Neutral Citation Number: **[2025] EWHC 2672 (Fam)**

Case No: FD25P00204

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

IN THE MATTER OF THE 1980 HAGUE CONVENTION OF THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/10/2025

Before :

MR JUSTICE PEEL

- -

Between :

EF	**Applicant**
- and -	
EF	**Respondent**

- -
- -

Miriam Best (instructed by **Walker Family Law**) for the **Applicant Father**
Jennifer Perrins (instructed by **Dawson Cornwell**) for the **Respondent Mother**

Hearing date: 23 September 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

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 may be a contempt of court.

Mr Justice Peel :

1. I am concerned with a boy, A, born on 8 June 2023 and now just over 2 years old. I shall refer to his mother as "M" and his father as "F".

2. This is F's application dated 16 April 2025 under the 1980 Hague Convention for A to be returned to Romania after what he describes as a wrongful removal by M to this country on 20 August 2024.

3. M's defences are:

   i) Consent/acquiescence.

   ii) Article 13(b).

4. The final hearing was listed before MacDonald J on 9 September 2025. Prior to that hearing, the evidence of both M and F on consent/acquiescence revolved around a discussion between them on 12 August 2024, shortly before she and A left Romania.

5. At the hearing on 9 September 2025, M raised, for the first time, an assertion that her father and F had reached an agreement in September 2024, mediated by community elders, that in return for payment of €13,000 to him, F would not seek the return of A to Romania. That, she says, constituted acquiescence. She had not raised it before. Nor had F made any mention of discussions with the elders, which he accepts took place and as a result of which he too thought some level of understanding had been reached, albeit different from M's account.

6. MacDonald J adjourned the final hearing. He gave directions for further statements from M, her father and F on this additional issue.

Oral evidence

7. I heard from M, her father, and F on the issue of consent/acquiescence. I did not think M and F were particularly satisfactory witnesses. Neither of them, for example, could explain coherently why they had not, prior to the hearing before MacDonald J, spoken of the discussion with the elders. M's father seemed to me to be a little confused at times.

The background

8. Doing the best I can on the written evidence and limited oral evidence, the relevant chronology is as follows.

9. M and F are Romanian nationals aged respectively 23 and 28. Both were born in Romania. They are of Roma background and heritage.

10. M moved to England from Romania with her parents when she was 14 years old. In 2021, she met F on holiday in Romania. She moved to Romania in August 2022 to live with F and his parents. She says that before long the Father and his family were physical and verbally abusive, demeaning and controlling towards her.

11. In March 2023, M left F, moving to her grandmother's home in Romania for a week, and then to her parents in England when she was six months pregnant. A was born in England. Shortly after his birth, M and F reconciled and in July 2023, M returned with A to Romania, moving back to F's parents' home. According to M, F was angry that his name was not on A's birth certificate, threatened to kill her and her family if she did not change it, beat her and locked her in a cellar. M alleges she was also threatened with death by the paternal grandfather and slapped around her face by the paternal grandmother. Thereafter M says that she was effectively imprisoned in the house and prevented from caring for A fully. The physical abuse continued. She was too terrified to leave or report the abuse because she feared A would be removed from her.

12. In June 2024, M's parents travelled to Romania for a holiday. At about the same time F had gone to England to do some work as a painter/decorator. On 12 August 2024, M told her parents about the situation she was experiencing. F was still in England and M believed that he was in a relationship with another woman. M and A left the paternal grandparents' home on 12 August 2024; M took some belongings and A's passports. They stayed with her grandmother for a week.

13. It was M's evidence, which I accept, that she had a conversation with F on 12 August 2024 after she had left the paternal grandparents' home. M's father made the call initially from M's grandmother's home, then handed over to M. According to her statement, M told F that "if he refused to return to Romania, I would take A to the UK, I told him that I did not want to continue with the relationship if he did not care about me. F told me that he would return to Romania when he wanted…F did not care…..I interpreted this as him giving consent for A to relocate to England". In oral evidence, M said that if F had agreed to leave his girlfriend and fly back to Romania, she would not have left him, or left Romania with A; she wanted the family to be together. M accepts that she did not directly ask F for his agreement to her leaving Romania with the children, nor did he expressly give his agreement.

14. On 20 August 2024, M, her parents and A travelled to England. I am confident that F did not know of the departure in specific terms, but had some inkling from the conversation on 12 August 2024 that M might leave Romania with A, although he did not know for sure that it would happen or when.

15. On the day of her arrival in England (according to M), or possibly the next day (according to F), F phoned her father and, said "he wanted his son to be back in Romania" (I take this quote directly from M's written evidence). On 21 August 2024 F, who had immediately returned to Romania on hearing of M and A's departure, had a text exchange with M's brother demanding A's return to Romania.

16. Subsequently, at some point in August/September, according to M's father, F phoned him asking for money. He said he would let A 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 M's father and other family members. If money was paid, he said he would stop all proceedings in Romania. F 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 M's case that F made repeated threats to kill on numerous

occasions in this period, both made against M's family in England and her family in Romania.

17. In September 2024, M's father suggested to F that they should try and broker an agreement in Romania through Roma community elders. He approached M Mototolea and F approached Mr Sadoveanu.

18. On 18 September 2024, M's father travelled to Romania with M's brother. They stayed at M's grandmother's house. M's father met both mediators on 21 or 22 September. The mediators went back and forth between M's father and F on what seems to have been no more than one or two occasions. M's father and F did not meet or have any indirect contact by phone or otherwise. Their perception of what took place is based entirely on what they each said to the elders, and what the elders said to each of them.

19. I was told by the witnesses that nothing was recorded in writing. M's father and F were not permitted by the elders to take notes. The elders had a small book in which they wrote a few notes, but nobody saw what they wrote down. For some inexplicable reason, neither party has produced any evidence from either of the elders about the negotiations and/or any agreement. Nor did it appear that either has attempted to do so. Establishing whether an agreement took place and, if so, in what terms is particularly difficult.

20. I was not greatly assisted by M's evidence about these events as she was not present, and relied on what she had been told by her father, although she did have one brief phone call with the elders. However, M did tell me, which I accept, that her primary aim in the discussions was to try and effect a reconciliation with F if possible and if that was not possible, then to agree finances between them so as to stop what she describes as F's aggressive and threatening behaviour; in short, to buy peace.

21. M's father 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 A 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 A could travel back and forth between England and Romania without risk that he would be retained in Romania; this he told me directly in response to questions from me, and again in re-examination. Implicit within that, it seemed to me, was an expectation that A would continue to live with M in England. However, that was not, on his evidence, an explicit requirement.

22. M's father 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 A would be able to stay with M, but (i) that is what he was told by the elders, not by F, and (ii) it was not specifically a term that A 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. F says that the elders informed him of two options: (i) M's family to pay him €13,000 and A to live in England or (ii) him to pay M's family €100,000 for A 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 M would come back to Romania with A 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 M and one month with F.

24. M's father 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. M's father says he handed it to the elders for onward transmission. They were supposed to hand it to F. They told M's father that they had done so. There is no direct evidence of the payment from M's father to the elders and then from the elders to F. In court proceedings in Romania, M's mother 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 F who was threatening them. M's father sent a text to F on 12 November 2024 saying, "I gave you 13,000 Euros out of fear" (I reject F's submission that this was sent for forensic purposes to assist in legal proceedings). These pieces of evidence provide some corroboration for M's father's evidence that €13,000 was raised and given to the elders, but F has always denied he received anything. They are not evidence that F received anything.

25. Pulling these events together, I am of the view that no overall agreement was reached, and in particular there was no agreement for A 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 A living with M and spending time with F, was achievable. The main aim of M's family was to try and stop F's aggression and to obtain a power of attorney so that A could not be retained by F in Romania. They thought they had achieved that. The main aim of F was to try and secure time with A. 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 euros was paid, in my judgment that sum was indeed raised by M's family and given to the elders to hand over in cash to F (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 F. They may have been able to avoid giving him the money because on F's case he rejected the monetary offer and therefore did not expect to receive a payment, whereas M's father was told by the elders that F had accepted it and therefore the money needed to be paid. Neither party would have been any the wiser. If F did receive the money, then he deceived M's family. On either version, however, the principal purposes for the payment from the point of view of M's family were (i) to persuade F to stop his threatening behaviour and (ii) to obtain a power of attorney, and from F's point of view it was to try and secure some contact with A. It was not to secure A remaining in England.

27. According to M's father, F phoned him a few days later. M's father said that A could spend some time with F either in Romania or England, but confirmation was needed that A would be returned after contact. M in her evidence also said that in principle it

was agreed that A could travel to see F for a holiday in Romania. The date of 22 October 2024 for A to travel was alighted upon.

28. What then seems to have happened is that M's father asked for the power of attorney which he believed had been agreed with the elders. F, to whom this had not been mentioned by the elders, reacted angrily, saying that A must come to Romania first and then everything could be sorted out, including a power of attorney. M's father refused to go along with that suggestion, believing that A could be retained by F without a power of attorney in advance. A heated exchange of messages in October evidences the nature of this disagreement. F'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.

29. Coinciding with the row over the power of attorney, F resumed his threats to M'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.

30. On one occasion, according to M's father, F said to M's father that he had tricked them, taken the money and would take the child as well, although I have reservations as to precisely what was said in this conversation during very heated exchanges. Any understanding or goodwill from the discussions via the elders evaporated.

31. In December 2024, F travelled to England and had contact with A. On M's case, he said he wanted to take A back to Romania. He threatened and physically attacked the maternal grandfather, and made further threats to kill M's family, and to take A away. The police were called by a neighbour. F says that in fact he was assaulted by M's mother and two brothers. Police disclosure provides corroboration that, at the very least, they received a callout; the records show that no formal complaint was made.

32. M and A currently live with M's parents. She says A is settled and thriving.

Romanian proceedings

33. F has launched a number of legal applications in Romania:

    a) He filed a criminal complaint on 2 September 2024 against M for alleged child abduction. That appears now to have been withdrawn.

    b) He made an application to the Cornetu Court on 2 October 2024 for what in England would be termed a child arrangements order. No hearings have taken place.

    c) He applied in the Bucharest court for the return of A to Romania by application dated 6 November 2024. Jurisdiction was denied by the tribunal because A was in England.

    d) He made a further application to the Cornetu Court on 3 March 2025 for the exercise of parental responsibility, for A to live with him but in the alternative, to secure visitation with A. This is distinct from the process under (b) above because it is intended to address temporary,

urgent situations. A number of hearings have taken place, most recently on 19 September 2025, and a further hearing is due on 10 October 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 A's living conditions from the relevant English local authority.

34. M has made no applications of her own (for example for relocation) but has been represented at the various hearings.

Expert evidence

35. At a case management hearing, an order was made for a SJE report on relevant Romanian law. The SJE has stated that:

i) The majority of orders and undertakings made in the English proceedings would be recognisable and enforceable under the 1996 Hague Convention, to which both the United Kingdom and Romania are signatories.

ii) An application for recognition by way of exequatur would need to be made to the Romanian courts.

iii) If not directly recognisable, equivalent measures can be sought.

iv) There are various remedies and legal protections for victims of domestic abuse, and legal aid is available.

v) F made a statement dated 30 June 2025 withdrawing any criminal proceedings in Romania. That is "likely to terminate criminal proceedings", but "the most prudent course is to obtain official confirmation from the Prosecutor's Office that the file has been closed…before any return".

Consent/acquiescence: the law

36. The burden lies on M to establish the defence. She must prove:

i) That F consented to the removal prior to it taking place; and/or

ii) That after the removal, he acquiesced in A remaining in this jurisdiction.

37. The Article 13(a) defence of consent was considered by the Court of Appeal in **Re G (Children) [2021] EWCA Civ 139**, per Peter Jackson LJ:

> "23. Article 13 of the Convention provides exceptions to the obligation under Article 12 to order the return forthwith of a child who has been wrongfully removed from the place of his or her habitual residence. One exception is consent:
>
> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that a) the person, institution or other body having the care of the person of the child… had consented to or subsequently acquiesced in the removal or retention; …"

24. Consent is an exception that is infrequently pleaded and still less frequently proved. The applicable principles were considered by this court in *Re P-J (Children) (Abduction: Consent)* [2009] EWCA Civ 588 [2010] 1 WLR 1237, drawing on the decisions in *Re M* (*Abduction*) (*Consent: Acquiescence*) [1999] 1 FLR. 174 (Wall J); *In re C (Abduction: Consent)* [1996] 1 FLR 414 (Holman J); *In re K (Abduction: Consent)* [1997] 2 FLR 212 (Hale J); and *Re L (Abduction: Future Consent)* [2007] EWHC 2181 (Fam); [2008] 1 FLR 914 (Bodey J). Other decisions of note are *C v H (Abduction: Consent)* [2009] EWHC 2660 (Fam); [2010] 1 FLR 225 (Munby J); and *A v T* [2011] EWHC 3882 (Fam); [2012] 2 FLR 1333 (Baker J).

25. The position can be summarised in this way:
(1) The removing parent must prove consent to the civil standard. The inquiry is fact-specific and the ultimate question is: had the remaining parent clearly and unequivocally consented to the removal?
(2) The presence or absence of consent must be viewed in the context of the common sense realities of family life and family breakdown, and not in the context of the law of contract. The court will focus on the reality of the family's situation and consider all the circumstances in making its assessment. A primary focus is likely to be on the words and actions of the remaining parent. The words and actions of the removing parent may also be a significant indicator of whether that parent genuinely believed that consent had been given, and consequently an indicator of whether consent had in fact been given.
(3) Consent must be clear and unequivocal but it does not have to be given in writing or in any particular terms. It may be manifested by words and/or inferred from conduct.
(4) A person may consent with the gravest reservations, but that does not render the consent invalid if the evidence is otherwise sufficient to establish it.
(5) Consent must be real in the sense that it relates to a removal in circumstances that are broadly within the contemplation of both parties.
(6) Consent that would not have been given but for some material deception or misrepresentation on the part of the removing parent will not be valid.
(7) Consent must be given before removal. Advance consent may be given to removal at some future but unspecified time or upon the happening of an event that can be objectively verified by both parties. To be valid, such consent must still be operative at the time of the removal.
(8) Consent can be withdrawn at any time before the actual removal. The question will be whether, in the light of the words and/or conduct of the remaining parent, the previous consent remained operative or not.
(9) The giving or withdrawing of consent by a remaining parent must have been made known by words and/or conduct to the removing parent. A consent or withdrawal of consent of which a removing parent is unaware cannot be effective."

38. The nature and meaning of acquiescence is authoritatively explained in **In re H [1998] 1 AC 72** per Lord Browne at 90E-G:

"To bring these strands together, in my view the applicable principles are as follows:

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. "

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

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

40. Acquiescence is not a continuing state of affairs; the person who acquiesces cannot subsequently change their mind. Once given, it cannot be withdrawn: **Re A (Minors) (Abduction: Custody Rights) CA 1992 Fam 106** and **Re L-S (Abduction: Custody Agreement: Acquiescence) [2018] 1 FLR 1373.**

Consent: analysis

41. I am satisfied that M's defence that consent was given prior to removal is not made out.

42. It seems to me that at its highest, M's case is that F, in the phone call on 12 August 2024, shortly before departure, did not actively object to, or oppose, A being removed from Romania. M submits that by standing by and doing nothing, F can be inferred to have given consent. By saying that "he would return to Romania when he wanted", she interpreted him as giving his agreement for A to relocate with her to England.

43. Against that, F makes a number of powerful points:

    i) The conversation was primarily aimed at M trying to persuade him to return from England to Romania to effect a reconciliation. M's claim that F consented is based on her own interpretation. There is nothing in M's own evidence, taken at its highest, which demonstrates clear and unequivocal

consent in that conversation. She accepted in evidence that she did not ask for his agreement, nor was it given.

ii) There is no evidence that F was aware of the date of the intended departure. Had he known that M was contemplating leaving a week later, he is likely to have reacted rather differently. But the conversation on 12 August 2024 was couched in general terms, focusing more on reuniting the family.

iii) After A was born, and M moved back to Romania with A, she says in her witness statement that "F did not allow me to travel to England with A". She took two trips to England in 2023 and 2024 to see her family without A. The context of the removal to England in August 2024 is, accordingly, that F had previously been opposed to A leaving Romania.

iv) M states "On 20 August 2024 [the date of arrival in England], F tried to call my father. My father told him that I had come to the UK and that if he wanted to visit [the child], he could do so. My father also made it clear that I would not be going back to F. F said that he wanted his son to be back in Romania" (messages to M's brother at the same time are in similar vein). That conversation may have taken place a day or two later, as F thought, but it is improbable that F would have demanded A's return within a day or so of A arriving in England if F had consented in clear and unequivocal terms to the removal just over a week before.

v) F almost immediately took steps in Romania to secure A's return by filing a criminal complaint on 2 September 2024 which again, in my view, does not support the contention that he clearly consented to the removal shortly before departure. He has pursued various proceedings in Romania since then.

vi) In the proceedings in Romania, M filed a position statement with the Cornetu Court for a hearing on 8 April 2025 in which she says that she left Romania because she believed her life to be in danger, but made no suggestion that F had agreed to A relocating with M to England.

vii) At one of the Romanian court hearings, the court heard oral evidence and concluded in a judgment that A's removal from Romania to England in August 2024 was carried out "unilaterally, without the consent of both parties". I was referred to **W-A (Children: Foreign Conviction) [2022] EWCA Civ 1118, [2023] Fam 139** in which the Court of Appeal held:

a. "In family proceedings all relevant evidence is admissible. Where previous judicial findings or convictions, whether domestic or foreign, are relevant to a person's suitability to care for children or some other issue in the case, the court may admit them in evidence" (para 51);
b. "The effect of the admission of a previous finding or conviction is that it will stand as presumptive proof of the underlying facts, but it will not be conclusive and it will be open to a party to establish on a balance of probability that it should not be relied upon. The court will have regard to all the evidence when reaching its conclusion on the issues before it" (para 52).

44. The burden lies on M to establish that consent was given to A being removed to England. In my judgment the totality of the evidence (including the Romanian court findings which are not determinative but carry presumptive weight) falls far short of clear and unequivocal consent.

Acquiescence: analysis

45. In my judgment this defence stands and falls on (i) whether agreement was reached between M's father (on M's behalf) and F in September 2024 for A 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 F subjectively acquiesced to retention here, or a finding that even if he did not subjectively acquiesce, his words or deeds clearly and unequivocally led M to believe so).

46. In my judgment, neither limb is made out by M. Again, I remind myself that the burden lies on M to prove the defence. The context is F having consistently opposed A's removal to England, and having sought A's return to Romania. M must satisfy the court that thereafter F 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 A would stay in England. M's father thought one thing, F another. M's father's aims were to secure a power of attorney and a degree of inter family peace. F wanted to be able to see A in Romania. It is hard to conclude that any agreement was reached about any matters, and in particular about A 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 F, but even if it was, it was not, I am confident, part of an agreement for A to live in England; the payment, as some of M's family members have said, seems to have been principally motivated by fear of F and a hope that he would cease his threatening behaviour. Overall, the picture is confused, unclear and uncertain.

47. A further submission made by M is that the Romanian court has acquiesced in the retention of A in England.

48. Counsel for M points to the wording of Article 13 of the 1980 Hague Convention:

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -
>
> *a)* the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention."

49. M submits that "institution or other body" can include a court. Holman J in **NM v SM [2017] EWHC 1294 (Fam**) and MacDonald J in **London Borough of Haringey [2024] EWFC 151** accepted that proposition and I agree.

50. M submits that the Romanian court has acquiesced to A's retention in England. I do not think that **LB Haringey (supra)** assists M. It was a 1996 Hague Convention case, it involved a Local Authority and MacDonald J concluded that he would not acquiesce to the removal of a child from this country to Poland. Importantly, 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.

51. The only case which counsel have been able to find which does not involve a Local Authority and in which the courts of England decided that an overseas court had acquiesced in the removal of a child to England is **NM v SM (supra).** That was on unusual facts. The applicant in that case (unlike the present one) had no rights of custody and accordingly the Irish courts, in which proceedings were taking place, had custody rights under Irish law but, by electing not to make orders retaining the child in Ireland had therefore, according to Holman J, acquiesced in the child's retention in England.

52. In my judgment, 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/acquiesce in the wrongful removal or retention. Such a proposition would be almost unheard of in cases between two parents, and I confess that I have not encountered it before. In most such cases, where a parent elects to institute 1980 Hague Convention proceedings to secure the return of a child from abroad, the English court will not permit an application under the inherent jurisdiction or the Children Act for a return order to be made, as the 1980 Hague Convention application is the preferred route to achieving the desired outcome; **Re N (A child) [2020] EWFC 35** and **Re S (Abduction: Hague Convention or BIIa) [2018] EWCA Civ 1226**. That is not consent or acquiescence. It is allowing the Convention to fulfil its purpose.

53. By the same token, on the reverse facts 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, F 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.

54. I would discourage this argument from being advanced, save in the most exceptional cases.

Article 13(b)

55. The burden lies on the Mother to open the Article 13(b) gateway.

56. For a general distillation of the applicable principles, I have in mind the dicta of the Court of Appeal in **Re IG [2021] EWCA Civ 1123**:

> "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."

57. To the above, I would add a particular aspect of Article 13(b) as expressed by Lord Wilson in **Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10** at para 34:

> "If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned".

58. In **Re C (Children) (Abduction: Article 13b) [2018] EWCA Civ 2834** Moylan LJ made clear that it is not the case that the court has to accept allegations made without conducting an assessment of the credibility or substance of the allegations:

> "[39] In my view, in adopting this proposed solution, it was not being suggested that no evaluative assessment of the allegations could or should be undertaken by the court. Of course a judge has to be careful when conducting a paper evaluation but this does not mean that there should be no assessment at all about the credibility or substance of the allegations…"

59. In **Re C (Article 13(b)) [2021] EWCA Civ 1354**, Moylan LJ emphasised that the risk to the child must be a future risk (paras 49-50). He cited from the Good Practice Guide to emphasise that:

> "… forward-looking does not mean that past behaviours and incidents cannot be relevant to the assessment of a grave risk upon the return of the child to the State of habitual residence. For example, past incidents of domestic or family violence may, depending on the particular circumstances, be probative on the issue of whether such a grave risk exists. That said, past behaviours and incidents are not per se determinative of the fact that effective protective measures are not available to protect the child from the grave risk".

60. An analysis of the approach to protective measures is set out by Cobb J in (**Re T (Abduction: Protective Measures: Agreement to Return) [2023] EWCA Civ**

1415 where he considered (para 45) the following:

i) The requirement for the parties to address protective measures early in the process;

ii) The importance of the court identifying early in the proceedings what case management directions need to be made, so that at the final hearing the court has the information necessary to make an informed assessment of the efficacy of protective measures;

iii) The need for the court to be satisfied, when necessary for the purposes of determining whether to make a summary return order, that the proposed protective measures are going to be sufficiently effective in the requesting state to address the article 13(b) risks;

iv) The status of undertakings containing protective measures, and their recognition in foreign states;

v) The distinction between 'protective measures' and 'soft landing' or 'safe harbour' provisions.

61. I bear in mind also what MacDonald J said in **G v D [2020] EWHC 1476 (Fam)** at para 39:

> "Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example Re H (Abduction: Grave Risk) [2003] EWCA Civ 355, [2003] 2 FLR 141, Re M (Abduction: Intolerable Situation) [2000] 1 FLR 930 and Re L (Abduction: Pending Criminal Proceedings) [1999] 1 FLR 433). In this context I note that Lowe and others observe in International Movement of Children: Law, Practice and Procedure 2nd Edt. at paragraph 24.55 that: "Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or, even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases."

62. When considering the domestic abuse allegations made by the Mother, I have taken into account the definition of domestic abuse at s1(3) of the Domestic Abuse Act 2021, PD12J and the jurisprudence as to the impact on child welfare of domestic abuse, including **Re H-N [2021] EWCA Civ 448**.

63. F offers a variety of protective measures which he says will sufficiently mitigate the concerns raised by M.

i) To pay for the cost of the return flights for M and the child to Romania.

ii) Not to attend the airport at the time of M and the child's return to Romania.

iii) To pay maintenance for a limited term, including to cover rent.

iv) Not to seek to separate M and the child save for any agreed contact or any decision of the Romanian court.

v) A non molestation provision.

vi) To transfer the child allowance payments to M until M's own claim is processed.

vii) Not to attend M's Romanian residence without prior agreement, save for any contact arrangements agreed between the parties or ordered by the court.

Conclusions on Article 13(b)

64. It seems to me to be appropriate in this case to take M's factual case as to F's behaviour at its highest. There is at least some independent support for it in the form of police disclosure and F's aggressive and abusive text messages. Despite F's denials, I do not think I can confidently discount the complaints and assertions made by M and conclude that they are unfounded or exaggerated.

65. Those complaints and assertions are very grave. I have set them out above. They seem to me to establish, at least potentially, Article 13(b) grounds. I accept, as counsel for M said, that even a low risk of serious harm can fall within Article 13(b) as much as a grave risk of lesser harm. It is all a question of degree and balance.

66. However, I must also consider the impact on M of this behaviour, and the effect upon her (and by extension on A) of a return to Romania. In this context, it is in my judgment of relevance that M left Romania in August 2024 not because of F'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. In my judgment, it is probable that upon return to a country which she knows well (but not a return to live with F), 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 F would be manageable, dependent as he is on M for his care.

67. There is no evidence from clinicians or experts that the state of M's mental health, and the effect on her mental health of a return to Romania, would jeopardise her care of A either physically or emotionally. The evidence to which I have referred (including her wish in August 2024 to reconcile with F, and her willingness to travel to Romania to assist with contact) does not point in that direction. She would not be returning to a relationship with F, or to the house where she lived with F. She can go to live with family members, or in rented accommodation as she chooses.

68. Were A to be further exposed to the domestic abuse between M and F, he would be at risk of harm but (i) his return would be with A, and they would not go back to live with F, and (ii) there are various legal and other authorities in Romania to protect both mother and child.

69. There is no evidence that F would be likely to perpetrate harm directly to A. M says that she is happy for F to see A, including in Romania. Through the October 2024 texts between F and M's father, it was envisaged that A could spend significant time with F there.

70. I bear in mind that my focus is on the impact to the child if a return order is made to Romania. In my judgment, the behaviour of F, which gives rise to potential risk to A if he and M 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.

71. If protective measures are established in a way which can be enforced in Romania, then in my judgment the risks to M of a return to Romania are sufficiently ameliorated, and the impact on A of a return would be mitigated. It would be unsettling, would require a period of adjustment and is not what M wants, but it would not be intolerable for A nor expose him to a grave risk of harm. M is already participating in proceedings which are underway and can make a relocation application. And I bear in mind the purpose of the Convention set out in **Re D (A Child) (Abduction: Rights of Custody)** ***[2006] UKHL 51***, by Baroness Hale at para 48 that:

> "The whole object of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their 'home', but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed."

72. I conclude that, provided protective measures are in place, the Article 13(b) defence is not made out.

73. I will therefore make a return order within 14 days subject to the following conditions and protective measures.

i) F to pay for the cost of the return flights for M and the child to Romania. This is a condition of return.

ii) Production of confirmation from the Prosecutor's Office that the criminal complaint will be taken no further. 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 A, and the SJE indicated that it would be prudent to obtain this confirmation.

iii) F to pay M €4000 euros 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 family members. If she does not rent, she shall still be entitled to the 4000 euros. This shall be a condition of return.

iv) F shall, from the date of return, by way of undertaking:

a) Pay M €500 per month for a period of 6 months.

b) Transfer the child benefit payments to M until M's own claim is processed.

c) Pay the costs of a speech therapist.

If these are recognisable and enforceable in Romania, all well and good. If not, I have no particular reason to doubt that he will comply, and he will appreciate that if he does not do so, the Romanian court will be made aware of that during the course of proceedings there.

v) F not to attend the airport at the time of M and the child's return to Romania.

vi) F shall not to seek to separate M and the child save for any agreed contact or any decision of the Romanian court. I will not make a provision that F shall not seek an order for A to live with him; that must be a matter for the Romanian courts.

vii) F shall not harass, molest, pester, use or threaten to use violence against M.

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

ix) F is not to be provided with M's address, and is not to seek it, unless ordered by the Romanian court.

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

74. My order is for a return in 14 days. The order shall include the usual provisions about release of passports at the airport.

75. The order shall be registered in Romania before a return. My order shall be stayed until the registration is in place.

76. I will not make an order for interim contact (whether direct or indirect) when A is back in Romania. That will be for the Romanian court.

Stay of this order

77. This order is stayed until it is registered in Romania.

78. M goes further and submits that it should be stayed until (i) the outcome of the Romanian proceedings is known and/or (ii) the outcome of an application by her for relocation from Romania to England (which she has not yet issued) is known. I reject this submission. There is no timescale, but it seems likely to me that Romanian proceedings would not conclude for potentially a lengthy time. Although the Romanian courts have held a number of hearings, there is no obvious sign of a swift resolution on the horizon. Since the purpose of the Convention is to enable the courts of the outgoing country to determine welfare issues should a return order be made, it would be illogical to refuse a return because they are in fact in the middle of exploring such issues.

Final comments

79. This order requires A to be returned to Romania. M will accompany him. This is not an order determining who A should live with and/or how much time A should spend with each parent. It seems to me from what I have seen and heard that, on the face of it, A's living arrangements should lie with M as his primary carer. But it is not for me to decide such matters, which are firmly for the Romanian court.