



Neutral Citation Number: [2025] EWHC 1176 (Fam)

Case No: FD25P00160

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

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Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/05/2025

**Before :**

**THE HONOURABLE MRS JUSTICE JUDD**

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**Between :**

**RE**  
**- and -**  
**RL**

**Applicant**

**Respondent**

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**Harry Langford** (instructed by **Hanne & Co LLP**) for the **Applicant**  
**Elle Tait** (instructed by **Miles & Partners**) for the **Respondent**

Hearing dates: 13<sup>th</sup> May 2025

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 15<sup>th</sup> May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE JUDD

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

**Mrs Justice Judd :**

1. This is an application by a father for the summary return of the parties' child, (R), to Italy pursuant to the 1980 Hague Convention. The application is opposed by the mother.

Background

2. The father is an Italian national and the mother is British. They met in Italy in 2021 when the mother was living there, and commenced a relationship. R was born in 2024. The mother alleges that the relationship between the parties has been difficult for some time. In February of this year they came to this country for a holiday which was booked to last for just over a week. The mother further alleges that when they were staying at a hotel in the middle of the holiday she was led to believe that the father was trying to buy drugs. She says that, for her, that was the last straw in the relationship and she told him that she and R would not be returning to Italy.
3. The father therefore returned to Italy alone. Almost immediately after he returned he contacted the authorities and this application was made as soon as possible thereafter, so that this can properly be described as a 'hot pursuit' case.
4. The mother accepts that R was habitually resident in Italy on the date that she decided she did not want to return and that his retention here is in breach of the father's rights of custody. The retention was therefore wrongful within the meaning of Article 3. She defends the application on the basis of Article 13b, namely that there is a grave risk that R's return would expose him to physical or psychological harm, or place him in an intolerable situation.
5. The father does not accept that the provisions of Article 13b are met. He is prepared to give undertakings that he will permit the mother and R to occupy his home (where the family lived before February 2025) by themselves until the Italian court is able to deal with financial arrangements on a substantive, even if interim basis, to pay her 700 euros a month in maintenance (which would not include rent or utilities which he will be paying on his property anyway) to be reduced pro rata once the mother is in receipt of Italian benefits, that he will not come to the property where the mother is living or remove R from her, save for agreed or ordered contact, and that he will pay for things such as return flights etc, and also pay for the visa application that will need to be made.
6. The mother has sought a list of protective measures as set out in an Annexe to the position statement filed on her behalf. Most of them have been met by the father although he does not offer to provide her with independent accommodation in a different town, or to pay her the sum she seeks in interim maintenance until the Italian courts are able to deal with things.

Submissions

7. Following receipt of the expert report from Ms. Ceschini, Ms. Tait for the mother accepts that she will be able to enter Italy together with R, albeit she submits that this is not without complication.

8. The mother's case under Article 13b is based upon what she says will be a very challenging environment for herself, and by extension, R, if a return order is made. The father's property at which they are expected to live is 50 metres from his place of work and that of his parents. The town is small, the mother speaks very little Italian, has no friends, and will be isolated. There is very limited public transport and the mother does not drive. The mother has made allegations that the father was domestically abusive to her, becoming angry and aggressive at times, jealous and controlling. She says that he abuses alcohol and drugs. All these factors taken together will mean that, despite any undertakings, she will feel frightened, watched, and trapped.
9. Added to this, the amount of money the father is offering to pay to her until the Italian courts are able to intervene is insufficient. She has provided a schedule of expected outgoings and even taking into account the fact that she would not need to pay for rent or bills in the father's house, the sum offered (which was increased to 700 Euros from 550 during the hearing) is not enough to pay for much more than food and nappies, leaving little or nothing for transport, or anything beyond the bare minimum.
10. Even if the factors taken individually are not sufficient to show a grave risk, Ms. Tait submits that cumulatively, they clearly do. The mother is a young single parent, with a severely limited income who will find it very difficult to live somewhere where she is socially isolated and financially dependent on a man who she says is abusive and controlling. The concrete situation for R on his return, taking into account the factors above at their highest, involves risks of homelessness and serious poverty, compounded by all the other matters.
11. In the event that the court determines that a return order should be made, Ms. Tait submits that the court should delay this until a Nulla Osta is obtained and a visa issued before travel to Italy. Although she accepts the expert evidence that the mother will be allowed to enter Italy with R (and that she is not an overstayer as she had previously thought), Ms. Tait argues that the alternative route, whereby the mother applies for a visa after arriving in Italy, leaves her exposed to a risk that it will be some time before she is able to access healthcare in Italy for herself, or benefits, and that there is always the prospect of the visa being refused completely.
12. On behalf of the father, Mr. Langford submits that the matters put forward by, and on behalf of, the mother fall a long way short of reaching the level of a grave risk for R. He submits that the immigration advice shows clearly that the mother will be able to enter Italy with R, that she will be entitled to obtain benefits and healthcare once the application for a visa has been made, and that she has not been an overstayer and therefore there is not likely to be any impediment to her getting a visa. The mother would be in a position to work whilst her visa application is being processed.
13. Mr. Langford points out that the mother has not sought undertakings with respect to non-molestation but the father has agreed to undertakings not to go to the mother's property and to give her all the sets of keys he has. He says that the mother has lived in Italy for several years and so she is familiar with it and the language too. In any event, none of these issues are sufficient to amount to an Article 13b defence. The father is prepared to pay maintenance for the mother and R and to enable them to have a 'soft landing' in Italy.

14. The court should make an order for R's swift return accordingly.

#### Expert evidence

15. Roberta Ceschini is a Family Law Partner at Ceschini & Restignoli, specializing in international matrimonial law and child abduction.
16. Ms. Ceschini advises that British nationals are allowed to stay for 90 days within a 180-day period without a visa. The mother could apply for a residence permit for a family reunion with R, either from outside Italy or immediately after entering.
17. The first report was based on the premise that the mother had been an overstayer in Italy, something which is a serious criminal offence, and which could have caused problems if she tried to enter Italy again without a visa. Therefore Ms. Ceschini advised that the best way forward would be to apply for a visa before leaving the UK by obtaining a Nulla Osta and visa and then for a residence permit within eight days of arriving in Italy. She said that no matter what the mother's visa situation, she would not be forced to leave Italy if R is living with her. It costs approximately €200-300 for the permit, plus potential legal fees of around €2000.
18. The expert advises that the mother can work and access state benefits and medical care with a valid residence permit, and that they are available once she can prove that the application has been made. She will be eligible for the "Assegno Unico" allowance for R, and can rent an apartment with a residence permit.
19. The expert's route of choice for the mother to apply for a visa would be via the Nulla Osta procedure in advance of travel, but it is clear from the report that the mother would not be prevented from entering Italy with R without a visa. The Nulla Osta procedure is said to take between three and six months.

#### Legal Framework

20. Article 1 of the 1980 Hague Convention sets out the purpose of the Convention:

*"To protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access"*.
21. The underlying philosophy is that the wrongful removal or retention of a child is prejudicial to his or her welfare, and that, save for the limited exceptions provided for, it will be in their best interests to return to the state of habitual residence, and for the courts of that state to determine the merits of a dispute as to their future arrangements.
22. In *B v B* [2014] EWHC 1804, Mostyn J described the specific purpose and limited operation of the Convention, stating that there are very few exceptions, and the exceptions that do exist have to be interpreted very narrowly in order that the central premise of the Convention is not fatally undermined. He stated:

*“All the Convention provides is that the child should be returned for the specific purpose and limited period to enable the court of her homeland to decide on her long-term future. That is all it decides”.*

Article 13b

23. In Re IG (Child Abduction: Habitual Residence: Article 13b) [2021] EWCA Civ 1123, Baker LJ summarised the principles derived from the case law at paragraphs 46 to 48:

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

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

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

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

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

*(4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then establish how the child can be protected from the risk.*

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

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

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

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

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

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

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

*"if the court does not follow the approach referred to above, it would create the inevitable prospect of the court's evaluation falling between two stools. The court's "process*

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

24. Paragraph 40 of the Guide to Good Practice states as follows:-

- i) As a first step the court should consider whether the assertions are of such a nature, and of sufficient detail and substance, that they could constitute a grave risk;
- ii) If it proceeds to the second step, the court determines whether it is satisfied the grave risk exception to the child's return has been established by examining and evaluating the evidence presented by the person opposing the child's return, and by taking into account the evidence pertaining to protective measures available in the state of habitual residence.

#### Protective Measures

25. The assessment of protective measures was considered in Re E above, paragraphs 35 to 37, and more recently in Re T (Abduction: Protective Measures: Agreement to Return) [2023] EWCA Civ 1415. To be protective, measures need to be effective.
26. In G v D (Article 13(b) Absence of Protective Measures [2021] 1 FLR 36, MacDonald J emphasised that it is well-established that the 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.
27. Both Italy and the United Kingdom are contracting parties to the 1996 Hague Convention, meaning that orders or undertakings are recognised by operation of law to safeguard the child upon return by virtue of Articles 11 and 23. In a case where there is a risk of harm under Article 13b of the 1980 Convention, measures can therefore be ordered here to guard against it.

#### Discussion and conclusions

28. The mother's initial fear was that she would not be permitted to enter Italy with R, and that even if she was, her immigration status there would be precarious. The expert report demonstrates that this is not the case and that the mother will be permitted to come into Italy with R and to live there whilst making a visa application. Although it takes about a year, she will be entitled to some benefits and healthcare once the application has been made. R is an Italian citizen and so is automatically entitled to healthcare.

29. The mother has made allegations of domestic abuse against the father and also stated that he abuses drugs and alcohol. If the mother was to have to live with the father on her return, or R was to be placed to live with the father, then, and taking the allegations at their highest, they would be just of sufficient detail and substance to give rise to a grave risk within the meaning of Article 13b. Alternatively, if the mother and R were to return with nowhere to live and no access to funds at all until some future date when the mother might be able to get benefits, I accept that R would be placed in an intolerable situation.
30. However, this is not what will happen upon a return. The father has agreed that the mother and R can live in his apartment alone and undisturbed until the Italian courts can decide upon maintenance and also to provide the sum of 700 Euros a month in the meantime. It is not a lot of money, but it is sufficient for the time being. The father has agreed to apply for a hearing in the Italian courts as soon as possible and not to remove R from the care of the mother pending any decisions of the Italian courts. He will pay for the visa and for flights, plus any one-off specific costs for things that R needs.
31. All of these measures – be they called protective measures or provisions for a soft landing (in fact they are a combination of both) - will ensure that there is no grave risk that a return will expose R to physical or psychological harm or place him in an intolerable situation. Further, the authorities in Italy, as a signatory to the 1980 and 1996 Conventions, are able to provide any further protection to the mother and R should that be required.
32. The concrete situation for R upon a return to Italy will therefore be that he and his mother will have somewhere to live and enough money to get by for the time being. R will be protected by the father's undertakings not to come to the property and not to remove him from his mother's care without a court order or the mother's agreement. Once the visa is applied for (which should be within just a few days of arrival), the mother will be entitled to healthcare and some benefits.
33. I accept that the mother does not wish to go back to Italy and that the return will not be to a town of her choosing. She may feel somewhat isolated and limited by the lack of language, family and friends. I sincerely hope that things will be better than she fears, but none of these issues, by themselves or taken together, would put R in the position of being at a grave risk either because of the unhappiness of his mother or the fact they may be somewhat isolated. These are matters of welfare to be taken into account by the Italian courts in due course.
34. In all the circumstances, I do not find that the defence under Article 13b is made out and I must, therefore, make an order for R's return to Italy. Given the length of time that it would take for the Nulla Osta process to be followed (said to be three to six months) I do not accede to the mother's application that the return should be delayed until then. This would conflict with the underlying intention of the Convention for children to be returned swiftly to the state of their habitual residence. The application for a visa can be made after the return order is effected.
35. I will listen to submissions as to the date of return, but in the first instance would suggest that a period of not more than two weeks would be appropriate.