Neutral Citation Number: [2025] EWCA Civ 1603

Case No: CA-2025-002590

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE,
FAMILY DIVISION
MR JUSTICE PEEL
FD25P00204

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/12/2025

Before :

LORD JUSTICE MOYLAN
LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE COBB

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Re B (1980 Hague Convention: Article 13(a)/(b))

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- -

Jennifer Perrins and **Elle Tait** (instructed by **Dawson Cornwell LLP**) for the **Appellant (mother)**
Teertha Gupta KC and **Miriam Best** (instructed by **Walker Family Law**) for the **Respondent (father)**

Hearing date : 18 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Cobb :

The Application

1. This appeal concerns B, a boy aged 2 years old. He was born in England in June 2023 to Romanian parents, of Roma heritage. Shortly after his birth he travelled to Romania with his mother ('the mother'), and he lived there for the first fourteen months of his life. In August 2024 he returned to England with his mother (in circumstances which I describe more fully at §11 below). In April 2025, B's father ('the father') applied to the English Court for B's return to Romania under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention').

2. The father's application for summary return was opposed by the mother. She sought to defend the application by seeking to bring her case within one of a number of the exceptions provided for in Article 13 of the 1980 Hague Convention, namely: (i) that the father had consented to the removal of B to this country in August 2024 (Article 13(a)); (ii) that the father had subsequently acquiesced in B's retention in this country (Article 13(a)); (iii) that the Romanian Court had acquiesced in B's retention in this country (Article 13(a)); and/or (iv) that a return would expose B to a grave risk of physical or psychological harm or otherwise place him in an intolerable situation (Article 13(b)). Were she to succeed in establishing any of these exceptions, she asked the court to exercise its discretion not to order B's return.

3. The father's application was heard and determined by Mr Justice Peel ('the Judge') at a two-day hearing on 23 September 2025. The Judge heard limited oral evidence, from the father, the mother and the maternal grandfather. In a reserved judgment handed down on 2 October, he gave his reasons for granting the father's application for summary return, which he ordered should take place by midnight on 15 October 2025. The order was expressly made subject to a number of conditions, and the Judge stayed the return order until the stipulated protective measures had either been declared to be enforceable in Romania under the 1996 Hague Child Protection Convention ('the 1996 Hague Convention') or had "otherwise [been] incorporated into enforceable orders of the Romanian Court" (see further §51 below). The Judge refused the mother's application for permission to appeal but further stayed the order until the determination of the mother's application for permission to appeal his decision, on the basis that if such permission were to be granted, the stay would endure until determination of the substantive appeal. The mother sought permission to appeal and this was granted (on limited grounds: see §54 below) by Moylan LJ on 4 November; in the circumstances, B currently remains in this jurisdiction.

4. For the purposes of this appeal, we have read the written evidence filed for the final hearing, and have been provided with a transcript of the oral evidence. We have been greatly assisted by counsel who have presented the arguments on appeal with great skill.

5. For the reasons which I set out below, I would dismiss the appeal.

Background facts

6. The father is 28 years old; he is in full time employment in Romania. The mother is 24 years old. The parents were never married. Their only child is B.

7. The mother moved to England from Romania with her parents when she was 14 years old. In 2021, she met the father while on holiday in Romania. She moved back to Romania in August 2022 to live with the father and his parents; it appears that their relationship became increasingly difficult and unhappy. She says that the father and his family were physically and verbally abusive, and demeaning and controlling of her; she claims to have felt "isolated and anxious" in their home. In March 2023, the mother left the father and the relationship came to an end. The mother believed that the father was in a relationship with another woman in England. The mother moved briefly to her own grandmother's home in Romania, before returning to her parents in England. By that time she was six months pregnant. B was born in England in June 2023. B's birth was registered in England; the father's name was not recorded on the birth certificate. Within weeks of B's birth, the mother and father reconciled, and in July 2023 the mother travelled with B to Romania, and moved in again with the father in his parents' home.

8. The Judge recorded the mother's account of what followed:

> "According to the mother, the father was angry that his name was not on B's birth certificate, threatened to kill her and her family if she did not change it, beat her and locked her in a cellar. The mother alleges she was also threatened with death by the paternal grandfather and slapped around her face by the paternal grandmother. Thereafter the mother says that she was effectively imprisoned in the house and prevented from caring for B fully. The physical abuse continued. She was too terrified to leave or report the abuse because she feared B would be removed from her".

9. The mother's evidence was that the paternal family were once again controlling of her, and "mistreated" her.

10. In 2023 and 2024, the mother returned to England twice to see her family; on neither occasion did she take B with her. Her case is that the father would not let her bring B to this country.

11. In the summer of 2024, the father travelled to England for work. At or about the same time, the mother's parents travelled to Romania for a holiday. The mother told her parents of the abuse which she was suffering at the hands of the paternal family. The mother asserted (and the Judge accepted the mother's evidence on this) that there followed a conversation on 12 August 2024 between the mother and father about his intentions as to their relationship; specifically, the mother wished to know whether the father was planning to return to be with her and B in Romania. The mother said that the father was non-committal (my description of her evidence), and in the light of his indifference to her and B, the mother decided to travel to England. She did so on 20 August 2024 with her parents. The Judge found:

> "… that the father did not know of the departure in specific terms, but had some inkling from the conversation on 12

> August 2024 that the mother might leave Romania with B, although he did not know for sure that it would happen or when".

12. The father immediately returned to Romania from England and sought B's return to that country.

13. In late August 2024, on the Judge's finding, the father telephoned the maternal grandfather (there was an inconsequential dispute about the precise date), and there was (again on the Judge's finding) some discussion about money being paid to the father to stop/prevent court proceedings in Romania. A police report records that, allegedly, at or about that time threats to kill were made by the father to the maternal grandfather ("I'm coming to England to kill you").

14. On 2 September 2024, the father filed a formal criminal complaint with the police in Romania arising from the mother's actions in removing B. This was the first of altogether four legal processes which he initiated arising from the mother's actions; the other three sets of proceedings are as follows:

    i) An application (2 October 2024) for the equivalent of what is known in this jurisdiction as a 'child arrangements orders' (section 8 Children Act 1989);

    ii) An application (6 November 2024) for the return of B to Romania under the Hague Convention (jurisdiction denied by the Romanian Court because B was physically in England);

    iii) A further application (3 March 2025) in Romania for the urgent exercise of parental responsibility (interim measures by way of a presidential ordinance), for B to live with the father. In the alternative, the father sought contact with B. A number of hearings have taken place in relation to these proceedings; both parents have been legally represented. The Romanian Court has determined a contested issue relating to jurisdiction, and has expressly accepted jurisdiction (6 June 2025). On 20 August 2025, a request under the 1970 Hague Convention on the Taking of Evidence Abroad was made via the Romanian Central Authority to obtain an assessment of B's living conditions from the relevant English local authority.

15. On or about the 21 or 22 September 2024, the parties engaged in an attempted negotiation of the living arrangements pertaining to B; this took place in Romania with the assistance of Roma community elders. I shall refer to this as the 'September 2024 negotiation'. It is a surprising feature of this case that, notwithstanding its centrality to the mother's case on acquiescence and domestic abuse (in respect of which this short but important chapter of the history occupied a great deal of the Judge's time and attention at the final hearing), neither party had previously mentioned the September 2024 negotiation in their lengthy written evidence prior to the original listed final hearing in early September 2025. An adjournment was required to allow the parties to file evidence.

16. The undisputed facts about the September 2024 negotiations appear to be these:

i) These negotiations were conducted by two elders of the Roma community (variously described in the hearing as 'the Gypsy Court', the 'Gypsy Judges' and the 'Elders Committee'), one chosen by the father and one chosen by the maternal grandfather on behalf of the mother;

ii) The mother played no direct part in the negotiation, save for one phone call;

iii) The negotiations seem to have taken place through the elders shuttling between the father and the maternal grandfather who never met during this process; the father and maternal grandfather can only speak about what the elders respectively communicated to them independently at the time;

iv) None of the negotiations were recorded in writing by the parties;

v) There was no independent evidence of a payment of any money by the maternal family to the father.

The Judge further found as a fact in relation to the September 2024 negotiation that:

vi) No mention was made of the proposed grant of a power of attorney by the father;

vii) A sum of €13,000 was raised by the mother's family and given to the elders to hand to the father as part of the negotiations;

viii) No overall agreement was reached in this process; in particular, there was no agreement reached that B would live in England;

ix) The Roma elders appear to have said different things to each party; the father and the maternal grandfather left with different understandings of the outcome.

17. The Judge recorded that sometime after the September 2024 negotiations the maternal grandfather asked the father to sign a power of attorney; he said that he wished to ensure that if B returned to Romania there would be no difficulties with him leaving again; the father "reacted angrily" to this suggestion. The father made clear that he would only sign the power of attorney once B had returned to Romania. There followed a heated exchange of messages between them. The Judge described this as follows:

> "The father's position is neatly summarised in one of the messages: "Bring the boy and afterwards we go and sort out the documents at the notary". In my judgment, this was a direct result of them each having different impressions of what had been discussed/agreed with the elders" (i.e., in the September 2024 negotiations).

He added:

> "Coinciding with the row over the power of attorney, the father resumed his threats to the mother's family which he denies but which I accept as having taken place. Messages in the bundle (which he denied were from him) showed a

> number of such threats in October 2024". (Emphasis by underlining added, both extracts).

18. In the autumn of 2024, it appears that the father sent a number of abusive messages to the mother and/or her family; a selection were exhibited in the evidence. Although we have not seen the full run of messages, it appears (from what we have seen) that at least some of the messages in reply from the maternal family could also be described as mildly offensive. The Judge accepted that the father resumed his threats to the maternal family at this time.

19. On 12 November 2024, the maternal grandfather sent a message to the father indicating that during the September 2024 negotiations he had paid the Roma elders €13,000 for onward transmission to the father and had done so "out of fear". The Judge rejected the father's argument that this text message had only been sent in a self-serving way in order to bolster the mother's case in the Romanian legal proceedings. The Judge confirmed that this evidence provided "some corroboration for the [maternal grandfather's] evidence that €13,000 was raised and given to the elders" (judgment [24]).

20. The father visited England in December 2024 to see B. He was invited to visit the maternal family home, but there was a disturbance while he was there; the police were called. There is a dispute about precisely what happened; allegations were made by one against the other. Specifically, the maternal grandfather complained that he was assaulted by the father, but he made no formal complaint to the police in that regard.

21. The father issued his application under the 1980 Hague Convention in April 2025.

The law

22. Before turning to the judgment under review, it is convenient to summarise the key legal principles in play in this application. I do so under three headings:

    i) Acquiescence by the applicant parent;

    ii) Acquiescence by the court of the requesting state;

    iii) Grave risk of physical or psychological harm.

23. *Acquiescence by the applicant parent*: Lord Browne-Wilkinson's speech in *Re H & Others (Minors)(Abduction: Acquiescence)* [1997] UKHL 12; [1998] AC 72; [1997] 2 All ER 225; [1997] 1 FLR 872 remains the seminal reference point on this issue. The Judge recited the summary of principles from this speech (see §§43-44 below). At the hearing of this appeal, we were helpfully taken by Ms Perrins to some of the preceding judicial discussion. At page 87G - 88D Lord Browne-Wilkinson dealt with the ordinary / principal situation in which *subjective* acquiescence can be said to arise in an Article 13 case:

> "What then does Article 13 mean by "acquiescence"? In my view, Article 13 is looking to the subjective state of mind of the wronged parent. Has he in fact consented to the continued presence of the children in the jurisdiction to which they have been abducted? This is the approach

> adopted by Neill L.J. in *In re S. (Minors)* [1994] 1 FLR 819 and by Millett L.J. in *In re R (Child Abduction: Acquiescence)* [1995] 1 FLR 716. In my judgment it accords with the ordinary meaning of the word 'acquiescence' in this context. In ordinary litigation between two parties it is the facts known to both parties which are relevant. But in ordinary speech a person would not be said to have consented or acquiesced if that was not in fact his state of mind whether communicated or not… in the ordinary case the court has to determine whether in all the circumstances of the case the wronged parent has, in fact, gone along with the wrongful abduction. Acquiescence is a question of the actual subjective intention of the wronged parent, not of the outside world's perception of his intentions."

24. At page 89C, Lord Browne-Wilkinson then dealt with the "exception" of *objective* acquiescence:

> "It is a feature of all developed systems of law that there are circumstances in which one party, A, has so conducted himself as to mislead the other party, B, as to the true state of the facts. In such a case A is not allowed subsequently to assert the true facts as against B. In English law, this is typically represented by the law of estoppel but I am not suggesting that the rules of English law as to estoppel should be imported into the Convention. What is important is the general principle to be found in all developed systems of law. It follows that there may be cases in which the wronged parent has so conducted himself as to lead the abducting parent to believe that the wronged parent is not going to insist on the summary return of the child. Thus the wronged parent may sign a formal agreement that the child is to remain in the country to which he has been abducted. Again, he may take an active part in proceedings in the country to which the child has been abducted to determine the long term future of the child. No developed system of justice would permit the wronged parent in such circumstances to go back on the stance which he has, to the knowledge of the other parent, unequivocally adopted: to do so would be unjust….
>
> … these exceptional circumstances can only arise where the words or actions of the wronged party show clearly and unequivocally that the wronged parent is not insisting on the summary return of the child: they must be wholly inconsistent with a request for the summary return of the child. Such clear and unequivocal conduct is not normally to be found in passing remarks or letters written by a parent who has recently suffered the trauma of the removal of his

> children. Still less is it to be found in a request for access showing the wronged parent's desire to preserve contact with the child, in negotiations for the voluntary return of the child, or in the parent pursuing the dictates of his religious beliefs." (Emphasis by underlining added).

25. The summary of principles is to be found at page 90E-G of the report:

> "1. For the purposes of Article 13 of the Convention, the question whether the wronged parent has "acquiesced" in the removal or retention of the child depends upon his actual state of mind. As Neill L.J. said in *In re S. (Minors)* "the court is primarily concerned, not with the question of the other parent's perception of the applicant's conduct, but with the question whether the applicant acquiesced in fact".
>
> 2. The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent.
>
> 3. The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law.
>
> 4. There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced". (Emphasis by underlining added).

26. Hale J (as she then was) in *P v P* [1998] 1 FLR 630 ('*P v P*') considered whether negotiations regarding contact and attempts to settle a dispute under the 1980 Hague Convention between the parents could amount to conduct such as to warrant a finding of acquiescence; she rejected this, commenting at page 634-5:

> "This case has all the hallmarks of what no doubt frequently occurs in these cases, of parents seeking to compromise the situation, allowing the abducting parent to remain in the country to which he or she has gone, provided that the wronged parent is satisfied as to the other matters which are in issue between them. Only if there were such a concluded agreement could it be said that there was clear and unequivocal conduct such as to fall within the exception… it would be most unfortunate if parents in this situation were

> deterred from seeking to make sensible arrangements, in consequence of what is usually an acknowledged breakdown in the relationship between them, for fear that the mere fact that they are able to contemplate that the child should remain where he has been taken will count against them in these proceedings. Such negotiations are, if anything, to be encouraged. They should not therefore necessarily fall within the exception or necessarily lead to the conclusion that as a matter of fact there was a subjective state of mind that was wholly content for the child to remain here" (Emphasis by underlining added).

Hale J's decision and reasoning were upheld in the Court of Appeal ([1998] 2 FLR 835).

27. *Acquiescence by the court of the requesting state*: At the hearing before the Judge, both counsel conceded that the court of the requesting State could acquiesce in the removal or retention of the child to the requested State. This concession appeared to derive from their reading of Article 13(a), and in particular: "the person, institution or other body having the care of the person of the child … had consented to or subsequently acquiesced in the removal or retention" of the child (Emphasis by underlining added).

28. Taking a step back, it is now well accepted in this jurisdiction that a court can have 'rights of custody' (Article 3 of the 1980 Hague Convention) of a child where the court is seised of an application which raises "matters of custody within the meaning of the Convention". This is the "purposive construction" of the phrase "having the care of the person of the child" which was promulgated by the House of Lords in *Re H (Abduction: Rights of custody)* [2000] 2 AC 291 at page 302 and page 303; it is said to stem from "the right to determine the child's place of residence" (per Lord Mackay):

> "… the phrase "rights of custody" are said by article 5 [similar language in Article 13] for the purposes of this Convention to 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; many of the matters relating to the care of the person of the child will consist in duties and powers rather than rights in the narrow sense of that word and in particular the power to determine the child's place of residence being itself characterised as a right underlines the width that should be given to the word "rights" in this Convention".

29. However, there is in fact little support in the caselaw for the proposition that a court can as a matter of fact 'acquiesce' in the removal or retention of a child. The parties drew the Judge's attention, and ours, to the decision of Holman J in *NM v SM* [2017] EWHC 1294 (Fam) ('*NM v SM*') and of MacDonald J in *London Borough of Haringey v T (1996 Hague Convention, Article 7)* [2024] EWFC 151 ('*Haringey*').

30. In *NM v SM,* the applicant for a return order to Ireland under the 1980 Hague Convention did not actually possess rights of custody, unlike the father in the instant case. The courts of Ireland had, on the application of the applicant parent, specifically declined to make an order requiring the child to return to (or, on the facts, remain in) Ireland (the mother had brought the child to Ireland for the hearing, having earlier removed her to England). In relation to the Irish court's decision, Holman J commented:

> "[49] The very court in which the only rights of custody in this case are vested (apart from those possessed by the mother) therefore had a very clear opportunity, if it thought fit, to make some order retaining this child in Ireland. We do not know the reasons why it did not do so, but we do know that it did not do so…
>
> [51] … the Irish court had a very clear and obvious opportunity, if it wished to do so, to assert and, indeed, vindicate its rights of custody, and it chose not to do so" (see also [23]/[26]). (Emphasis by underlining added).

Even though, as Holman J recognised, the circumstances in which a court may be said to acquiesce would be "very different" from those in which a parent may be said to acquiesce ([57]), he nonetheless found ([54]) that the court had indeed "acquiesced" in the child's retention in England within the meaning of Article 13(a) of the 1980 Hague Convention.

31. In *Haringey*, the court was concerned with the exercise of jurisdiction under Article 7 of the 1996 Hague Convention (retention of jurisdiction by the court's of the child's habitual residence); in that case the subject child had been removed during the currency of the care proceedings from England (undeniably the child's state of habitual residence prior to the removal) to Poland (the mother's home state). MacDonald J was invited to declare that the English Court had acquiesced, or was prepared to acquiesce, in the wrongful removal of the child from England to Poland in order to allow proceedings to continue there. He accepted that a court of a requesting state could do so ([81]), but on the facts declined to do so. To reinforce the point, MacDonald J was considering the issue in the court of the state which was said to have acquiesced or prepared to acquiesce.

32. Counsel's search of the INCADAT website (the leading legal database on international child abduction law, a service offered by the HCCH: Hague Conference on Private International Law) revealed no other illustrations in the case law either in England & Wales or elsewhere in signatory countries of a court being held to acquiesce in a wrongful removal or retention in proceedings under the 1980 Hague Convention.

33. Pausing there, I should record that I am doubtful that a court could ever as a matter of fact *subjectively* acquiesce in a child's removal or retention (Lord Browne-Wilkinson's primary example: see §23 above). A court is not possessed of a 'state of mind' to 'consent' to the continued presence of the child in the country to which they have been abducted; different judges may preside over sequential hearings, bringing different 'states of mind' to the case. I am equally doubtful that a court can as a

matter of fact or law be said *objectively* to 'acquiesce' in the removal or retention of the child under the 1980 Hague Convention (Lord Browne-Wilkinson's exception: §24 above). There is a material difference between vesting in the court of the requesting state the 'rights of custody' of the child (which is essentially a status) and the presentation by the court of the requesting state of conduct which is said "clearly and unequivocally" to lead the parties (specifically the abducting parent) to believe that the court (*qua* "wronged parent") is not asserting or going to assert its "rights" to the summary return of the child and are inconsistent with such return.

34. In my judgment, neither *NM v SM* nor *Haringey* support (or strongly support) the proposition conceded before the Judge and contended for by the Appellant mother in this case. Holman J offers no real analysis for his conclusion that the court of a requested state could treat the court of the requesting state as acquiescing and indeed observed (see §30 above) that he did not "know the reasons why" the Irish Court did not order the child's return. Macdonald J in *Haringey* (at [81]) referred to the 'objective' test as "more attractive" than the 'subjective' test, but I note that he did not in fact rule out the possibility of the court of the requesting state subjectively acquiescing.

35. Finally, it is worth observing that if a court could either subjectively or objectively be said to acquiesce in a child's retention, this could (or more likely would) lead to considerable confusion in any case where there is a wronged parent with rights of custody who is plainly *not* as a matter of fact acquiescing to the retention of the child abroad.

36. *Grave risk of physical or psychological harm*: The exception to return founded upon Article 13(b) is well-trodden territory, and reliance in this appeal and at first instance was inevitably placed on *Re E (Children)(Abduction: Custody Appeal)* [2012] 1 AC 144 ('*Re E*'). In that case, the Supreme Court described Article 13(b) as "of restricted application" ([31]), further commenting (importantly) that a court considering a situation similar to that which obtains here should ask itself;

> "… whether, if [the allegations of domestic abuse] are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk" (*Re E* at [36]).

In this case, the Judge drew from a number of further sources including (set out below in chronological sequence, rather than as they appear in the judgment at first instance): *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10; [2012] 2 AC 257 at [34]; *Re C (Children) (Abduction: Article 13(b))* [2018] EWCA Civ 2834 at [39]; *G v D* [2020] EWHC 1476 (Fam) at [39]; *Re IG (Child Abduction: Habitual Residence: Article 13(b))* [2021] EWCA Civ 1123 where Baker LJ at [47] summarised and listed the core principles; *Re C (Article 13(b))* [2021] EWCA Civ 1354 at [49]-[50]; *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415 at [45]. Each of the paragraphs from the judgments referenced above were reproduced in full in the Judge's judgment.

37. In relation to the specific issue of domestic abuse, the Judge rightly referenced the definition of abuse in section 1(3) of the Domestic Abuse Act 2021, the procedural

safeguards built in to domestic cases by PD12J FPR 2010, and the jurisprudence as to the impact on child welfare of domestic abuse including this court's judgment in *Re H-N* [2021] EWCA Civ 448.

Judgment

38. The Judge recorded the essential background history which I have, in material respects, reproduced above.

39. He referenced the phone call between the father and the maternal grandfather towards the end of August or early September (see §13 above) and said this:

> "[16] … at some point in August/September, according to the maternal grandfather, the father phoned him asking for money. He said he would let B stay in England if her family paid him a sum, which is customary in Roma community arrangements for children. He said that if he did not receive money, he would kill the maternal grandfather and other family members. If money was paid, he said he would stop all proceedings in Romania. The father denied this conversation took place but I consider it likely that something along these lines occurred, and at least some mention of money was made, although there was no agreement. Thereafter, it is the mother's case that the father made repeated threats to kill on numerous occasions in this period, both made against the mother's family in England and her family in Romania." (Emphasis by underlining to record the Judge's finding).

40. Of the September 2024 negotiation, the Judge observed that "establishing whether an agreement took place and, if so, in what terms is particularly difficult". He rehearsed his note of the key evidence relating to the September 2024 negotiations in this way:

> "[20] … the mother did tell me, which I accept, that her primary aim in the discussions was to try and effect a reconciliation with the father if possible and if that was not possible, then to agree finances between them so as to stop what she describes as the father's aggressive and threatening behaviour; in short, to buy peace." (Emphasis by underlining added).

41. The Judge continued:

> "[21] The maternal grandfather confirmed that he wanted to bring the threats to an end, and if possible to effect a reconciliation. He did not say to me that the purpose of the discussions was to ensure that B would remain in England. He said that his essential terms, relayed to the elders, were (i) to have peace between the families, and (ii) for a power of attorney to be signed so that B could travel back and forth between England and Romania without risk that he

would be retained in Romania; … Implicit within that, it seemed to me, was an expectation that B would continue to live with the mother in England. However, that was not, on his evidence, an explicit requirement.

[22] The maternal grandfather said that a payment of €13,000 was suggested by the elders and agreed by him to achieve his priorities. True, he said that the elders told him that B would be able to stay with the mother, but (i) that is what he was told by the elders, not by the father, and (ii) it was not specifically a term that B would continue living in England, and (iii) it was not, on his own evidence, what was agreed; he said to me that the agreement was payment of €13,000, securing a power of attorney and enabling harmony to be restored.

[23] The father says that the elders informed him of two options: (i) the mother's family to pay him €13,000 and B to live in England or (ii) him to pay the mother's family €100,000 for B to be returned to Romania. He rejected both. He denies having received any money. He says, and I accept, that no mention was made to him of a power of attorney. Instead, he thought they reached an understanding as to some form of shared care, taking place between Romania and the UK. He said "The broad agreement that we reached was that the mother would come back to Romania with B to discuss and agree the details of how this would work and to formalise the agreement via lawyers". Subsequently there was some talk of three months with the mother and one month with the father.

[24] The maternal grandfather says €13,000 was paid. The evidence on this is thin. The money, he told me, was raised from family members, and was all in cash. The maternal grandfather says he handed it to the elders for onward transmission. They were supposed to hand it to the father. They told the maternal grandfather that they had done so. There is no direct evidence of the payment from the maternal grandfather to the elders and then from the elders to the father. In court proceedings in Romania, the maternal grandmother told the Romanian court at a hearing on 10 July 2025 that €13,000 was paid "two or three weeks later" and because the family was afraid of the father who was threatening them. The maternal grandfather sent a text to the father on 12 November 2024 saying, "I gave you €13,000 out of fear" (I reject the father's submission that this was sent for forensic purposes to assist in legal proceedings). These pieces of evidence provide some corroboration for the maternal grandfather's evidence that €13,000 was raised

> and given to the elders, but the father has always denied he received anything." (Emphasis by underlining added).

42. The Judge drew the evidence together in this way:

> "[25] … I am of the view that no overall agreement was reached, and in particular there was no agreement for B to live in England. The elders seem to me to have laid the groundwork for some form of relative peace, to create some space within which the parties could decide on child arrangements. I consider it likely that both parties envisaged that some form of shared care arrangement, with B living with the mother and spending time with the father, was achievable. The main aim of the mother's family was to try and stop the father's aggression and to obtain a power of attorney so that B could not be retained by the father in Romania. They thought they had achieved that. The main aim of the father was to try and secure time with B. He thought he had achieved that. The elders seem to have said different things to each party. Each party left with a different understanding.
>
> [26] As for whether €13,000 was paid, in my judgment that sum was indeed raised by the mother's family and given to the elders to hand over in cash to the father (precisely when is unclear). It seems plausible to me that the elders, who conducted the discussions on their own terms, without the parties meeting and with no record of what happened, did not hand the money to the father. They may have been able to avoid giving him the money because on the father's case he rejected the monetary offer and therefore did not expect to receive a payment, whereas the maternal grandfather was told by the elders that the father had accepted it and therefore the money needed to be paid. Neither party would have been any the wiser. If the father did receive the money, then he deceived the mother's family. On either version, however, the principal purposes for the payment from the point of view of the mother's family were (i) to persuade the father to stop his threatening behaviour and (ii) to obtain a power of attorney, and from the father's point of view it was to try and secure some contact with B. It was not to secure B remaining in England". (Emphasis by underlining added).

43. In light of the evidence recorded, and the findings made, the Judge said this on the subject of acquiescence:

> "[45] … this defence stands and falls on (i) whether agreement was reached between the mother's father (on the mother's behalf) and the father in September 2024 for B to remain in England and (ii) if so, whether that constituted acquiescence under either of the limbs referred to in *Re H* (a

> finding that the father subjectively acquiesced to retention here, or a finding that even if he did not subjectively acquiesce, his words or deeds clearly and unequivocally led the mother to believe so)".

44. The Judge found that neither limb of the 'acquiescence' test was made out; he said this:

> "[46] The context is the father having consistently opposed B's removal to England, and having sought B's return to Romania. The mother must satisfy the court that thereafter the father set aside his strong objections and clearly acquiesced in his retention. In my judgment she is unable to do so. There is, as I have indicated, no contemporaneous documentation to confirm the agreement. There is no evidence from the elders. I have set out above my findings on these events. I consider that each party had different discussions with the elders and left with a different understanding. There was no clear accord that B would stay in England. The maternal grandfather thought one thing, the father another. The maternal grandfather's aims were to secure a power of attorney and a degree of inter family peace. The father wanted to be able to see B in Romania. It is hard to conclude that any agreement was reached about any matters, and in particular about B continuing to remain in England. At best they each had an understanding which did not align with the other's. This seems to me to have been discussions genuinely aimed at trying to resolve differences which appeared to create some space for resolution but did not achieve anything definite; the sort of situation referred to in *P v P* (supra). I am far from sure that €13,000 was passed on by the elders to the father, but even if it was, it was not, I am confident, part of an agreement for B to live in England; the payment, as some of the mother's family members have said, seems to have been principally motivated by fear of the father and a hope that he would cease his threatening behaviour. Overall, the picture is confused, unclear and uncertain." (Emphasis by underlining added).

45. In relation to the acquiescence of the Romanian Court, the Judge found that it would be "highly unusual" for a court in England to determine that, if a child is allegedly abducted from this jurisdiction to a 1980 Hague Convention country, the court itself should consent to or acquiesce in the wrongful removal or retention. He continued:

> "[53] … where (as here) a child has been brought to this country and a return order is sought under the 1980 Hague Convention, it would be almost unheard of for the English court to conclude that an overseas court has acquiesced to the removal or retention. In this case, the father was exercising his rights of custody. I cannot see how it can be

> said that the foreign court has acquiesced in removal if the parent has not. Further, in my judgment that should be for the foreign court to decide, rather than the English court. There is no suggestion that the Romanian court has been asked to determine that it has in some way acquiesced to the removal, or that it has in fact done so. It would be unprincipled for me to assume the role of the Romanian court and make decisions on their behalf. In any event, as it happens there is nothing from the court proceedings in Romania which, in my judgment, begins to justify the assertion that the courts there have formally acquiesced under Article 13".

46. The Judge found that as a matter of fact *NM* and *Haringey* did not assist. In particular, he distinguished the *Haringey* case observing that:

> "[50] … in that case MacDonald J was sitting in a court in the outgoing country (England) and making a determination as to whether the English court should acquiesce. By contrast, in this case, I am sitting in the incoming country (England) and am being asked to conclude that the court of the outgoing country (Romania) has acquiesced".

47. *Article 13(b)*: I have already made reference to the Judge's review of the relevant case law pertaining to Article 13(b). He listed the 'protective measures' and soft landing provisions which had been offered by the father. I set out below (§50) the longer list of measures which the Judge in the end incorporated into his final order.

48. The Judge indicated that he took the mother's factual case as to the father's behaviour "at its highest" (conforming in broad terms with the approach in *Re E*, see §36 above); he relied on the limited independent support for the mother's allegations in the form of: (a) the police reports, and (b) the aggressive and abusive text messages from the father. He explicitly accepted that the "complaints and assertions [of the father's abusive behaviour towards her] are very grave". He continued:

> "I must also consider the impact on the mother of this behaviour, and the effect upon her (and by extension on B) of a return to Romania. In this context, it is in my judgment of relevance that the mother left Romania in August 2024 not because of the father's abusive behaviour but because he refused to reconcile with her. She explained this to me very clearly in her evidence. She says she would be happy to travel to Romania to facilitate contact which perhaps suggests that, separated from the father and free of a relationship with him, she would be relatively comfortable about going to Romania. In my judgment, it is probable that upon return to a country which she knows well (but not a return to live with the father), and where she has several family members, is not in and of itself likely to destabilise her gravely, provided that it is accompanied by appropriate protective measures to mitigate the risks to her. It follows

> that a return for [B[1]] would be manageable, dependent as he is on the mother for his care…. There is no evidence that the father would be likely to perpetrate harm directly to B. The mother says that she is happy for the father to see B, including in Romania. Through the October 2024 texts between the father and the maternal grandfather, it was envisaged that B could spend significant time with the father there". (Emphasis by underlining added).

49. The Judge turned to the issue of protective measures. He said this:

> "In my judgment, the behaviour of the father, which gives rise to potential risk to B if he and the mother are further exposed to it, can be mitigated by protective measures. Further, I am entitled to assume, and have evidence to this effect, that Romania has legislation and other available measures to protect and assist victims of domestic abuse…. If protective measures are established in a way which can be enforced in Romania, then in my judgment the risks to the mother of a return to Romania are sufficiently ameliorated, and the impact on B of a return would be mitigated. It would be unsettling, would require a period of adjustment and is not what the mother wants, but it would not be intolerable for B nor expose him to a grave risk of harm. The mother is already participating in proceedings which are underway and can make a relocation application … provided protective measures are in place, the Article 13(b) defence is not made out".

50. The Judge then listed the *specific* protective measures and soft landing provisions which he required (he described them as 'conditions' for return: para.7 and 9 of his order) to be in place before B's return would be effected. These were more extensive than those offered by the father, and are as follows:

i) The father to pay for the cost of the return flights for the mother and B to Romania: "this is a condition of return";

ii) Production of confirmation from the Romanian Prosecutor's Office that the criminal complaint will be taken no further. He added:

> "This is a condition of return. I consider it essential as the risk (however small) that the complaint has not been fully dropped could be harmful to B, and the Single Joint Expert indicated that it would be prudent to obtain this confirmation".

iii) The father is to pay to the mother €4000 before her return as a lump sum to use as she thinks fit, including for renting a property if she chooses not to stay with

[1] In the original, the Judge uses the initial 'F' (i.e., to denote the father) here, but the context clearly indicates that he means B.

family members; if she does not rent, she shall still be entitled to €4000. This shall be a condition of return;

iv) The father shall, from the date of return, by way of undertaking: a) pay the mother €500 per month for a period of 6 months; b) transfer the child benefit payments to the mother until the mother's own claim is processed; c) pay the costs of a speech therapist;

v) The father is not to attend the airport at the time of the mother's and B's return to Romania;

vi) The father shall not to seek to separate the mother and B save for any agreed contact or any decision of the Romanian court;

vii) The father shall not harass, molest, pester, use or threaten to use violence against the mother;

viii) The father shall not attend the mother's Romanian residence without prior agreement, save for any contact arrangements agreed between the parties or ordered by the court.

ix) The father is not to be provided with the mother's address, and is not to seek it, unless ordered by the Romanian court;

x) B's passport is to be lodged with the mother's Romanian lawyers on return, to be released to the mother only if so ordered by the Romanian court.

51. As I have earlier mentioned, the return order was made subject to a number of conditions which included that the above measures were to be made enforceable in Romania either under the provisions of the 1996 Hague Convention or by being "otherwise incorporated into enforceable orders of the Romanian court under any other relevant Romanian law". The return order was stayed until this was effected. This was consistent with the advice received from the Single Joint Expert (see §53 below).

52. He rejected the mother's request for any return order to be stayed pending outcome of the Romanian 'child arrangements' proceedings (see §14 above) and/or any application by her for an order permitting her to relocate to England.

Expert evidence

53. The Judge had available to him an opinion on Romanian law (and specifically on the recognition and enforceability in Romania of protective measures and undertakings) from a Single Joint Expert, Ms Eniko Fulop. Her key conclusions can be summarised thus:

i) To be enforceable in Romania, undertakings given to an English court must be embodied in a judicial order of the English court and expressed as measures concerning the child's protection or welfare;

ii) Under Romanian law, automatic recognition is not given to UK judgments under EU instruments; therefore recognition and enforcement proceeds solely

under the 1996 Hague Convention to which both countries are signatories; most of the proposed protective measures in this case are within the scope of Article 3 of the 1996 Hague Convention and are capable of recognition and enforcement in Romania; others (such as the financial arrangements) can, it is assumed, be made enforceable under Romanian domestic law;

iii) Any order of the English court must be submitted to the competent Romanian court for an exequatur (declaration of enforceability) under Article 26 of the 1996 Hague Convention; only after this declaration is granted does the order acquire enforceable effect in Romania. The procedure is summary in nature but is nonetheless mandatory;

iv) Legal aid is available in Romania in family and protective-measure proceedings, subject to income-based eligibility.

v) Protective measures designed to govern the father's conduct towards the mother and child are:

> "… paradigmatic examples of protective measures concerning the person of the child and his relationship with his parents. They would therefore be recognised by operation of law in Romania. Automatic recognition does not by itself permit coercive enforcement, but the necessary declaration of enforceability can be obtained by summary application";

vi) There is a jurisdiction by which the applicant can obtain urgent interim measures without the court being deemed to prejudge the merits:

> "The procedure is designed precisely for situations requiring immediate child protection, and may regulate the child's residence, contact arrangements, handover procedures, or restrictions on removal from the jurisdiction. Courts have frequently used this mechanism in cross-border family disputes".

She confirms that victims of domestic abuse may apply for a protective order (*ordin de protecție*), which can include eviction of the aggressor, stay-away orders, restrictions on contact, and temporary custody arrangements. Courts have used this law to protect not only direct victims but also children exposed to domestic abuse. Importantly, it is possible to ensure that protective measures are in place in Romania before the physical return of the child and mother;

vii) Although the father has indicated that he has withdrawn his criminal complaint (which is likely to terminate criminal proceedings in respect of those allegations), it would nonetheless be most prudent "for the mother to obtain official confirmation from the Prosecutor's Office that the file has been closed (*clasare*) before any return".

Grounds of Appeal

54. Five grounds of appeal were initially raised. Moylan LJ granted permission to appeal on three grounds, as follows:

    i) Ground 2: The judge was wrong to dismiss the mother's Article 13(a) 'acquiescence' defence. Specifically, (a) the factual conclusion that there was no agreement amounting to acquiescence was plainly wrong, illogical in the context of the other findings, and/or was not reasonably open to the Judge, and that (b) further or alternatively, the findings made should still have been held to establish acquiescence.

    ii) Ground 3: The judge's decision that the Romanian court had not acquiesced was wrong. Specifically, (a) the judge mis-applied the relevant law to the facts, in particular by failing to analyse the effect of the Romanian court's interim order for the child to be assessed at his home in England; and (b) the judge erred by holding that a different legal standard should apply to acquiescence by a court, where the proceedings are between two parents and/or do not involve a local authority.

    iii) Ground 4: The judge was wrong to dismiss the mother's Article 13(b) defence:

        a) The analysis of 'grave risk' failed to consider sufficiently the potential level of harm to the child. It conflated the assessment of risk with the question of protective measures, and the judge allowed irrelevant or unfair considerations to feature in his assessment;

        b) The judge gave no, or no adequate, weight to the relevance of his findings about the factual background;

        c) The judge was wrong to hold that the protective measures would be adequate to ameliorate the grave risk to the child.

55. For completeness, I should add that the mother unsuccessfully sought permission to argue that the Judge was wrong to dismiss her Article 13(a) 'consent' defence. She also failed in her aspiration to persuade this court to consider that the judge was wrong to reject the mother's alternative position that, if a return order were made, it should be suspended pending the outcome in the welfare proceedings which are ongoing between the parties in the Romanian court.

The arguments

56. The mother's argument on Ground 2 (acquiescence by the father) was two-fold: (a) that the father had (as a matter of fact) *subjectively* acquiesced to B remaining in England, alternatively (b) that the father had fully engaged with the September 2024 negotiations in circumstances where he knew €13,000 was being proposed as part of a deal whereby B would stay in England, and the money was paid and it was not open now to the father to retreat from that (i.e., *objective* acquiescence). She argued that a concluded agreement had been reached in the September 2024 negotiations; by that concluded agreement, she said that for the sum of €13,000, the father had agreed to B remaining in England. She further argued that the whole concept of achieving 'peace' between the families, in the specific context of this case, demonstrated acquiescence. 'Peace' necessarily included the mother being allowed to live peacefully in England

with B. This was, argued Ms Perrins, obviously a case where the father had at least led the mother to believe he was acquiescing (the exceptional case under *Re H*). She challenged the Judge's failure to find a concluded agreement.

57. Ms Perrins sought to demonstrate, relying on various passages from the transcript of the oral evidence given by the parents and the maternal grandfather at the hearing, that the Judge's factual findings (which had informed his conclusions on acquiescence) were not in fact in line with the evidence which he had heard; in at least one respect the Judge was in fact plainly wrong in his review of the evidence. She also observed that although the Judge had referred to both parents as unsatisfactory witnesses, his factual findings were founded exclusively on the mother's account and not the father's. She further argued that the findings which the Judge did make were sufficient to establish acquiescence.

58. She argued that it was "not reasonably open" to the Judge to conclude that the €13,000 had stayed with the elders (this had been suggested by counsel for the father at the hearing; i.e., it was not the Judge's own idea). Ms Perrins uses this conclusion to argue that this aspect of the judgment undermines the safety of the overall conclusions about the agreement.

59. On Ground 3, Ms Perrins relied on the authorities of *NM v SM* and *Haringey* to support the argument that the Romanian Court could acquiesce and had indeed done so. She relies on the fact that the Romanian Court has not expressly directed B's return, and has commissioned a social investigation report into B's life in England; she says that "the direction for an assessment of B at his home in England is wholly inconsistent with a summary return".

60. On Article 13(b) (Ground 4), Ms Perrins argued that, while the Judge had articulated the principles correctly, he did not apply them appropriately; she takes issue with the finding that there is no evidence that B would be 'directly harmed' by the father, asserting that this is at best an unfounded minimisation of the threats which the father has made to the mother and her family. The Judge failed to take into account that the payment of €13,000 was to secure 'peace' for the maternal family; this was an indicator of grave risk of harm should B return.

61. Mr Gupta KC rejected Ms Perrins' contention (on Ground 2) that the evidence revealed a clear and unequivocal agreement at the conclusion of the September 2024 negotiations, let alone one which allowed for B to remain in England. He relied on *P v P* (as the Judge himself had done) in support of a submission that acquiescence could not be established unless a concluded agreement could be shown: discussions/negotiations between the parties in these alleged abduction cases should be encouraged and should not fall within the exception of acquiescence unless there was indeed a concluded agreement. In this case he contended that at the end of the September 2024 negotiations each party had an understanding of what had been discussed (and purportedly agreed) which did not align with the other's. Although the father himself had not volunteered evidence about the September 2024 negotiations until the mother did so, Mr Gupta nonetheless highlighted on the contradictory explanations offered by the mother and the maternal grandfather for not having raised the September 2024 negotiations until the day of the listed hearing, variously citing concern at the absence of documentary proof and/or fear of the father. I pause to mention that the Judge found that neither party could explain coherently

why they had not, prior to the hearing before MacDonald J, spoken of the discussion with the elders.

62. On Ground 3, Mr Gupta argued that the Romanian court had not acquiesced in B's removal to or retention in England, and that the Judge was right to distinguish *NM v SM* and *Haringey*. He drew on the Judge's conclusion:

> "… there is no suggestion that the Romanian court has been asked to determine that it has in some way acquiesced to the removal or that it has in fact done so… there is nothing from the court proceedings in Romania which, in my judgment, begins to justify the assertion that the courts there have formally acquiesced under Article 13." (§53)

He further referenced the fact that the Romanian Court had specifically held that the removal of B was wrongful, and that it retained jurisdiction under Article 7 of the 1996 Hague Convention as the state in which the child was habitually resident immediately prior to that removal; he cites the passage from the Romanian Court record: "at the date of the court's referral, the minor's habitual residence was in Romania, and therefore, jurisdiction to adjudicate the present application lies with the Romanian courts". The fact that a social enquiry report has been ordered to take place in England is, he argued, "fundamentally not in conflict with the concept of a summary return".

63. On the issue of Article 13(b) (Ground 4), Mr Gupta agreed with Ms Perrins that the Judge had adopted the correct approach as advocated by the Supreme Court in *Re E*: the Judge had identified the mother's allegations and the sources of evidential support for the same. Mr Gupta nonetheless described as "unfounded" the Appellant's criticism of the Judge for not accepting the gravity of the factual background. It was clear, argued Mr Gupta, that the Judge acknowledged there was grave risk of harm as a result of the mother's allegations, and was fully aware that he needed to consider the risk of future harm to B. He drew upon the Judge's remarks at §66:

> "It is in my judgment of relevance that the mother left Romania in August 2024 not because of the father's abusive behaviour but because he refused to reconcile with her. She explained this to me very clearly in her evidence. She says she would be happy to travel to Romania to facilitate contact which perhaps suggests that, separated from F and free of a relationship with him, she would be relatively comfortable about going to Romania."

At §69 Peel J repeated the mother's own position namely:

> "… the mother says that she is happy for the father to see B, including in Romania. Through the October 2024 texts between the father and the mother's father, it was envisaged that B could spend significant time with the father there."

It was argued that these aspects of the mother's own case are clearly relevant to the assessment of whether B would be at grave risk of harm upon a return.

64. Mr Gupta supported the Judge's conclusion that if protective measures are established in a way which can be enforced in Romania, then the risks to the mother of a return to Romania are sufficiently ameliorated, and the impact on B of a return would be appropriately mitigated (see [71] of the judgment).

65. Finally, Mr Gupta defended any gaps in the judgment (pointed out by Ms Perrins) as inevitable given the extent of the material and the essentially summary nature of the process. He further references *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 WLR 48 in ensuring that this Court guards against improperly interfering with the trial judge's determinations of primary fact and the inferences to be drawn therefrom.

Discussion and conclusion

66. ***General***: For a number of reasons this is an unusual case on its facts. Although I am satisfied that it was quite properly brought and determined under the 1980 Hague Convention it has many factual characteristics which are untypical of its kind. It is for instance a curious fact that both the mother and father were independently drawn to a life in England in August 2024, the father for work and the mother for family reasons; yet, as soon as the father was aware that the mother had come to these shores with B, he hastened back to Romania and initiated proceedings to seek B's return.

67. It was yet more curious that until the listed final hearing neither party had referenced in their written evidence an incident which became the focus of judicial enquiry and the peg on which the mother hung her claim based on acquiescence. The evidence in relation to the September 2024 negotiation, pulled together in writing under pressure of time, and recounted orally only through interpreters, was in the Judge's finding convoluted and unclear.

68. ***Ground 2: Acquiescence by the father***: The focus of the mother's argument that the father had acquiesced in her retention of B in England necessarily homes in on the negotiations conducted by the community elders in September 2024.

69. I have reviewed the witness statements of the parties and the transcript of the evidence in its entirety in this regard with care, concentrating, as the Judge did, on what could be distilled therefrom. I accept (as Ms Perrins rightly pointed out) that the Judge erred in his finding that the "primary aim [of the mother and the maternal grandfather] in the [September 2024 negotiations] was to try and effect a reconciliation with the father if possible"; I am satisfied that reconciliation was raised only as a first issue so that the elders could establish whether it was possible. The mother made clear that she was not interested. However this error did not, in my view, materially undermine the Judge's overall assessment and conclusion. Indeed, like the Judge, I found myself unable to make coherent sense of the evidence as a whole, and the Judge cannot properly be criticised for having found it "particularly difficult" to establish whether an agreement was reached "… and if so in what terms" ([19]).

70. It appears that many topics were covered in the September 2024 negotiations, without ultimate resolution on any of them: reconciliation of the parties; (on the maternal grandfather's case) the father signing a power of attorney (and, separately, when and where that should be signed, i.e., before or after B's return to Romania); peaceful living for the maternal family free from abuse; B remaining in England (the father plainly accepted that the €13,000 payment was proposed for that reason, but had

"rejected" it: [23]); and a shared care arrangement of B. I observed that during the oral evidence of the maternal grandfather the Judge himself tried to nail down precisely why the €13,000 had, on the maternal family's case, been paid. He failed. In re-examination the maternal grandfather denied that it had ever been part of the discussions with the elders that in exchange for money, the father would agree for B to live in England with the mother; he described this, instead, as a "mutual understanding agreed between us, between myself and the father…".

71. I find it impossible to disagree with the Judge's conclusion that "the elders seem to have said different things to each party" ([25]); his assessment that "each party left with a different understanding" ([25] / [46]), of what had been discussed (let alone agreed: "no overall agreement was reached" [25]) is not readily challengeable – it seems pretty clear to me (as the Judge indeed found) that "the mother's father thought one thing, the father another … at best they each had an understanding which did not align with the other's… the picture is confused, unclear and uncertain" ([46]).

72. I remind myself that subjective acquiescence requires proof as a matter of fact that the wronged parent "consented to the continued presence of the [child] in the jurisdiction to which they have been abducted" (*Re H*: see §23 above), and that objective acquiescence requires that the words or actions of the wronged parent "clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return" (*Re H*: see §24 above). Only then will "justice require[s] that the wronged parent be held to have acquiesced". The mother failed to discharge the burden on her of proving acquiescence on either basis on the evidence before the Judge. In my view, the Judge did not fall into error in rejecting her claims; in this regard he was not wrong to conclude that at the end of the September 2024 negotiations there was no agreement of any kind on any matter between the parties. Specifically, and crucially, there is no proper basis in my judgment for the mother's challenge in this appeal to the Judge's conclusion that the parties had not agreed for B to live in England with the mother. Aside from the muddled evidence concerning the negotiations, the Judge was in any event entitled to have regard to the fact that (and explicitly so found) all of the father's actions in the years and months before, and the months after, the negotiations revealed that he had "consistently opposed B's removal to England".

73. Therefore, having considered the judgment against the backdrop of the material as a whole, I am satisfied that the Judge cannot be criticised for the conclusions which he reached on acquiescence, and the mother therefore fails on Ground 2.

74. ***Ground 3: Acquiescence by the Court***: The Judge was entitled to take the view that it would be "highly unusual" ([52]) for a court in a requesting state to consent to or acquiesce in the wrongful removal or retention. Indeed, for the reasons which I have already set out at some length above (see §§33-35 above) I am doubtful about the proposition at all. That said, there is nothing objectionable about the Judge's analysis in [53] of his judgment (see §62 above) of the argument that the foreign court had acquiesced in the retention of B. The fact that the Romanian court has ordered a social enquiry report under the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, within the proceedings for interim measures is not in my judgment of any materiality.

75. Even if the Romanian Court could be said as a matter of construction of Article 13 to have acquiesced in B's wrongful removal, the Judge was right to conclude that the court had not in fact done so. Although the Romanian Court declined jurisdiction on 25 November 2024, this was only in respect of an application under the 1980 Hague Convention which was appropriately to be brought in *this* country. Notably, the mother challenged the jurisdiction of the Romanian court to make substantive welfare orders in relation to B earlier this year (2025), and in a reserved ruling the Romanian court resolved that B was habitually resident in Romania, and that the Romanian court could and would exercise jurisdiction. None of this is consistent with 'acquiescence' by the court.

76. The mother's appeal on this ground, in my judgment, fails.

77. ***Ground 4: Article 13(b) grave risk***: As both counsel accepted, the Judge approached the issue of grave risk under Article 13(b) of the 1980 Hague Convention appropriately; there was no dispute on this appeal that the exception has a high threshold. The Judge paraphrased the *Re E* test by indicating that he would take the mother's case on domestic abuse "at its highest" ([64]). Threats to kill are plainly "very grave" allegations, as the Judge rightly observed; in this case it was reasonable for the Judge to proceed on the basis that the risk of harm was equally "grave" (*Re E* at [33]). I do not read the Judge's comment that "there is no evidence that the father would be likely to perpetrate harm directly to B" (see §48 above) as indicative of his under-estimation of the impact of domestic abuse of B (as Ms Perrins argued), but merely his recording that there was no evidence that B would be likely to be the specific target of harm. The Judge rightly drew upon the independent corroboration of those allegations yielded by the text messaging and the police reports.

78. In considering whether the Article 13(b) exception was made out the Judge was entitled (indeed obliged) as part of his evaluative assessment to look to (and attach appropriate weight to) the wider context in which the allegations of domestic abuse were made. In this regard, he observed that the mother's move to England in August 2024 was because of the father's non-committal stance in respect of their relationship and "not because of F's abusive behaviour" ([66]). The Judge was entitled to take into account the mother's offer to return to Romania in the future to facilitate contact "which perhaps suggests that, separated from the father and free of a relationship with him, she would be relatively comfortable about going to Romania" ([66]). Later the Judge recorded ([69]) that:

> "The mother says that she is happy for the father to see B, including in Romania. Through the October 2024 texts between the father and the mother's father, it was envisaged that B could spend significant time with the father there".

79. While I make proper allowance for the fact that victims of domestic abuse often need protections from their abuser which they themselves (for a variety of reasons) may not recognise that they need, I am satisfied that the Judge (who saw and heard the mother) was entitled to take account of these factors, which emerged from her evidence, in his overall review of *future* risk to B (*Re E*).

80. The Judge further rightly considered the importance of buttressing the arrangements for the mother and B with appropriate (and effective) protective measures. In his risk

assessment, he concluded that the combination of factors would lead to the risks being "sufficiently ameliorated, and … mitigated".

81. There is force in Ms Perrins' argument that the payment of €13,000 to the community elders was (in the Judge's finding) "principally motivated by fear of the father and a hope that he would cease his threatening behaviour" ([46]). Insofar as this had been intended in September 2024 to operate as a type of informal 'protective measure' against the father's behaviour, I accept that it appears not to have been effective. In part that may be because the father did not receive the money (about which the Judge made no firm finding). Although it may culturally have seemed appropriate to the maternal family to pay a large sum of money to achieve 'peace', I must however, in the context of the 1980 Hague Convention, consider with care the availability of formal and legitimate means of achieving protection. In this case, a set of measures was proposed by the father; it was commented upon (and without prejudice to her primary arguments not challenged) by the mother, and the Single Joint Expert has offered an opinion as to the steps which needed to be taken so that they would truly be effective. The Judge has accepted their effectiveness as he was entitled to do.

82. As Baroness Hale observed in *Re E* at [35]:

> "… 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."

And later (at [52]):

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

In this case the Judge had the benefit of clear and practical advice on the implementation of protective measures in Romania from the single joint expert (see §53 above); the Judge sensibly deferred B's return until the necessary steps had been taken to establish the legal protective framework.

83. For these reasons, I am of the view that Ground 4 also fails and the appeal therefore must be dismissed.

84. In the circumstances, the Judge's order for the return of B to Romania therefore stands. Plainly, an adjustment to the order needs to be made to provide for a new date by which a return should be effected; I would be content to receive submissions from counsel as to that. All said, I accept the appropriateness of the Judge's initial approach which was to stay the order for return until there is satisfaction that the conditions and protective measures are in place as provided for in paragraphs 7, 8, 9 and 10 of his order, which provisions remain unaffected by this appeal.

85. Once an order has been made by this Court following this appeal, any further case management should be remitted to Mr Justice Peel.

Lady Justice Elisabeth Laing:

86. I agree.

Lord Justice Moylan:

87. I also agree.