Despite the attack, it remains operational and continues to provide treatment to both inpatients and outpatients. The building sustained only collateral damage and remains structural intact. Sadly, seventeen people lost their lives in the attack. The hospital was mistakenly targeted as the intended target was a nearby hotel, which was believed to be housing military personnel.

94. This appears to conflict with his case which he concludes as follows:

… the suggestion that Y's return would expose her to a grave risk of harm or place her in an intolerable situation is wholly without foundation… life has returned to normal… All the neighbours and families in the community in Chernihiv that I know, have resumed full living activities…we do not live in a war zone… there is no basis to suggest that Y's return to Ukraine would expose her to a grave risk of harm or place her in an intolerable situation.

95. I find that this aspect of F's evidence cannot be relied upon in these proceedings for two reasons: his level of tolerance to risk has more likely than not been affected by his presence in a war zone and his work for the military over the last nearly 4 years; and his perspective is, again more likely than not, understandably but significantly affected by his genuine desire to see his daughter again.

96. This contrasts with Y's and M's perspective: as M says, *"Y and I have both lived for around 18 months in a peaceful environment, free from air raid sirens and explosions."* I cannot ignore the psychological impact that a move from East Anglia to a location which experiences frequent missile and drone attacks, often accompanied by sirens, would have on Y, and on M as her primary carer, quite apart from the risk of physical harm

97. I therefore find, as Harrison J did in Re G and B, that the risks to Y of moving to a location that is specifically and currently overshadowed by war are 'grave' risks that she should be expected to tolerate. I find that F's particular tolerance for such risks is not one I can reasonably apply to Y (or to M, who would return to Ukraine with her). I accept Mr Gration's submissions that the risks posed by an enemy aggressor are of a wholly different order to risks of everyday life in a modern city. The risks that Y would face were she to return to Chernihiv now pose an unquantifiable possibly relatively low statistical risk of death or really serious injury, but one that is nonetheless properly evaluated as 'grave'. Similarly, the risk of indirect harm to Y suffered as a result of her witnessing and/or being directly affected by such harm coming to others, potentially including M, is similarly 'grave' and intolerable. I place little weight on the fact that some, including F, have stayed in Chernihiv, because I do not know why they have done so. Some (like F) may have had no choice.

98. Most of the protective measures discussed related to what Prof. George described a 'soft-landing' measures, and Mr Gration did not disagree. Mr Gration submitted, however, that this was because the risks of war are not risks that any protective measures can ameliorate. The only measure offered by F that comes close to doing so is his offer "not to prevent an internal re-location if the situation in Chernihiv deteriorates". However, as the issues ventilated in these proceedings have shown, there is no certainty, in fact there is significant uncertainty, that M and F would agree on what constitutes deterioration so as to justify such a step. It is clear as I have set out above that F and M have very different perceptions as to the tolerable level of risk for Y. It is not reasonable that they should have to litigate any such disagreement in courts that may well be affected by such a deterioration. In any event, an internal re-location to a place in Ukraine where Y (and M) have no established links or integration is not my view a reasonable proposition.

99. I therefore find that the Art.13(b) exception is made out. Given this conclusion, I will exercise my discretion so as to refuse an order for Y's summary return.

CONCLUSION

100. I find that there was a 'retention' of Y by M in November 2024.

101. I find that by November 2024, Y was habitually resident in England, so the retention was not a breach of F's rights of custody in Ukraine.

102. I also find that the Art.13(b) exception is made out.

103. I therefore refuse to order Y's return to Ukraine.

104. I nonetheless remain concerned as to the impact of this decision on Y's relationship with F. In this regard, I invite Prof. George to consider how best to pursue an application in that regard, bearing in mind the remedies available pursuant to Art.21 and the ongoing children proceedings in the court in Ukraine and to seek to agree with Mr Gration such directions as may assist in facilitating an early resolution of any necessary welfare decision as F's ongoing involvement in Y's life.