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Case No: FD17P00037

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/06/2017

Before :

MR JUSTICE HAYDEN

Re: GP (wrongful removal)

Mehvish Chaudhry (instructed by **Dawson Cornwell Solicitors**) for the **Applicant**
Paul Hepher (instructed by **Terry Jones Solicitors**) for the **Respondent**

Hearing dates: 26th May 2017

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE HAYDEN

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

Mr Justice Hayden :

1. This is an application pursuant to the Child Abduction and Custody Act 1985 seeking the return of GP who, it is agreed, was wrongfully removed from Italy on the 10th February 2016 by her mother (M). GP is 11 years old and presently lives with her mother alternating between Shrewsbury during the week and Derby at the weekends. F lives in San Benedetto Del Tronto, Italy.

2. The Applicant father (F) was born in Italy, the Mother in Latvia. The couple married in Italy in May 2001. They were primarily based in San Benedetto Del Tronto but travelled periodically to Latvia. GP was born in Latvia in December 2005. The parties returned

to Italy on a permanent basis in September 2010. GP started nursery.

3.It is plain that the marriage was in difficulty by November 2010 and early in 2011 Divorce proceedings commenced. Following the parties separation M removed GP from the family home to Sommacampagna, Northern Italy, 450 Km away. F reported this unlawful removal to the police and Court proceedings were commenced. In November 2014 M was sentenced to 1 year in prison for the removal of the child, by the 'Court of Ascoli Piceno, Criminal Division'. An appeal against that decision was rejected by the Court of Appeal in Ancona on the 12th January 2017. It is important to record a number of paragraphs from the judgment of that Court:

> *"On 17 January 2017 the Court of Appeal of Ancona delivered judgment (Justice Giuliana Basillia, Justice Marina Tommolini, Justice Cecelia Laura Cristina Bellucci) in relation to the Mother's appeal of the one-year sentence for removing the child to Northern Italy. The Court is referred to decision in relation to the Mother's appeal and the findings made in relation to the Mother's conduct within that judgment. In particular, the Court found as follows:*
>
> *The Mother had acted in a pre-meditated manner, and unilaterally so as to separate the Father from his daughter, in order to pursue a romantic relationship.*
>
> *The Mother's reports to the police were lacking in detail, generic, and contrived to lend support to her decision to unilaterally remove the child from her family home.*
>
> *The Court dismissed the Mother's claims, finding that the child had a strong bond with her Father and wider family.*
>
> *The Court further, found that the Mother removed the child for a protracted period of time and: "created a situation whereby she could keep the child under her exclusive control with the purpose of excluding Mr P from any decision and contact, and that she ceased that conduct only when forced to do so by the judicial orders."*
>
> *The Court of Appeal also took a very dim view of the Mother's conduct, playing by her own rules in order to satisfy her own wishes).*

4.The impact of this custodial sentence has been the focus of submissions, during the course of this hearing and I will return to it below. It is also necessary to record that on the 24th July 2014 the Court of Ascoli Piceno granted joint custody of GP to M and F. That Order, which has been filed in these proceedings, provided that GP shall live each year in the care of M from 11th September until 9th June and in the care of F from 10th June to 10th September. In addition, there was provision for alternate weekend contact and midweekly contact, F was ordered to pay child support of 300 Euros per/month. I note that the maintenance order was also subject of an appeal, dismissed by the Court of Appeal in Ancona on the 11th August 2015.

5.It is M's own case that she complied with the contact and care arrangements. GP's school

report for this period reveals her to be making good progress in the classroom, an intuitive learner and able *to 'gather, analyse and re-use information'*. She is described as *'well integrated into the classroom'*.

6. There has been no dispute that at the time of her removal GP was habitually resident in Italy. M's defence is set out within her statement of defence. She relies upon Article 13 of the 1980 Hague Convention, namely that:

i) There is a grave risk that GP's return would expose her to physical or psychological harm or otherwise place her in an intolerable situation; and/or

ii) GP objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of her views.

M accepts that in removing GP to the UK she acted in breach of the Father's rights of custody.

7.Proceedings in this jurisdiction were instituted on the 25th January 2017 when Parker J issued a Location Order. On the 26th January the Tipstaff Order was executed on the maternal uncle who disclosed that M was living in Shrewsbury with a man called Steve. The uncle asserted that he did not know M's address in Shrewsbury, confirmed that GP was attending school but was unable to give the name of it. On the 30th January the case was restored before Moor J who made orders intended to facilitate locating the child. Those orders were unproductive.

8.In pursuance of the whereabouts of M, Peter Jackson J made further orders on the 28th February, including an order compelling the attendance of the maternal uncle *'to give evidence before a Judge and to answer questions on oath concerning what he knows about the whereabouts of the said child, where they are and where they might be found'*. On the 28th February, F's solicitors made contact with the maternal uncle who asserted that M was living with him. Accordingly, repeated attempts were made by the Tipstaff to serve M at the uncle's address. It is not necessary for me to set out those efforts, I merely observe that M was eventually served on the 1st March 2017. Whilst M denies any knowledge of the proceedings until early March, I find that wholly unconvincing. It is inconsistent with her case that she spends every weekend with her brother. This was a determined and cynical evasion of service.

Article 13(b) – grave risk of harm

19. The court is not obliged to order the return of the child if '*the person, institution or body which opposes its return establishes that…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*'.

20. The Supreme Court clarified the principles to be applied in **Re E (Children) (Abduction:**

Custody Appeal) [2011] UKSC 27:

> *"[31] ……. there is no need for the article to be narrowly construed. By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or gloss."*
>
> *[33] Firstly, it is clear that the burden of proof lies with the person institution or other body which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will, of course, be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.*

9. The following passage also requires to be set out and, in my view, emphasised:

> *[33] Second, the risk to the child must be grave. It is not enough as it is in other contexts such as asylum, that the risk be real it must have reached such a level of seriousness has to be characterized as grave. Although grave characterizes the risk rather than the harm there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as grave while a higher level of risk might be required for other less serious forms of harm.*
>
> *[34] …the words "physical or psychological harm" are not qualified. However, they do gain colour from the alternative "or otherwise" placed "in an intolerable situation" (emphasis supplied). As was said in In re D [2007] 1 AC 619, para 52, "'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'". Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent. Mr Turner accepts that, if there is such a risk, the source of it is irrelevant: eg, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child.*

10. The predictive nature of Article 13b is underscored:

> *[35]Fourth, article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home. Mr Turner accepts that if the*

> *risk is serious enough to fall within article 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.*

11. Addressing the challenge facing the Judge in the face of factual dispute, Baroness Hale observed:

> *"[36] There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true.... Where allegations of domestic abuse are made, the court should first ask 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 ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues."*

12. As to the application of the guidance, the Supreme Court endorsed the approach of Charles J in its judgment in **Re S (Abduction: Article 13(b) Defence) [2012] 2 FLR 442**:

> *[29] In his substantive judgment dated 30 August 2011 Charles J sought faithfully to follow the guidance given by this court at para [36] of its judgment in Re E (Children) (Abduction: Custody Appeal), set out in para [20] above. Thus:*
>
> *(a) He began by assuming that the mother's allegations against the father were true.*
>
> *(b) He concluded that, on that assumption, and in the light of the fragility of the mother's psychological health, the protective measures offered by the father would not obviate the grave risk that, if returned to Australia, W would be placed in an intolerable situation.*
>
> *(c) He proceeded to consider, as best he could in the light of the absence of oral evidence and the summary character of the inquiry, whether the mother's allegations were indeed true.*
>
> *(d) Following a careful appraisal of the documentary evidence, including the mass of emails between the parents, he concluded that, as counsel for the father had been constrained to acknowledge, the mother had 'made out a good prima facie case that she was the victim of significant abuse at the hands of the father' (italics supplied).*

13. I think that it is helpful to condense the principles that required to be applied. Thus:

(i) There must be a grave risk of the harm alleged to the child;

(ii) Intolerable harm means a situation which the particular child should not be expected to tolerate in the circumstances. Harm includes both physical and psychological harm. This encompasses exposure to the physical and psychological harm done to a parent;

(iii) The source of the risk of harm is irrelevant such that it may stem from the

subjective perception of a parent which could have intolerable consequences for the child;

(iv) If the risk is serious enough the court is not only concerned with the child's immediate future as the need for protection may persist.

14. From the case law, referred to above, Ms Chaudhry on behalf of F, distils the following principles. I agree with her that these can be helpfully summarised:

i) The burden of proof lies with the person who opposes the child's return. The standard of proof is the balance of probabilities;

ii) Article 13(b) is not to be constructed narrowly; by its very terms, it is of restricted application. The words of the Article were plain and needed no further elaboration or gloss;

iii) It is rarely appropriate to hear oral evidence of the allegations made under article 13(b);

iv) The risk of the harm must be "grave"; it was not enough for the risk to be "real". It must have reached such a level of seriousness as to be characterised as "grave." A relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm;

v) Intolerability denotes a situation that the particular child in the particular circumstances of the case should not be expected to tolerate;

vi) The source of the risk is irrelevant: eg. where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child;

vii) When assessing the risk that a child faces on return the court will have regard to protective measures;

viii) Critically, pursuant to Article 11(4) of *Brussels II Revised* a court cannot refuse to order a child to return when Article 13(b) is raised when it is "established that adequate arrangements can be made to secure the protection of the child after return";

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

x) Inherent in the Convention is the assumption that the best interests of children as a primary consideration are met by a return to the country of their habitual residence following a wrongful removal. That assumption is capable of being rebutted only in circumstances where an exception is made out.

15.Neither Mr Hepher nor Ms Chaudhry has asked me to evaluate the allegations of domestic violence. They are correct in this approach. The Italian courts are seized of these issues and the Court of Appeal in Ancona has, in an admirably succinct judgment, made its findings on these issues. The basis upon which it is contended that GP's return puts her in an 'intolerable' situation is essentially: F is only able to make limited financial provision (300 Euros per/month); no accommodation has been provided for M or GP; M is unlikely to find satisfactory employment; M faces a custodial sentence on her return.

16.I do not doubt that M is likely to find it difficult to manage her finances in Italy. Indeed, I have no difficulty in accepting that her unlawful removal of her daughter to the UK was motivated by a determination to provide a better quality of life for her. That said, the Italian Court made orders in relation to maintenance and rejected F's appeal and has plainly been vigilant to see that GP receives provision. Moreover, whilst M may not find the volume of work available to her that has been possible in UK she has, historically, been able to find work as a translator in Italy.

17.The parties have both drawn my attention to the advice received in relation to the legal framework applicable to M's circumstances in Italy. These are to be found in the **Rules on the Penitentiary Order and the Implementation of the Privileges and Limitations of Freedom** (16th April 2015, No. 47; G. U. 23.04.2015, n 94 at Chapter vi: Alternative Measures to Determining and Dismissing the Debt, Article 47). This provides :

> *"i. If the imprisonment sentence imposed does not exceed 3 years, the convicted person may be entrusted to the social service outside the institution for a period equal to the penalty payable"*
>
> *ii. The measure is adopted on the basis of results of personality observation, carried out collegially for at least one month in the institution, in cases where it can be considered that the measure itself, also through the prescriptions referred to in paragraph 5, contribute to the re-education of the offender and ensure the prevention of the danger that he commits other offences."*

18. Ms Gerardina Orlandella, the Italian lawyer advising the parties, asserts that this should be interpreted as follows: *'I confirm you that is possible to converte her sentence to imprisonment to community service'.* This is the extent of the advice on the point, provided by email to Ms Ramus of Dawson Cornwell, Solicitors. The advice is less than pellucid in clarity but it is apparent that a 12 month custodial sentence is far from inevitable. That said, the wrongful removal of GP to the UK has, so far, not been the subject of a prosecution. Whether it will be is entirely a matter for the Italian authorities. The seriousness of these offences is underscored in our own courts, see: **Regina v H (R) and another [2016] EWCA Crim 1754.**

19. Whilst I do not discount the possibility that M may serve a period in custody and that this, if it happens, will be traumatic to GP, it does not seem to me, on a proper

construction, to amount to intolerability even in a subjective sense, by which I mean: *'a situation which this particular child in these particular circumstances should not be expected to tolerate'*. Moreover, to conclude otherwise would be, it seems to me, to undermine the central principle of comity which underpins these proceedings. Every child who is returned to a country from which he has been wrongfully removed must, logically, face the prospect that the abducting parent may be incarcerated. All children bear a burden when a parent serves a custodial sentence. These are part of the inevitable repercussions from which children can not always be protected. Indeed, the realisation that actions have consequences and that breaches of the law may attract punishment, may be harsh lessons for a child but ones which carry at least some longer term benefits. GP, as is clear from the CAFCASS report, is a resilient young girl who has had to adapt to much change. She is, sadly in many ways, better equipped to face disruption than some children of her age might be.

20. F has offered some financial support, albeit limited, to provide for assistance with accommodation if M and GP return to Italy. It is by no means sufficient. All are agreed that F has very limited resources. The transition will inevitably be uncomfortable and M will have to bear some of the costs. There are extant proceedings before the Italian Courts with a forthcoming hearing on 30th June. Those Courts are well placed to survey and protect the full gamut of GP's welfare needs and I am satisfied that adequate arrangements are available to secure the protection of the child on her return, as required by **Article 11 (4) Brussells II R; X v Latvia [2014] 1 FLR 1135.**

Article 13. The Child's Objections

21. Mr Hepher draws my attention to **Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as parties to appeal) [2015] EWCA Civ 26**, which he submits and I agree, sets out the approach to be taken when considering this defence. The observations of Black LJ require to be set out:

> *"[69] In the light of all of this, the position should now be, in my view, that 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 an age and degree of maturity at which it is appropriate to take account of his or her views. Sub-tests and technicality of all sorts should be avoided. In particular, the Re T approach to the gateway stage should be abandoned.*
>
> *I see this as being in line with what Baroness Hale said in Re M at §46. She treated as relevant the sort of factors that featured in Re T but, as she described the process, they came into the equation at the discretion stage. It also fits in with Wilson LJ's view in Re W that the gateway stage represents a fairly low threshold.*
>
> *I do not see it as altering the outcome of most cases although it may sometimes make the route to the determination rather less convoluted. In particular, it would not lead to considerations which are undoubtedly relevant being lost, as they will be given full consideration as part of the*

discretionary stage. It would be unwise of me to attempt to expand or improve upon the list in §46 of Re M of the sort of factors that are relevant at that stage, although I would emphasize that I would not view that list as exhaustive because it is difficult to predict what will weigh in the balance in a particular case. The factors do not revolve only around the child's objections, as is apparent. The court has to have regard to other welfare considerations, in so far as it is possible to take a view about them on the limited evidence that will be available as part of the summary proceedings. And importantly, it must give weight to the Hague Convention considerations. It must at all times be borne in mind that the Hague Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned and returned promptly. To reiterate what Baroness Hale said at §42 of Re M, "[t]he message must go out to potential abductors that there are no safe havens among contracting states".

22. It is now well established that there are two limbs to the child objections defence. It is necessary for the respondent firstly to show that: (a) the child objects to being returned; and (b) the child has attained an age and degree of maturity at which it is appropriate to take account of his or her views. If each of those first two "gateway" limbs is established the court then has discretion about whether or not to order a summary return.

23. In **Re M (supra)**, the Court of Appeal reviewed the authorities on this point. Black LJ sets out the following as "tolerably well" established principles at §34 onwards:

"What can be treated as established in relation to the gateway stage of the child's objections exception?

34. Where does the law stand in relation to the gateway requirements? Certain features can perhaps be treated as tolerably well established.

(1) Factual matters

35. It is established that whether a child objects to being returned is a matter of fact, as is his or her age, see for example Re S [1993] at 782 and Re T at 202. It seems to me that the degree of maturity that the child has is also a question of fact.

36. The authorities reveal a mild debate over whether, once the child's age and degree of maturity have been established and the court moves to the question of whether it is appropriate to take account of his views, it is making a finding of fact or exercising judgment. I am not sure that it would be of great assistance to get involved in this debate over how to categorise the process. What matters is how to go about it in practice and I will undoubtedly have to address that later.

(2) No chronological threshold

37. A second established feature is that there is no fixed age below which a child's objections will not be taken into account. However, the younger the child is, the less likely it is that he or she will have the maturity which makes it appropriate for the court to take his or her objections into account, Re R (Child Abduction: Acquiescence) *[1995] 1 FLR 716 at 729/730.*

(3) Objections and not anything less

38. A further feature about which I think there is, in fact, no real difficulty is that the

child's views have to amount to objections before they can give rise to an Article 13 exception. This is what the plain words of the Convention say. Anything less than an objection will therefore not do. This idea has sometimes been expressed by contrasting "objections" with "preferences".

Discretion

24. Upon satisfaction of the 'gateway stage', the exercise of the Court's discretion is then engaged. In **Re M (Republic of Ireland) (above):**

> *"[32] Paragraph [46] of Re M (Children) (Abduction: Rights of Custody) is important and I will quote it in full:"*

> *'In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.*

25. Ms Teresa Julian, the CAFCASS Officer, assessed GP's maturity *'to be broadly commensurate with her chronological age'*. GP was very distressed when she met Ms Julian. I was told by Ms Julian in evidence that GP started to cry, quite suddenly and continued to do so throughout her interview. The crying stopped as abruptly as it began. Ms Julian plainly felt that there was a degree of artifice involved. She is also clear that GP had a strong allegiance to her mother and reflected some of her mother's negative views about F and the paternal family.

26. GP has made allegations in relation to domestic violence. Ms Julian's concerns about the reliability of the allegations are strikingly consonant with the findings of the Italian Courts and, she considers, are unlikely to reflect GP's own memories. The CAFCASS report notes: *'it is most unlikely that [GP] would have a conscious memory of an incident at 2 years old and would therefore need to have had it reported to her. That she is able to repeat it to me as a memory of her own is extremely worrying indeed'*. It is also notable that GP has thrived in her English school and is obviously happy which does not support the level of distress that she asserts in her interview: *'I would rather kill myself than go to Italy'*. Ms Julian notes that after the interview GP was not at all upset and relishing the attractions of sight seeing in London.

27. In her interview GP said that she would like to meet the Judge. Ms Julian wrote the

following letter which I repeat in full:

> *Dear Ms Ramus,*
>
> *[GP] told me that she would like to meet the Judge. If that remains her wish and the Judge is agreeable then I see no reason why she shouldn't meet him. I would be happy to be present during the meeting. The mother will of course need someone at court who could sit with [GP] whilst the mother is in court.*

28. I agreed to meet with GP. Before I did so, there was discussion as to what the scope and ambit of the meeting should be. All sensibly agreed that I should not talk to GP about the case. Ms Chaudhry submitted that I should speak to GP only after I had arrived at my decision. GP was already present at court, I did not want to send her away and I was not sure whether a decision would be available that day. More importantly however, it strikes me as disempowering for a child to be spoken to by the judge conducting the hearing only after the case has been determined. It seems to me to undermine the whole purpose of seeing the child and trying to help her to feel included within a decision making process which has such an impact on her life.

29. I was referred to the *Guidelines for Judges Meeting Children who are subject to Family Proceedings* April 2010 and the Court of Appeal guidance In **re KP (A Child) (Abduction: Rights of Custody) [2014] 1 WLR 4326**. Moore Bick LJ observed as follows:

> *With those caveats in mind, it is possible to draw together a number of themes which are common to each of the authorities to which we have made reference:*
>
> *a) There is a presumption that a child will be heard during Hague Convention proceedings, unless this appears inappropriate (*Re D*) ;*
>
> *b) In this context, 'hearing' the child involves listening to the child's point of view and hearing what they have to say (*Re D*, para 57;* JPC v SLW and SMW*, para 47);*
>
> *c) The means of conveying a child's views to the court must be independent of the abducting parent (*Re D*, para 59);*
>
> *d) There are three possible channels through which a child may be heard (*Re D*, para 60):*
>
> *i) Report by a CAFCASS officer or other professional;*
>
> *ii) Face to face interview with the judge;*
>
> *iii) Child being afforded full party status with legal representation;*
>
> *e) In most cases an interview with the child by a specialist CAFCASS officer will suffice, but in other cases, especially where the child has asked to see the judge, it may also be necessary for the judge to meet the child. In only a few cases will legal representation be necessary (*Re D*, para 60);*
>
> *f) Where a meeting takes place it is an opportunity (*JPC v SLW*, para 47;* De L v H*, para 45; Re J [2011], paras 31 to 40):*

i) for the judge to hear what the child may wish to say; and

ii) for the child to hear the judge explain the nature of the process and, in particular, why, despite hearing what the child may say, the court's order may direct a different outcome;

*g) a meeting between judge and child may be appropriate when the child is asking to meet the judge, but there will also be cases where the judge of his or her own motion should attempt to engage the child in the process (*Re J *[2011], paras 31).*

56. Despite having great respect for this judge, who is highly experienced in the conduct of proceedings where the voice of the child needs to be heard, our conclusion is that on this occasion the conduct of the judicial interview did indeed fall on the wrong side of the line. Having summarised the submissions of Mr Turner and Mr Gupta, with which we agree, we can set out the reasons supporting this conclusion in short terms as follows:

i) During that part of any meeting between a young person and a judge in which the judge is listening to the child's point of view and hearing what they have to say, the judge's role should be largely that of a passive recipient of whatever communication the young person wishes to transmit.

ii) The purpose of the meeting is not to obtain evidence and the judge should not, therefore, probe or seek to test whatever it is that the child wishes to say. The meeting is primarily for the benefit of the child, rather than for the benefit of the forensic process by providing additional evidence to the judge. As the Guidelines state, the task of gathering evidence is for the specialist CAFCASS officers who have, as Mr Gupta submits, developed an expertise in this field.

iii) A meeting, such as in the present case, taking place prior to the judge deciding upon the central issues should be for the dual purposes of allowing the judge to hear what the young person may wish to volunteer and for the young person to hear the judge explain the nature of the court process. Whilst not wishing to be prescriptive, and whilst acknowledging that the encounter will proceed at the pace of the child, which will vary from case to case, it is difficult to envisage circumstances in which such a meeting would last for more than 20 minutes or so.

iv) If the child volunteers evidence that would or might be relevant to the outcome of the proceedings, the judge should report back to the parties and determine whether, and if so how, that evidence should be adduced.

v) The process adopted by the judge in the present case, in which she sought to 'probe' K's wishes and feelings, and did so over the course of more than an hour by asking some 87 questions went well beyond the passive role that we have described and, despite the judge's careful self-direction, strayed significantly over the line and into the process of gathering evidence (upon which the judge then relied in coming to her decision).

vi) In the same manner, the judge was in error in regarding the meeting as being an opportunity for K to make representations or submissions to the judge. The purpose of any judicial meeting is not for the young person to argue their case; it is simply, but importantly, to provide an opportunity for the young person to state whatever it is that they wish to state directly to the judge who is going to decide an important issue in

their lives.

My meeting with GP

30. I found GP to be a striking and delightful young girl. I told her from the beginning that I knew exactly what her wishes were and so it wasn't necessary for us to talk about it. She agreed to this with complete equanimity and seemed entirely reassured. She told me that I wasn't what she was expecting. By this she explained she had anticipated a man in a long Judge's wig. I told her that I wore one very rarely and brought it out of the cupboard for her to inspect. She was intrigued that it was horse hair and thought it rather scratchy and uncomfortable. I asked her what her favourite food was. She responded immediately by asking if she could select a 'dessert'. I agreed and she told me with great enthusiasm that it was 'panna cotta'. It had to be home made and by her mother. She has lived in England for barely more than a year, her English was faultless. It was also spoken without any trace of an accent. She volunteered that she found school in England to be much easier than in Italy. At 11 years old she is fluent in Italian, English and Latvian. Finally, she told me something of her plans for the day whilst we were in Court. She was smiling and poised throughout our meeting. As she left I said a few words of (tourist) Italian to her. She seemed delighted. She told me that Italy was a good place to go for a holiday but not to live. I told her that I would do my best to get the right decision for her but I was very clear that the decision was **entirely** mine.

31. I am entirely satisfied that GP is sincere in her expression of her resistance to returning to Italy. I am also clear that these views are coloured and influenced by her mother's own wishes. The objections are therefore not wholly authentic. It is apparent that GP has been made aware of the issues at this hearing e.g. she stated in interview *'if she (M) went back I think she would be in danger of going to prison'*. The allegations made by GP against F are also conspicuously lacking in detail. I note that the Italian Court of Appeal made the same observations about M's allegations. Though my meeting with GP was focused on respecting her wish to have some involvement in the process I observe that her remarks about Italy were not characterised by hostility. In this I see a reflection of GP's comments to the CAFCASS officer:

> *" 'No. I don't like Italy' I commented that she had just told me how she liked Venice to which GP replied, 'yes, I liked Venice' and then she began to cry".*

32. Earlier GP had described Venice as *'our favourite place'* by which she explained the 'our' to be *'me and my mum'*. This said, GP's life has to date been characterised by upheaval and relocation. I have no doubt at all that her affection for England is both sincere and strong. She is obviously settled and happy. In addition GP is, to some extent, free from parental conflict in England. She is also, of course, deprived of her right to a relationship with F and the paternal family which the Italian courts have concluded was rooted in a 'strong bond'. The information before this Court seems to me also to reinforce the Italian courts' conclusion that M *'created a situation where by she could keep the child under her exclusive control with the purpose of excluding [F] from any decision and contact'*. More importantly, it is manifest that the Italian Courts, who have considered GP's circumstance so carefully, are best placed properly to identify her welfare interests.

33. For completeness and in addition to my reasoning above I add the obvious. For The Hague Convention to have both legitimacy and efficacy, the principle of international comity, whilst not unassailable, must always be central to these applications. For the Convention to work, children who have been **abducted** by a parent (it is important to use that term) from their country of habitual residence must expect to be returned. A parent's efforts to defeat that process require to be evaluated with healthy scepticism. As Black LJ says *'there are no safe havens among contracting states'*.

34. Accordingly, I reject Mr Hepher's submission that there is a grave risk of harm to GP in an order to return made by this Court. For the reasons I have set out above I do not consider M's risk of imprisonment, however that risk be calibrated, to carry the weight it is asserted on M's behalf should be given to it. Whilst F's undertakings, constrained by his financial circumstances do not ensure that GP's 'landing' is as 'soft' as M would wish it to be, I am satisfied that it offers sufficient reassurance. I am encouraged that M agrees to accompany GP, and express the hope that she will, despite the history of her behaviour, use her best endeavours to minimise the upset to GP that my decision will undoubtedly cause.

35. At the end of the school term GP, because of her age, would be required to transfer to senior school. This natural hiatus provides a useful opportunity to ameliorate the impact of the return to Italy. I propose that this order should not be given effect until the end of GP's school year. I have been told that there is a hearing in the Italian Courts listed on 30th June 2017. I request that F's lawyers provide that Court with a copy of this judgment by 20th June 2017. To facilitate this I invite Ms Chaudhry to redraft her order to give it effect in the way I intend.