



Neutral Citation Number: [2021] EWHC 2451 (Fam)

Case No: FD21P00015

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/09/2021

**Before :**

**The Honourable Mrs Justice Judd**

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**Between :**

**VI  
- and -  
VM**

**Applicant**

**Respondent**

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**Re: L (A Child)**  
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**Indira Ramsahoye** (instructed by **Brethertons LLP**) for the **Applicant**  
**Anita Guha** (instructed by **Dawson Cornwell**) for the **Respondent**

Hearing dates: 24 & 25 May 2021  
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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.

THE HONOURABLE MRS JUSTICE JUDD DBE

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.

**Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 2:00pm on 6 September 2021. A copy of the**

**judgment in final form as handed down will be automatically sent to counsel shortly afterwards**

**The Hon Mrs Justice Judd :**

1. This is an application by a father for the return of his nine year old daughter, L, to Portugal pursuant to the Convention of the Civil Aspects of International Child Abduction 1980.

Background

2. The parents, who are both Portuguese, commenced a relationship in about 2007. They separated in January 2020, but remained living together for some time in the home of the paternal grandparents.
3. The mother commenced a new relationship about the same time as her relationship with the father ended. She became pregnant by this man. In June or July of 2020 she instigated proceedings in the court in Portugal, and at the first hearing an interim order was made whereby L was to spend alternate weeks with each parent. The mother moved out of the family home. She also initiated criminal proceedings for harassment and identity theft (by accessing her email and social media accounts). I understand that these proceedings are ongoing.
4. The mother alleges that the father has had a relationship with another woman in Portugal for many years. The father disputes that; stating that he began to communicate in 2019 with a woman but that the relationship did not commence until February of this year.
5. In October 2020, the mother brought L to this country. She claims that she intended to come for a Halloween party, but that a series of events (the mother said she was ill, the lockdown followed, and by then she was too late in her pregnancy to travel) thereafter meant that they could not return. Now L is happy with her life in England, living with her mother, baby brother, aunt, uncle and cousins. She has attended school since March or April.
6. The father was not aware that L had been taken out of the country until he went to collect her from the mother's home in Portugal for his week with her on 1<sup>st</sup> November. He reported her disappearance to the police on 2<sup>nd</sup> November and made this application on 11<sup>th</sup> January. The father's

case is that the trip to this country in October was intended to be a permanent move, not for a short holiday.

#### The parties' respective cases

7. The mother accepts that she wrongfully removed L from Portugal within the meaning of Article 3 of the Convention. She defends the application on two grounds. First she argues that L objects to a return and that she is of an age and degree of maturity at which it is appropriate to take into account her views, and second that there is a grave risk that her return would expose her to physical or psychological harm or otherwise place her in an intolerable situation (Article 13(b)).

#### Child objections

8. The mother states that L very much likes this country and wishes to remain. She likes her school and has made many friends. She also likes living with her aunt and cousins, playing games and going on outings. She objects to going back to Portugal, and does not want to go back to her father. She also does not wish to repeat a year at school in Portugal which she believes she would have to do.
9. The father does not accept that L is happy and settled in England, noting that she has never been here before and does not speak the language. Prior to her departure she did not get on well with her mother's new partner.

#### Article 13b

10. The mother states that the father has been threatening, abusive and controlling to her. She says that the reason that she did not leave the family home when the relationship ended was because the father threatened to kill her if she did, and that she would not be able to take L. She also states that he followed her to her work, and made threats to her new partner. He gained access to her social media accounts and sent messages pretending to be her. He would repeatedly phone L when she was with her mother to find out what she was doing and what she had eaten. The mother also says he told her he had asked a cousin of his to kill the mother's new partner. She said his behaviour led her to bring proceedings for child custody in Portugal but that the court did not take

the father's behaviour into account when making the interim order. The mother left the home on 3<sup>rd</sup> July, and she said that as she was packing the father started an argument in which he threatened to break the television, broke a basket, and pushed her in the chest. L overheard this incident and asked her father to leave her mother alone.

11. The father denies the mother's allegations of abuse, although he does acknowledge using her Facebook account when she left it open on one occasion. He accepts that it would not be appropriate for the mother to live under the same roof as him if she was to return with L, but says that she has access to a property that is owned by her current partner (who is in England at present). He offers a number of undertakings in the event of a return, including not seeking or supporting any prosecution for child abduction, not to separate L from her mother or to see her unsupervised in advance of the case being considered by the Portuguese courts, to pay for flights back for L (but not the mother), not to attend the airport, not to threaten, harass or pester the mother, and not to attend her place of residence without prior agreement. He also seeks a number of cross undertakings, including for the mother to make L available to spend time with him in accordance with the current court order in Portugal. On this basis he submits that this would ameliorate the mother's Article 13(b) defence.

12. In the event that I find either of the defences to be made out, the mother invites me to exercise my discretion to refuse to order a return.

#### The hearing

13. The application was dealt with on the basis of written evidence from the parties, a report and oral evidence from the Cafcass Officer, and submissions. At the conclusion of the case I asked the parties to make some enquiries as to the protective measures available in Portugal. Both parties concluded, and I agreed, that the best way of doing this in the circumstances of this particular case was to commission an expert report.

#### The evidence of the Cafcass Officer

14. The Cafcass Officer saw L in her offices alone, with the assistance of an interpreter. L spoke positively of her life in England, and stated that she had made friends at school and enjoyed living with her mother, baby brother, aunt and cousins. She also said that she had lots of friends at her school in Madeira, but said that she had not kept in touch because she did

not like talking to them much. She said *'It's not that I don't like them. I don't know how to explain'*.

- 15.L clearly had some difficult memories about her parents' separation, including overhearing an argument and her father bringing her mother into her room for her to witness it. She told the Cafcass Officer her father had threatened to kill her mother if she moved to her boyfriend's house (it does not seem that she actually overheard this although it is not clear).
- 16.She was unable to recall any positive times she spent with her father although she described the order of the court dividing her time equally between her parents as being 'fair'. She stated that her father did not look after her very much and that he was effectively absent during their time together.
- 17.L told the Cafcass Officer that if the court here returned her to Portugal she would be sad because she liked to be with her mum. She repeated on a number of occasions that she just wanted to be with her mum, and was tearful. She cheered up when talking about her baby brother, but she was distressed for a substantial part of the interview.
- 18.In her report the Cafcass Officer said that L's primary concern was not be separated from her mother (albeit she was worried about repeating a year at school). When she was asked about returning to Portugal with her mother she said she would be 'ok' with that.
- 19.L's maturity was judged to be in accordance with her age, and the Cafcass Officer stated that she did not think she was implacably opposed to a return to Portugal.
- 20.At the time the report was written, Ms. Baker had not had a response from her enquiries with L's school. This was received just before the hearing. The school considered that L presented as mature. They noted occasions when L had been scared her father would kidnap her, and that she was worried her father was going to take her to Portugal, and that he had said he would kill her mum if she went to her boyfriend's house. During these discussions L was crying and distressed.
- 21.In her oral evidence Ms Baker stated that there was a general concern about L having adult information and she was concerned about her

emotional fragility. Her interview had been longer than was conventional because of L's distress. She did believe that the emotion was genuine, and that she had not come to the interview with a script. She did describe negative experiences of being with her father, and Ms Baker felt that there may be an element of not wishing for contact not to go back to what it had been.

22. In cross examination by Ms Guha for the mother Ms Baker agreed that L had expressed clear views to her that she wished to remain here, and that she did not wish to return to Portugal to live. She also gave reasons which accorded with her lived experiences of life in Portugal, for the environment for her there over the last few months appears to have been very difficult for her. Ultimately, L's views were affected by her anxiety about being separated from her mother and a return to what things had been like before they left. Ms Baker also agreed that even if the mother did return with her to Portugal this would not entirely remove L's anxiety and fear of returning.

#### The law

23. Where a child has been wrongfully removed from the country of habitual residence within the meaning of Article 3 of the 1980 Convention and the application is brought within a period of a year, the court shall order the return of the child forthwith, unless any of the exceptions set out in Article 13 apply. The burden of proof to establish the exceptions is upon the respondent.

#### Child objections

24. At paragraph [69] of *(Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26; [2016] Fam 1, 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".

25. 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.

26. 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).

#### Article 13(b)

27. In *Uhd v McKay* [2019] EWHC 1239 MacDonald J summarised the principles to be derived from the decision of the Supreme Court in *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144, as follows:-

“[67] ..

- i) There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.
- ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance



of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.

iii) The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two.

iv) The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation'. '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'.

v) Art 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.

vi) Where the defence under Art 13(b) is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable, in principle, such anxieties can found the defence under Art 13(b).

28. In *Re E*, the Supreme Court made clear that in examining whether the exception in Art 13(b) has been made out, the court is required to evaluate the evidence against the civil standard of proof, namely the ordinary balance of probabilities whilst being mindful of the limitations involved in the summary nature of the Convention process (which include the fact that it will rarely be the case that the court will hear oral evidence and, accordingly, rare that the allegations or their rebuttal will be tested in

cross examination). Within the context of this tension between the need to evaluate the evidence against the civil standard of proof and the summary nature of the proceedings, the Supreme Court further made clear that the approach to be adopted in respect of the harm defence is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as grounding the defence under Art 13(b). Rather, the court should assume the risk of harm at its highest and then, if that risk meets the test in Art 13(b), go on to consider whether protective measures sufficient to mitigate harm can be identified”.

29. This process does not mean that there should be no assessment at all of the substance or credibility of the allegations. A judge has to be careful when conducting a paper evaluation but there are cases where the evidence before the court enables the judge confidently to discount the possibility that the allegations give rise to an Article 13(b) risk (*Re K (1980 Hague Convention: Lithuania [2015] EWCA Civ 720*). The assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation which includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner that is consistent with the summary nature of the proceedings.

### Discussion

#### Article 13b

30. In my view, the allegations of domestic abuse by the mother are of a nature and of sufficient detail and substance to warrant careful analysis. The threats that father is alleged to have made are extremely serious and intimidating, and they are coupled with frightening and controlling ‘stalking’ type behaviours that have included drawing L in. If the allegations are true, and what L says about the father not looking after her much during the time he is supposed to spend with her is correct, his motivation in seeking contact must be called into question. In all the circumstances L is likely to be affected by her mother’s fear and anxiety as well as her own. There may also be a physical risk to the mother which I cannot discount.
31. I therefore consider (taking the risk of harm at its highest) that there is a grave risk that L would be exposed to psychological harm and/or placed in an intolerable situation if a return is ordered. L has demonstrated real fear and distress at the prospect of a return, and has told her teachers

about a fear that her father would kill her mother. Being sent back to Portugal without sufficient protective measures would be likely to exacerbate this.

32. I will therefore turn to the question of protective measures and whether what is available can provide sufficient mitigation of the risk.

### Protective measures

33. The father offers a number of undertakings to the court in the event that a return order is made.

- a) not to seek or support any civil or criminal prosecution in respect of the mother in respect of the alleged child abduction.
- b) Not to separate L from her mother save for agreed periods of supervised contact, pending the first inter partes hearing in Portugal
- c) To pay for L's one way economy flight back to Portugal and any required COVID- 19 testing for her. He does not agree to fund the mother's share as he believes that she does have the funds to do so and/or could be supported by her partner.
- d) Not to attend at the airport at the time of arrival back in Portugal.
- e) To undertake without prejudice to any admissions or acceptance, not to threaten, intimidate, harass or pester the mother or instruct anyone else to do so.
- f) Not to attend the mother's place of residence without prior written agreement.
- g) To lodge the sealed Return Order and undertakings with the Portuguese Family and Juvenile Court prior to a return.
- h) to agree neutral cross-undertakings that neither party posts negatively about each other on social media or discuss these proceedings online.
- i) To undertake to pay 250 Euros per month for maintenance until the matter can be dealt with further by the Family and Juvenile Court or for a maximum of 3 months,

34. Portugal is a signatory to the 1996 Hague Convention. Article 23(1) provides that measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States, subject to exceptions which are set out at paragraphs (2) (a) to (f). An expert report has been provided to the court from a firm of Portuguese family law specialists, explaining what protective measures would be available to mother and child in Portugal, and what orders or undertakings would be enforceable there.
35. The lawyers state first and foremost that domestic violence (which includes psychological abuse) is a criminal offence in Portugal and have set out a number of ways in which alleged victims are entitled to support and the provision of a number of safeguards. The mother would be entitled to assistance from a lawyer, and to be reimbursed for the costs thereof if she does not have the economic means to hire one. She is entitled to ask the court for measures which protect her. There are also a network of shelters to assist victims and ensure their removal from the aggressor.
36. The lawyers state that the measures are effective but always depend on the assessment of risk for the victim, which is often neither easy or evident, especially when the violence is of a psychological nature and takes place at home.

I note that the mother has accommodation to go to for herself, L and the baby, in Portugal.

37. Ms Guha, for the mother, submits that because the measures for victims of domestic violence are only available through the criminal rather than the civil courts, that they are insufficiently protective. She also points out that no progress seems to have been made with respect to the social media complaint. Whilst in this country we are used to making enforceable non-molestation orders in family proceedings, this does not mean that the use of the criminal jurisdiction alone in Portugal is less effective, or insufficiently effective for victims of domestic abuse.
38. Looking at the undertakings offered by the father, they consider that those at (b) and (i) (the undertakings to pay maintenance, and not to seek to remove L from the mother save for supervised contact pending the matter being considered by the Portuguese court), would be directly enforceable under Article 23 as they relate to measures relating to the exercise of parental responsibility. As to (e), (non molestation

undertaking) they state that the mother would be able to make a complaint if such were broken because it would amount to a crime under Portuguese criminal law (see above).

39. The other undertakings, they believe, would not be recognised because they are provisional measures determined by a foreign court to be executed outside its territory.
40. The undertaking given at (b) by the father would therefore ensure that he would not have any unsupervised contact with L or remove her from the day to day care of the mother unless and until the local court determines the issue on welfare grounds. This is an extremely important factor. Although the undertakings at (d), (e), (f) and (h) are not enforceable, the mother may nonetheless make a criminal complaint about the father if he issues any further threats to her and she would have the assistance of a lawyer. She is entitled to ask the court for measures to protect her and the criminal code provides for measures to control the behaviour of someone indicted for the crime of domestic violence. There are organisations to help the mother and provide her with emotional and moral support. The fact that it is not easy to assess the risk for a victim applies in this country as well as in Portugal, and does not fundamentally undermine the protective measures on offer.
41. All these matters, together with the enforceability of the maintenance undertaking lead me to consider that the risk to L would be sufficiently ameliorated, so that she would not be at grave risk of physical or psychological harm, or placed in an intolerable situation if a return order is made. I know she will be anxious (and this is a matter to which I will return) but with reassurance from her mother I think she will be able to manage the situation.
42. The fact that the other undertakings are not enforceable does not lead me to change my view. I have little information as to the way in which a criminal complaint against the mother for the offence of child abduction would be treated; but equally there is no evidence before me that the mother would be incarcerated and/or separated from her children.

#### Child's objections

43. It is plain from the written and oral evidence that L is expressing a clear view that she wishes to remain in this country and that she is very positive about her living arrangements here. The Cafcass Officer stated

in her oral evidence that not being separated from her mother was the core of L's wishes and concern, and also that she described negative experiences of being with her father. She believed that L's most recent memory of Portugal was of her fractured life there, and that there is a degree to which L knows the situation there has not been resolved. In her behaviour and words to the Cafcass Officer and at school, L has expressed fear and distress. She said at school she was worried that her father was going to take her to Portugal, and that her father had said that if her mother took her to her boyfriend's house, her father would 'kill her mum'. She also said that she was scared her father would kidnap her.

44. Despite L's statement to Ms Baker that she would be 'ok with returning if her mother was with her, it seems to me her objections go further than an objection to a separation from mother and a return to her father. In my judgment she does object to a return to Portugal. Her distress demonstrates it. Although concern about being separated from her mother is highest on the list for L, there are other contributing factors which make it difficult to separate everything out. At school and in her interview with Ms Baker, L's descriptions included unhappy memories of events in Portugal. For example she witnessed her parents arguing, was scared of things her father said and did (or she believes he has said and done) and remembered her father being absent when he was supposed to be caring for her. In her oral evidence Ms Baker agreed that the fact that her mother would return with her would not solve her problems or remove her anxiety and fear.
45. I note that Ms Baker stated she did not think that L was 'implacably opposed' to a return to Portugal, but the word implacable does not appear in the wording of the Convention and in any event the decision about that is one for me.
46. L is 9 years old, and will be 10 in September. Ms Baker considered that her maturity is commensurate with her age. In the reports from the school, L is described as mature. It seems to me that although she is only nine, it is appropriate for me to take into account her views. Although she may have been exposed to adult conversations, Ms Baker believed that L's emotional presentation was genuine and that her responses did not appear to be scripted.
47. This is the gateway to the exercise of a discretion, nothing more. It does not mean that a return order will not be made, for there are wider issues to be considered when exercising a discretion, to which I will now turn.

87. This is a case where the mother brought L to this country without telling the father, whilst proceedings were still going on in Portugal. The mother has stated that she only ever intended to bring L here for Halloween, but that a combination of factors including her sudden illness and the second lockdown conspired to make it impossible for her to return straight away. Then, of course, she was heavily pregnant and could not travel. The mother's explanation is not a convincing one at all, for she could not have travelled to the UK in late October last year without recognising that there was a risk of becoming stranded because of the rise in cases of Covid. Also, if it was just a short holiday, why was the father not told?
48. When considering the exercise of discretion, considerable significance should be attached to the purpose of the Convention which is to return children swiftly to the country of their habitual residence in order for their future to be decided there. The fact that this appears to have been an abduction at a time when the Portuguese court was seized of the case, must weigh significantly in my decision.
49. This is a young girl who is expressing a strength of feeling about staying here and not going back. These feelings are genuine and appear (at least in part) to be borne out of her own experiences rather than a result of influence by her mother and others. On the other hand, although I have found that L's objections to a return do not relate only to a fear of being separated from her mother and returned to her father, those matters still feature to a significant extent. So too does a reluctance to repeat a school year.
50. Looking at other welfare issues, there do not appear to be any magnetic factors in favour of either making or refusing to make a return order. L appears to be doing well in this country despite the fact she came over here so recently, and she obviously has very good relationships with her aunt, uncle and cousins. On the other hand she has lived in Portugal all of her life, and seemed to have friends at school there. Portuguese is her native language. She would have to go to temporary accommodation in Portugal and be the subject of court proceedings, but the latter would apply here anyway.
51. Proceedings are ongoing in Portugal, including an application the mother made after the mother had brought L over here on 31<sup>st</sup> October, which has been put 'on hold' pending the outcome of this application. If L and her

mother were to return to Portugal then proceedings would be conducted with all relevant parties in the same place, and in circumstances where it may be easier to investigate the mother's allegations of domestic abuse. At the moment the most up to date information about L herself emanates from this country, from the Cafcass Officer and the school but these reports can readily be disclosed to the Portuguese authorities. L's first language is Portuguese and she will be able to make her wishes and feelings known to the authorities there. She will be able to return to a school which is familiar to her, even if she has to repeat a year.

52. Although I do very much take L's objections to a return into account, after consideration of all the wider issues, I have come to the conclusion nonetheless that I should make a return order. The factors in favour of a return (including the objectives of the convention and the fact that proceedings are underway in Portugal) firmly outweigh those against.
53. Although I anticipate that L will be anxious about the decision that she should return to Portugal, I do believe she will be reassured by the fact that her mother will return with her, as will her baby brother who she adores. The protective measures will ensure that L does not have unsupervised contact with her father until the Portuguese court is able to make a welfare decision as to what is best for her, and should the father engage in threatening, intimidating, controlling or stalking type behaviour the mother will be able to make a complaint to the police and be provided with support to do so. These matters should be of significant reassurance to the mother, and therefore L herself. The situation she will be returning to will not be the same than the one she left in October 2020.
54. I will order that a copy of this judgment, the Cafcass report, a transcript of the oral evidence of the Cafcass Officer, and the reports from L's school should be disclosed to the court in Portugal. I make it clear that I am not making an overall decision as to whether L's welfare would be best met by living in England with her mother or remaining in Portugal. This is very much a matter for the courts of Portugal who will take a decision on the basis of all the available evidence.
55. I propose to allow the mother some three weeks to make the necessary arrangements for the return, to include arranging accommodation, a return to school, re-invigorating the proceedings in Portugal and organising things for the baby. I will hear any further submissions the parties wish to make about that should they wish to do so.



### Postscript

56. Following the circulation of my draft judgment the father spoke to L and the mother and father had further discussions. As a result of this, the father came to the conclusion that he should allow his daughter to live in the UK without putting her through the distress of returning to Portugal to engage in the proceedings there and await a welfare decision. I am sure this was very much a decision that was child centred and will enable the parties to move on with their lives. They have agreed a scheme of contact which they consider is safe and will involve L returning to Portugal for holidays.