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Case No: FD24P00585

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/04/2025

Before :

THE HONOURABLE MRS JUSTICE JUDD

Between :

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- and -
O

Applicant

Respondent

Victoria Green (instructed by **Freemans Solicitors**) for the **Applicant**
Indira Ramsahoye (instructed by **Ellis Jones LLP**) for the **Respondent**

Hearing dates: 14th-15th April 2025

Approved Judgment

This judgment was handed down remotely at 2pm on 15th April 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 :

Introduction

1. This is an application under the 1980 Convention for a return order to Lithuania in respect of three children who are aged 9 (I will refer to her as the older child or M), 4 and almost 3 (I will refer to them as the younger children).
2. The parents are both Lithuanian nationals who met and began a relationship in the UK, where all of the children were born. The relationship between the parents was troubled, and finally broke down in 2023. For almost all of the time until then, the family lived in the UK, apart from a short period of time spent in Spain in 2021.
3. At the time the parties' relationship broke down in 2023 they agreed that the mother and children would live in Lithuania. Over the course of the summer of that year the children and mother moved to live in a property owned by the maternal grandfather, and the oldest ones attended school.
4. The agreement between the parents was incorporated into a settlement agreement which was approved by the Lithuanian court in March 2024. This provided that the children would live with their mother and spend time with the father, including up to two weeks during the summer or school holidays. He was also to pay maintenance for the children. Both parties were legally advised.
5. The children came to England in early June 2024 in circumstances which are disputed. The mother states that this was for the summer holidays; the father says that the mother told him she could not cope with them and it was agreed the children would come to England to live with him. The mother says that during the course of the summer, the telephone contact she was having with the children began to peter out, and she also felt that the oldest child was being coached about what to say. The father then sent messages to the mother to say that the children would not be returning to Lithuania, and stopped answering the mother's calls.
6. At the end of September 2024 the mother travelled to the UK. In November, she attended the family home where she believed the children were living but did not find them. When she attended the children's school she found out that children's services had been involved with the family and interviewed the oldest child. The involvement related to allegations that the oldest child had made about being hit by the mother and also because the father had left them alone in the house on 1st September.
7. The mother sought legal advice and then, via the Central Authority, made this application in November 2024. She has remained in England ever since, having contact to the children every week, albeit her accommodation is not sufficient to have them to stay overnight.

The hearing

8. I read the evidence in the bundle provided to me and further statements which were filed too late to be incorporated into it. I read the Cafcass report and the skeleton arguments filed by each party. I heard evidence from each of the parents as to the issue of consent. The father said at the end of his evidence (for the first time that I am aware

of) that if the court made a return order, he would go to Lithuania with the children. This is not something he has said before.

Legal Framework

9. Under Article 3 of the Convention the removal or retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person under the law of the state in which the child was habitually resident immediately before the removal or retention as long as those rights were actually exercised at the relevant time.
10. Article 12 provides that where a child has been wrongfully removed or retained in terms of Article 3 and less than 12 months has elapsed between the wrongful act and the commencement of the proceedings, the judicial or administrative authority should order the return forthwith subject to the provisions of Article 13.
11. Article 13 provides that:-

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested state is not bound to order the return of the child if the person, institution or other body which opposes the return establishes that –

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to, or subsequently acquiesced in the removal or retention, or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.”

Article 13a

12. In Re G (Abduction: Consent/Discretion) [2021] EWCA Civ 139, the Court of Appeal stated as follows:-

“24. ... The applicable principles were considered by this court in Re P-(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.”

Article 13b

13. The provisions of Article 13b have been considered in numerous cases. In *Re IG (Child Abduction: Habitual Residence: Article 13b)* [2021] EWCA Civ 1123, Baker LJ stated 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."

14. Pursuant to the Guide to Good Practice, paragraph 40:

"(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".

Child objections

15. The leading case with respect to child objections remains Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal) [2015] EWCA Civ 26; [2016] Fam 1, where Black LJ (as she then was) stated as follows:

"the gateway stage is confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained a degree of maturity at which it is appropriate to take account of his or her views. Sub-tests and technicalities of all sorts should be avoided.

The following factors apply:

(a) Whether a child objects to being returned is a matter of fact, as is her age;

(b) There is no fixed age below which the child's objections will not be taken into account, albeit the younger a child is the less likely it is that she will have the maturity which makes it appropriate to do so;

(c) The child's views have to amount to an objection, and anything less than that (for example, a preference) will not do;

(d) Further, the objection must be to being returned to the country of the child's habitual residence, not to living with a particular parent, albeit there may be cases where those factors are so inextricably linked that they cannot be separated."

16. These principles were summarised more recently by Williams J in *R v JN (Re Q and V: 1980 Hague Convention and inherent jurisdiction: Summary Return)* [2019] EWHC 490.
17. If the gateway is surmounted, then there is a discretion to refuse to order a return. The discretion is at large and there is no exhaustive list of factors. The court should have regard to welfare considerations so far as it is possible to take account of them on the limited evidence available. The court must give weight to Convention considerations and, at all times, bear in mind that the Convention only works, in general, if children who have been wrongfully removed or retained from their country of habitual residence are returned promptly. The court will have to consider the nature and strengths of the child's objections, the extent to which they are authentically their own or the product of the influence of the abducting parent and the extent to which they coincide with, or are at odds with, other considerations which are relevant to the child's welfare. There is no requirement to establish exceptionality; policy considerations will be balanced against other factors relating to any defence established and welfare considerations (*Re M* [2007] UKHL 55).

The Cafcass report

18. In her report, the Cafcass officer set out some of the background history of the family that was available from referrals to Children's Services that were made in 2017, 2020, 2021 (this was when the parties were living together). A section 47 investigation was started in 2021 but this was not completed because the family were said to have returned to Lithuania. In August 2024, the father self-referred for support, saying that he was caring for the children on his own, the mother having left the country. He said that the mother had not seen the children for a year, and that she had been abusive in the past. On 1st September, the police called at the home and found the children on their own, the father having gone out to the shops to collect some food. He returned quite quickly after the police arrived. The home was found to be in a reasonable condition and so the matter was left with him being given a warning and entering into a safety plan in which he agreed not to leave the children on their own again.

19. The Cafcass officer spoke to the oldest child (who she described as confident and engaging) who told her that her parents had agreed that she could come to the UK for the whole summer. She was clear that she understood that it would be a temporary trip and that they would be returning after this. Ms. Veitch stated that the child had given her a more positive account of her life in the UK than in Lithuania and spoke in a brighter tone of voice. She said 'my school is really cool and I have really good real friends and I am learning more things. I have one biggest best friend, but the rest are my kind of nearly best friends'. She spoke very positively about her home here with her father, stepmother and siblings, and said that she liked being in the town she lived, which had many parks and playgrounds and amenities.
20. By contrast, she said her teachers at her school in Lithuania were stricter than the ones here, and said that some children were her friends and some were not. She said she did not enjoy walking alone to school, and that the school was old but 'otherwise fine'. She spoke about not liking the house she was living in much, and of her mother drinking and neglecting her and her sisters. She said she was made to look after her sisters and that she had been told her mother had been 'out partying'. She said that her mother hit her, including when she was drunk, and that, on one occasion, her mother had put her head to the table hitting it hard and causing her nose to bleed, which really hurt.
21. Ms. Veitch stated that the oldest child's wishes and feelings were that she wanted to remain living with her father in England. She said she wished to remain in her father's care because she did not know if her mother had changed. Ms. Veitch was concerned that she had been influenced by what her father had told her and that she would be hit, made to look after her sisters and exposed to her mother's drinking if she was to return. She believed that the child's wishes and feelings related more to the parent with whom she wished to live than the country, and that her strong preference to live with her father was grounded in her experience of being looked after by her mother and not inextricably linked to Lithuania, as her account of her life there was balanced and included some positives.
22. The child prepared a letter for me in which she made comments which fitted very much with what she told Ms. Veitch. At the end, she wrote 'if I had to go to Lithuania I would feel depressed, angry, sad and afraid'.
23. Given the ages and presentation of the other two children, Ms. Veitch did not explore their wishes and feelings. The father told her that they were missing their mother. There were no concerns about their presentation or welfare.

Oral evidence

24. Both the parents gave oral evidence about the issue of consent. This followed very much what was contained in their respective statements, albeit with some more contextual detail. The father said that the agreement that the children would come and live with him was made in a restaurant a day or two before they came here after the mother had left them at his mother's house with all of their belongings. He said that he had not registered the children at school until August because it was not easy for him as a single parent and that he had stopped working at the end of May when they arrived (he is self employed). He said at one point that the oldest child had been told she was coming here for a long time but contradicted this soon afterwards when asked why she had said what she did to the Cafcass officer.

25. At the end of his evidence, Ms. Ramsahoye asked the father whether he would return to Lithuania if the court was to order that the children should go, to which his answer was yes. This was the first time he made anyone aware that this was his case. In other documents, he has said that he would not return as it was not possible for him to do so. This was later explained as a misunderstanding.
26. The mother was adamant that she had not agreed the children should come and live with the father in England, but simply that they should come here for a holiday. She packed a number of the children's belongings but not all of them. She sent the youngest child's medical records so the father could take her for her two year check, but apart from that and the passports, did not send any other official documents. She did pack some of the oldest child's pictures and school cards but that was because she wanted her father to see them. The reason that the children had been left with their grandmother for a few days was because the father had been unable to travel from England as soon as he had hoped.

Submissions

27. On behalf of the mother, Ms. Green submitted that the evidence clearly pointed away from the mother giving her consent to the children coming back to live in England. The father did not say this to Children's Services when he spoke to them in England in August 2024, and the oldest child clearly told the Cafcass officer that she understood that they were coming to England for the summer holidays. The father's evidence, through his documents and what he has said to different people at different times, is inconsistent. He has also been inconsistent about other things as well, and his evidence is, thereby, not credible.
28. Further, the mother acted very swiftly when the children were not returned to Lithuania in September and she has never wavered in her claim that the children were living there, and should be returned.
29. So far as the Article 13b defence is concerned, Ms. Green submits that all the allegations made against her are firmly denied. She invites me to find that I can confidently discount the possibility that the allegations made against the mother can give rise to a grave risk. She points to the inconsistency in the oldest child's evidence about an event where she says her nose was injured, and also to the views of the Cafcass officer that she appears to have been influenced by her father in being drawn into the parental dispute. The way in which the child made allegations to both the Cafcass officer and to the social worker in 2024 all reveal signs that she has been the subject of alienating behaviours (including some examples the older child gave which did not fit with known evidence). It is notable that the father signed an agreement as late as March 2024 despite what he said to Children's Services, and that in it the apartment the mother and children lived in was said to be clean and tidy, with all amenities. Further, there have been no concerns raised by the school or relatives (including paternal relatives) who live in Lithuania.
30. In the event that I do find that the allegations give rise to a grave risk, Ms. Green states that the protective measures proposed by Ms. Veitch are sufficient. A referral should be made to Children's Services there and the Lithuanian Central Authority, the Cafcass report should be provided, the Family Court there should be engaged, and the mother

should give undertakings as to physical chastisement and use of alcohol. Further, if the father was to return with the children they would be protected.

31. Turning to the defence of the older child's objections, Ms. Green submits that Ms. Veitch herself has pointed out that such objection that there appears to be relates much more to a return to the mother rather than Lithuania itself. Her views about Lithuania itself are balanced, for while she spoke of some preference for things in England, it was not more than that. The oldest child did not demonstrate an objection to school or even to the home she lived in, and has told her mother more positive things than she told Cafcass. Given what is in the report, it appears clear that the father has influenced her views.
32. Even if I was to find that the oldest child did object, Ms. Green invites me not to exercise my discretion to refuse to make a return order. This is a case where the Lithuanian courts were engaged only two months before the children left to go to England, and the object of the Convention must have centre stage. The children all lived in Lithuania together and they have relatives there. It is part of their heritage. No defence is raised with respect to the younger children and it is important that they are all able to stay together.
33. Even if I do exercise my discretion in relation to the older child, the mother invites me to order a return for the younger two.
34. Ms. Green also raises, very properly, the father's previous engagement in criminal activity and the risk that this poses to the children as well. In her statement in reply, the mother says that the father has had long standing problems with alcohol and drugs, and that he has also been involved in cultivating and dealing in cannabis, which led to police raids on their home.
35. On behalf of the father, Ms. Ramsahoye submits that the mother consented to the children's removal to live in this country before they left, during the course of a meeting between the father and mother at a restaurant near the mother's home. She says that the evidence as to the quantity of luggage and belongings brought amount to strong supporting evidence as to the father's case.
36. As to Article 13b, she submits that the allegations made by the older child are detailed, and have been repeated to different professionals, once in the summer of 2024 and more recently to the Cafcass officer. She gives a clear description of her life and that of her siblings as she saw it, which included her mother being significantly affected by alcohol and being verbally and physically abusive. Although the father has said he would return with the children, in truth he does not have anywhere to live and would have to stay with his mother in very cramped accommodation and then find work.
37. Finally, Ms. Ramsahoye invites me to find that the oldest child does object to a return within the meaning of the convention and that she is of an age and maturity at which it is appropriate to take account of her views. Given her allegations, if the gateway is surmounted, I should exercise my discretion to refuse to order a return.

Decision

38. The father's very last minute statement that he would return to Lithuania with the children has not made things at all easy. There has been virtually no explanation as to

how this might be achieved, how long it would take or indeed if it is even practical. The father is a Lithuanian national and so can speak the language and presumably obtain work to support himself and the children, but the timescale of this would be completely unknown. If he was to return before being able to set himself up with accommodation then he would have to stay with his own mother and all the children in a one-bedroom flat which is a considerable distance from where the children last lived and the oldest ones attended school. The mother herself says this is not suitable because the father's brother, who suffers from schizophrenia, also lives there.

39. Further, during the meeting between the Cafcass officer and the older child, there was no exploration as to her views if she was to return with her father and siblings because that was not believed to be an option. Ms. Veitch did note that there was a short term protective measure available of the children returning to their paternal grandmother (who has the one-bedroomed flat referred to above), which could be safe pending investigation by the local social services.
40. The father's change of stance did lead me to wonder whether or not to adjourn this hearing in order to make more enquiries about the arrangements that could be made, and possibly to consider another meeting between Cafcass and the older child. Neither party invited me to do this, and I am conscious that this would lead to more delay in what is intended to be a summary process. For that reason, I have concluded I should go ahead and make a decision now on the information I have.

Consent

41. I will deal first with the issue of consent as, in many ways, this issue is the most straightforward. Having heard, and read, all of the evidence I do not find that the mother consented to the children being removed to live in England at all. I am satisfied that she only agreed that the children should come here for the whole of the summer holidays. The father's evidence was muddled and inconsistent on this point, most particularly when trying to give an explanation as to why the oldest child gave such a clear statement to the Cafcass officer as to what she thought had happened. This was when she had been living with her father for almost a year and was plainly something from her own experience. It was she who was particularly missing her father, and she who would have been most interested in what was happening to her when she came here last year. I do not accept the father or mother knew otherwise and were protecting her from the truth. It is very unlikely that the children's belongings could have all fitted into limited luggage brought to this country by train. It is much more likely that the father decided to keep the children here at a later stage, which explained why it became more difficult for the mother to communicate with the children and led to her coming over here in September 2024.

Child objections

42. I will then turn to deal with the issue of child objections, which relates to the oldest child alone. I have not found this particularly easy, especially as it is clear that she assumed that, were she to return, it would be to the care of her mother, an assumption which was not challenged by the Cafcass officer because the father did not appear to have said anything to lead anyone to believe that he would be able, or willing, to leave his home here and return there.

43. I am also very conscious of the views of the Cafcass officer which have not been challenged in oral evidence. In her report, she expressed the clear view that what M was saying to her related far more to the parent with whom she wished to live than to either being in England or Lithuania.
44. Nonetheless, it is important to look at the whole of the report, and what M actually said. She said a lot about both countries over and above who was caring for her. As to this country, she said that she has really good friends at school, and that she loves music including playing the ukelele. She likes the town where she is living, because of the parks and playgrounds and a local leisure complex. She likes her home and bedroom. Ms. Veitch noticed how her face brightened when she spoke of being here compared with how she presented when speaking of Lithuania. Although she was described as being balanced about that country, she had very little to say that was positive about it, save that it was warm in the summer and that was why she had agreed to go (albeit she later regretted it). She did say she had some friends at school, but there was a strong contrast to the description of that and the situation here. She did not enjoy walking to school alone, and she described no hobbies or any particularly happy memories. The description of the home she had lived in was of it being dark and in poor repair. She acknowledged having relatives there but there is no particular description of them.
45. She told the Cafcass officer that she would feel ‘kind of depressed, sad or angry about it’ if made to go back and ‘I kind of feel better when I am separated from my mum’. In her letter for the judge she said a number of things which relate both to living with her parents but also to living in England. She finished by saying ‘if I had to go to Lithuania I would feel depressed, angry, sad and afraid’.
46. It is very difficult for anyone, not least a child to be able to separate out whether their views about a particular place relate to the experiences of the people or the place. It can be somewhat artificial. Whilst it must be acknowledged that many of the direct quotes from M include not wanting to live with her mother as part of her expressed wishes, I have come to the conclusion that her objection to going back is not only to living with her mother but also to the country itself. It is an objection too, and not just a preference. The contrast between what she says about her life here in relation to school, friends, hobbies and the home she lives in, and what she says about Lithuania, is very significant. It is true that she objects to going to live with her mother even more, but that should not mask the rest of what she has said. In coming to this view I have borne in mind the likelihood that some of the views that she has expressed, especially about her mother, are likely to have been influenced by her father but it has not changed my conclusion overall as to this aspect of the case.
47. M is nine years old, and is described by the Cafcass officer as ‘streetwise’ and possibly more mature than some children of her age. She was certainly able to express herself well. In my judgement, she has attained an age and degree of maturity at which it is appropriate to take into account her views.
48. I will deal with the issue of discretion later in this judgment.

Article 13b

49. The allegations made by M as to what happened in the care of the mother are both detailed and substantial in nature. They contain assertions that the mother was affected

by drink, that she left M to care for the younger children, and that she was verbally and physically abusive. She told the Cafcass officer of an occasion when her mother pushed her head into a door causing her to suffer an injury to her nose which hurt. The allegations were made to the Cafcass officer in April 2025 and to a social worker in the autumn of 2024. They were broadly similar, albeit there are some differences (one example is of the injury to the nose being apparently caused by a table not a door). I entirely accept the submissions that have been made by Ms. Green as to whether or not M has been influenced or even coerced by her father, that there were no reports from the school or grandmother of harm being caused, but it seems to me that these are matters for substantive proceedings, and I most certainly could not confidently discount them. If the assertions are true, then there is a grave risk that a return to the care of the mother would expose each of the children to physical and/or psychological harm and place them in an intolerable situation.

50. I then turn to the question of protective measures. In the event of a return order, it is proposed by Cafcass, and accepted by the parties, that there should be a referral to the local Children's Services and that the matter should be returned to court as soon as possible, with the Cafcass report being translated and disclosed. The mother does not agree that the children should be returned to the paternal grandmother. The mother proposes that the children should live with her and the maternal grandmother and that she should give undertakings about the use of alcohol and physical chastisement.
51. As I have set out above, the father has now said he would return with the children.
52. Given the allegations made by M, I do not consider, apart from the proposal that the father returns, that the protective measures proposed here are sufficient to ameliorate the grave risk. If the allegations are true, then the presence (albeit not living in the same home) of relatives such as the maternal grandmother was not sufficient to prevent the mother behaving in the way described, which would have been very distressing and harmful. Nor was the school aware. I accept that the mother would give undertakings not to use alcohol or physical chastisement but there is a significant risk that they would be broken if she indeed does have problems with alcohol or controlling her temper. Social services could, of course, step in, but this could well be after damage was done.
53. The children could live with the paternal grandmother in the very short term until the court was able to deal with the matter, but experience suggests that days could turn into weeks whilst the children live with her in a one-bedroom flat with the possible presence of a paternal uncle too. This does not appear to me to be a situation which the children should be expected to tolerate.
54. On the other hand, the children would be sufficiently protected if the father was to return with the children and care for them in his own accommodation until the court in Lithuania was able to deal with the welfare issues. Apart from what happened on 1st September, the children do appear to be sufficiently well cared for at the moment. They are well-presented and no concerns have been noted.

The exercise of discretion

55. Having found that M does object to a return and that she has reached an age and degree of maturity which means that it is appropriate to take into account her views, I turn to

consider whether I should exercise my discretion to refuse to order that she return to Lithuania.

56. First of all, I bear in mind the object of the Convention which is to secure the prompt return of children wrongfully removed to the state of their habitual residence, and also to respect the rights of custody and access in Contracting States. Here, there was a consent order which provided that the children should live with the mother and have contact with the father, an order which was made only two months before the children left to go to England. The fact that they were retained when they were on an agreed holiday is a particularly powerful factor in favour of ordering a return. If and when M made allegations about her treatment by her mother during that holiday the proper course of action for the father was to have told the mother what had transpired and to have made a referral to the local authority in Lithuania. As it was, he appears to have cut off communication with the mother, disappeared, and then secretly enrolled the children at school here and kept them. He then tried to present a case that the mother consented all along, a case which I have rejected.
57. This is all very worrying and may suggest (as has been said in the Cafcass report) that his behaviour in this regard has been abusive and not child focussed. Leaving the children in his care for longer still may allow him to alienate them (if that is what he has done) further from their mother. Further, M is still quite young, at only 9 years old, which means she has a less than full understanding of events and is vulnerable to being manipulated.
58. There are other factors, however. M has given very clear and strong views. She and her siblings were all born here, and apart from about a year in 2023-4, and a period of time in Spain, she has lived here most of her life. There are no language barriers. She has now been here for almost a year and a move back would entail very considerable disruption. If she goes back with her father, then it will take time to find a home, which may or may not be in the area of her old school. There may have to be more than one move, with all that entails, and that would be very hard for her. It would be much better for M in the short term for her to stay here, with the court in this country being able to carry out a proper welfare analysis as to what is in her best interests longer term. Although the mother does not have particularly good accommodation, she has fortunately been able to live in this country for several months now, with contact to the children. She speaks English and is no stranger to being here.
59. In all the circumstances of this case, and despite the way in which M's retention in this country came about, I have concluded I should exercise my discretion and refuse to order a return.
60. Accordingly, M will be able to stay here for the time being.

Decision with respect to the younger children

61. I then turn to deal with the younger children. I have already stated that the high bar of the Article 13b defence is made out in this case, unless the children are able to return to Lithuania with their father. My decision about M makes this unlikely if not impossible. To return the younger children on their own, given their ages, would leave them particularly vulnerable. Added to that, they would be separated from their older sister.

The protective measures on offer are not sufficient to ameliorate their situation and so I must refuse to order their return as well.

Postscript

62. It is very important in this case to emphasize that this decision in relation to summary return should not be considered as any indication as to the outcome of future, fully welfare based decisions. Whilst the allegations against the mother are serious, there are plenty of concerns about the father as well. He has an apparent history of involvement in drugs and gangs. The mother's allegations against him are very serious indeed and could place her and the children at risk if true. Abduction and/or retention of children away from a primary carer is known to be a means of perpetrating abuse on the other parent and children in some cases and such behaviour would therefore be relevant in any future proceedings. I am concerned that the case should be dealt with as swiftly as possible in the Family Court, and would welcome proposals from the parties as to how those proceedings may be progressed.