



Neutral Citation No: [2021] EWHC 2687 (Fam)

Case No: FD21P00446

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF L (A Child)

The Royal Courts of Justice
The Strand
London
Date: 14 September 2021

Before:

MR RICHARD HARRISON QC
Sitting as a Deputy High Court Judge

Re L (A Child) (Wrongful Removal: Alleged Sexual Abuse)

Ms Christopher Hames QC, Mr Tom Wilding and Ms Mehvish Chaudhry (instructed by Bindmans Solicitors) appeared on behalf of the applicant.

The respondent mother appeared in person.

Hearing dates: 6, 7 and 14 September 2021

Covid-19 Protocol: This judgment was handed down by the judge remotely by email. The date and time for hand-down will be deemed to be 11 am on 14 September 2021

Approved Judgment

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 Richard Harrison QC:

Introduction

1. I am concerned with a girl, L, born in October 2013 and now aged 7 years and 10 months.
2. In early May 2021 the mother ('M') removed the child from Hungary without the knowledge or consent of the father ('F'). F now applies to this court for the summary return of the child to Hungary under the 1980 Hague Convention on the Civil Aspects of International Child Abduction.
3. M accepts that F had rights of custody in respect of the child and that the child was habitually resident in Hungary at the time of the removal. It is not asserted that F was not exercising his custody rights at the time (it being plain that he was doing so within the meaning of the Convention). It follows that the removal of the child was wrongful under Article 3 of the Convention and that the court is obliged to make a forthwith return order under Article 12 unless M can establish one of the Article 13 exceptions. She relies upon two such exceptions:
 - (a) Grave risk under Article 13(b);
 - (b) The child's objections to returning under Article 13(2).
4. F is represented by Mr Christopher Hames QC, Mr Tom Wilding and Ms Mehvish Chaudhry of counsel, instructed by Bindmans solicitors. M is not represented at this hearing, although on 2 September 2021 she was represented by specialist counsel and solicitors. I was told that M has the benefit of a legal aid certificate which would allow representation by leading counsel. On 3 September 2021, however, F's solicitors were informed that she had dispensed with the services of her legal team. Although it was difficult for M to present her case, and at times she was clearly emotional in doing so, I can record that she addressed the court courteously throughout her submissions. She is an engaging person and it is easy to understand why she has elicited sympathy from the professionals in this jurisdiction to whom she has relayed her story.
5. At the start of the hearing M made a renewed application for an adjournment which I refused for reasons I gave in a short judgment. She had previously been granted an adjournment of the final hearing from 12 August 2021 to 6 September 2021 by Arbuthnot J. On 2 September 2021 Williams J refused an application for a further adjournment. I was informed by the Clerk of the Rules that if the case were to be further adjourned it could not be heard until November; I did not consider that timescale to be compatible with Article 11 of the Convention nor with the welfare of the child. The basis of M's application was that she wished to instruct a new legal team in circumstances where she could have been legally represented at this hearing had she not dismissed her previous team.
6. I have read the court bundle and the skeleton argument and chronology prepared by F's counsel. I have also read the closing submissions prepared Mr Hames QC and Ms Chaudhry and the further representations made to me by email by both sides after the conclusion of oral submissions. I have also received the letter written on behalf of the Secretary of State for the Home Department dated 9 September 2021.

7. I heard oral evidence from Ms Lynn Magson, the Cafcass Officer who filed a report dated 1 September 2021. She gave evidence for over two hours in total.

Background

8. The account set out below is based primarily upon the judgment of the Pest Central District Court dated 19 June 2021 ('the June judgment')
9. M was born in Hungary and is aged 46. F was born in Ukraine and is aged 40. He has lived in Hungary since 1999. Both parties are Hungarian nationals.
10. The parties have never married. They began a relationship in 2011 and began living together in 2012.
11. The child was born in Hungary in October 2013. She is a Hungarian national.
12. The June judgment records that both parties were involved in caring for L during their relationship; L '*was emotionally balanced and was attached to both of them*'.
13. There was a hiatus in the relationship between September 2015 and May 2016 after F had an affair; F left the family home around the time of L's second birthday. This event has caused M to feel mistrustful of him. In an account given to Mrs GF on 23 December 2019 [C183] M reported that '*[F] moved out for eight months in 2015 because he chose another partner and my mother fell very ill during this period and was in need of 24-hour care; [the child] was born by then and I would have only been able to care for her with difficulty, which is why [F] moved back, our relationship was not cordial after...*'.
14. The June judgment records that in September 2018 M came to suspect that F had engaged in a further affair, which he did not accept. This led to tension in the relationship. In January 2019, according to what M told Mrs GF, '*I found a phone number in the phone of [F] and I told him to move*'. Relatively soon thereafter, the parties separated.
15. In her statement dated 13 August 2021 M says that on 6 February 2019, when she was putting L to bed, the child told her that F had touched her private parts and wanted to get into bed with her. L was aged 5 at the time.
16. The account which M gave to Mrs GF in December 2019 was slightly different. She said that while putting the child to sleep on 6 February 2019, the child told her that '*[F] grabbed her buttocks and genitalia when he took her out of the bathroom in the morning, following which he clasped her genitalia multiple times on the couch in the living room during story time by in the meantime saying things to her like "it's best, better not to tell mother"*'. M went on to say to Mrs GF that '*My child is more attached to her mother, but her relationship with [F] was harmonious before it turned out what happened, they played together, she cuddled up to her father, just like she does to me. [L] said that nothing like this has ever happened before...*'.
17. It appears from the June judgment that the parties were living in the same property on 6 February 2019; following the accusation, however, F left the home and moved to another property.

18. Shortly after making the allegation against F (the following day, according to M), M reported the matter to the police in Budapest; this resulted in a police investigation being opened on 11 February 2019 *'because of a well-grounded suspicion of sexual assault'*. M, however, says in her statement that the police were unsympathetic to her and suggested that she should not lodge the complaint at all.
19. M says that the police failed to arrange an assessment of the child, as a result of which she had no choice other than to arrange for a psychologist's opinion; the assessment by the psychologist, according to M, took place in April 2019.
20. The investigation by the Budapest police was resolved in early 2020 with no charges being brought against F. Their conclusion was that no crime had been committed. According to M (and F agrees), the child was interviewed by the police on three occasions. The June judgment records also that the child was examined by a gynaecologist and a specialist psychiatrist and that M (but not F) was *'heard'* as a witness during what are described as *'the police proceedings'*.
21. Following the parties' separation there was (inevitably) a dispute about the amount of time that F should spend with the child. As a consequence, in 2019 F issued proceedings in the Pest Central District Court. The June judgment records that from the beginning of February 2019 M was only prepared to permit contact between F and the child under her supervision. *'She installed cameras and a panic button on the ground floor of her property without any previous reasons and monitored the parent-child contact from the neighbouring room while giving language classes'*. Notwithstanding the unsatisfactory nature of this arrangement, F *'initially went to visit almost daily for a few hours and endeavoured to keep in contact with the Child during the weekends'*.
22. The June judgment also records that, following her report to the police, M referred the child to the Psychiatric Ward of B Hospital where a psychiatrist *'determined that the Child's speech production needed development and it would be important for [M] to speak Hungarian [to the child]'* (one of the complaints made by F is that M has insisted on speaking to the child only in English since birth and that this has affected her language development). The psychiatrist also *'emphasized the extreme bond between [M] and the Child, and recommended contact with supervision until the end of the proceedings because of the threat permeating the relationship of [F] and [the child].'*
23. On 12 April 2019, the child was placed under the protection of the District Guardianship Authority in Budapest. At around the same time, M moved from her property in Budapest and took the child to live with her at a holiday home owned by her brother (some distance away from Budapest) where she remained until the Autumn of 2019. From the June judgment it appears that in 2020 she also returned to the holiday home between September 2020 and March 2021. As a consequence of these moves, responsibility for overseeing L's welfare came to be shared between the Guardianship Authorities in each of the two regions where M stayed.
24. In 2019, while the police investigation was ongoing, the Pest court made an interim contact order under which F was permitted to have visiting contact twice a week for two hours during the week and on alternate weekends for a few hours; this was to be supervised by M. It was also ordered that F should have two hours of supervised contact at a contact

centre on alternate weekends; F, however, declined to take this up on the basis that he found it humiliating.

25. On 27 February 2020 the court made a further interim order which recorded that the police investigation had concluded (as had occurred on 7 February 2020); F's relationship with the child was described as 'excellent'. The court made an order for F to have unsupervised staying contact from Friday to Sunday as well as visiting contact on one day a week.
26. The June judgment records that M '*continually opposed*' the interim measures (i.e. those ordered in February 2020) and '*on no occasion handed the Child over for contact*'. This was '*without reason in some of the cases and by indicating groundlessly that the child was ill on other occasions*'. M was only prepared to allow contact to take place in her presence and after locking the garden gate at her property. F continued to attend for contact '*almost without exception*' even though on several occasions he made the journey to the property where M was staying to no avail.
27. The Pest Court found in the June judgment that '*[M]'s conduct has made the Child afraid of [F]. [M] taught the young girl to scream when [F] touched [her] so that she drew the neighbours' attention to herself who would rush to rescue her and then when the Child screamed in the presence of [M]¹ because F had lifted her up she laughed*'. Despite contact being supervised by her, M '*repeatedly claimed that [F] posed a risk of harm to [the child] by him shouting and generating fear in her which resulted in [the child] wetting (sic; should be 'wetting') herself despite having been previously housetrained*'.
28. M proceeded to make allegations against M to a different police authority (the one local to the holiday home) which conducted its own investigation including appointing an expert psychologist. The renewed allegations were again rejected, it being concluded by the psychologist that '*the tests carried out did not indicate any psychosexual trauma*' and that '*what [the child] said did not prove to be consistent and realistic while the papers in the case showed that one could observe signs of paranoid disorder in the case of [M].*'
29. In December 2020 M was fined 150,000 HUF for failing to comply on ten occasions with the provisions for contact that had been ordered. After the fine had been imposed, M did then permit contact to take place on a few occasions between the beginning of February 2021 and 10 April 2021. The June judgment records, in relation to these periods of contact, that '*The handover[s] took place in the presence of several strangers in an overcharged emotional atmosphere, [M] made the handover[s] difficult and the persons present made camera recordings. [M] gave the Child an audio recording device for the contact and also taught her how to use it. During weekday contacts [M] closely followed [F] and the Child in her vehicle.*' The judgment also records that '*[F] paid the utmost attention to the young girl's needs during the contacts in the interest of the Child, and when asked by the Child returned before the end of the contact even after one date. With the passage of time, the child became more relaxed in [F]'s environment and enjoyed herself*'.
30. On 29 January 2021, a joint psychiatric and psychological assessment was prepared for the purposes of the proceedings in Hungary. It was concluded that M had a paranoid personality disorder. The experts went on to prepare two supplemental reports, in the form

¹ The judgment states that it was in the presence of 'the Claimant' (i.e. F) but this appears to be a typographical error.

of responses to questions, dated 16 February 2021 and 2 June 2021. They describe a worrying situation for the child, in which she is subjected to M's negative influence in a way that is harmful to her. The June judgment summarised the evidence of the psychiatrist and the psychologist in the following terms:

‘According to the expert forensic opinion of the appointed psychologist and psychiatrist, one can detect mental disorder of the type called paranoid personality disorder in the case of [M] which primarily, essentially affects her conduct in life and the way she relates to the outside world periodically/ or regularly. Her condition can become chronic and decompensated in a given case. Father's unacceptable conduct alleged by [M] was not established on the basis of what the examination of the Child spontaneously reflected or the test data indicated, but mother's bringing up the Child against Father by involving the Child and making accusations against Father could be established. The experts in the litigation also found a complex examination of the Child's skills necessary with special regard to the difficulties the Child had in expressing herself in her mother tongue which is Hungarian and also the starting of psychiatric appointments and treatment for Mother. Further to this, they considered the assistance of a clinical specialist psychologist necessary after diagnosing the unfavourable psychological condition of the Child.’

The court further stated that:

‘According to our February 2021 expert opinion and supplementary expert opinion [M]'s psychological condition can become decompensated in a stressful situation or a situation of conflict and this condition can approach the serious level of psychiatric disorder that requires psychiatric treatment, potential drug therapy. They repeatedly emphasized that Mother needs psychiatric help.’

31. In the second supplemental report dated 2 June 2021, it is stated that ‘*When [M] is psychologically balanced she will not pose a direct risk of harm to the child... her current functioning exerts a negative impact on the proper development of the Child but in our opinion there is no actual serious risk of harm.*’ However, ‘*should there be no positive change from what has gone before in [M]'s condition or should there be decompensation, deterioration in her condition removing the child from [M]'s care will be raised*’. The experts also commented in the same supplemental report upon the likely impact upon the child of being subject to M's negative influence, stating:

‘It poses a risk of harm to the Child that Mother makes contact with Father impossible and so fails to contribute to the deepening of Father-Child relationship, to the Child forming a realistic image of her Father and eliminating, processing the unfavourable image – as a result of control, influencing by Mother, Mother bringing the Child up against him – she formed earlier of Father and especially fails to contribute to getting rid of the presumptions of sexual traumatization from the Child's world of ideas. It is most likely that Mother still maintains the presumption that one needs to be afraid of Father. Communication, emails from the Mother, accounts of family support workers, opinions expressed by Mother indicate that she cannot accept the expert opinions (be it from police or court) and the court's decision concerning contact, and continues to maintain thoughts of abuse, what's more she will add other events that have taken place to her accounts at official places. Covering the rooms with cameras, moving between her different places of residence, the involvement of the authorities in the matter do not

mean a sufficient solution to Mother but during the ongoing proceedings and school-term without the consent of Father, and by misleading her wider environment she has in all likelihood left the country for a relatively long period of time. It is contrary to the Child's interest to carry the mental burden of traumatization which - whether during police or court proceedings independently of each other but without contradictions - the appointed professionals have not supported. It is not in the [Child's] interest to live in fear of her Father because of this and not keep in contact with him. It is not in her interest to live in a world of her own which has no bearing on reality. All this disrupts the Child's emotional attachments, confidential relationships, generates anxiety and suspicion in her, and makes events less predictable for her. Therefore maintaining this situation is contrary to the Child's interest, and poses a risk of harm to the Child's proper emotional development.'

32. On 10 April 2021, F married his partner, with whom he had been cohabiting since August 2020. The June judgment records that since the date of the wedding M has not made contact possible, without any reasonable excuse. Prior to that time (between February and April 2021) F had been able to have a few periods of staying contact. As set out above, the court found in the June judgment, that M had gone out of her way to frustrate the contact, creating particular difficulties at handovers.
33. On 27 April 2021 F saw L for the last time. M did not permit him to do so at his home, but allowed him to have contact at her address.
34. According to M she removed L from Hungary to England on 2 May 2021. They arrived here with few belongings contained in just two suitcases. They spent the first two weeks in quarantine.
35. There was a court hearing in Hungary on 5 May 2021 which M did not attend (she appears to have claimed that she had contracted Covid-19). Contact was due to take place over the weekend of 7 May 2021 but M texted F to say that L was unwell. F attempted to telephone M on 10 and 11 May 2021 but her number was disconnected. He went to her address on 11 May 2021 but found that she was not there; he therefore reported the matter to the Hungarian police.
36. On 20 May 2021 the Pest Central District Court made an interim order for L to spend several periods of one week with F over the course of the 2021 summer holidays.
37. On 25 May 2021 F was informed by the Hungarian police that M and the child had travelled to England on or about 14 May 2021. The police provided him with an address for M in Herefordshire (in which M was in fact staying). This was different from an address which M, through her Hungarian lawyer, had falsely provided to the court following her removal of the child.
38. On 30 May 2021 the Pest Central District Court made a further interim order granting interim parental custody of the child to F and ordering M to hand the child over to him within one day.
39. On 2 June 2021 the court-appointed psychiatrist and psychologist filed their further responses to questions. They concluded that M's recent behaviour, including removing the child from Hungary, suggested a deterioration in her condition to the extent that she

might be suffering from a pathological mental disorder. They further concluded that, while it was not possible to predict how M would behave, it could not be excluded that her conduct would *'spread to the extent of posing a risk of harm to herself and the child'*. The experts recommended that, in view of the significant concerns about M, L should be taken into care so that her relationship with her father could be re-established and to enable the professionals to monitor the situation.

The final judgment of the Pest Court

40. On 19 June 2021 the Pest Court made a final order granting F the right of parental custody. M was ordered to hand the child over to F within 3 days. Although M was not present at this hearing, she was legal represented. The June judgment contains a number of serious findings about M, including the following (some of these are set out above in this judgment, but are repeated here for ease of reference):

- (a) *'From February 2019 [M] systematically reduced the Father-Child relationship by accusing [F] of sexually molesting the young girl on the basis of what the young girl had said, and gave the Child who was of a young age and did not quite understand what was going on around her the idea that she needed to be afraid of him and that she needed help in relation to him. She did everything to limit their relationship to the greatest possible extent and to keep it entirely under her control. She did this in spite of the fact that after engaging a gynaecologist and a psychologist, the Child and Youth Protection Department of Budapest Police Headquarters proceeding on the basis of the report by [M] did not charge [F] who denied the accusations all through and voluntarily underwent a polygraphy test, and ended the proceedings on the grounds that no crime had been committed.'*
- (b) *'Even after [F had been exonerated] [M] groundlessly reported and made several formal complaints against [F] and accused him of repeatedly assaulting the Child sexually, of other offences detrimental to the Child, and of posing a risk of harm to an underage child. She did not accept the expert opinions and orders prepared and made in the different proceedings as they did not support what she had claimed.'*
- (c) *'[M] only made contact possible under her own supervision in a property covered by cameras, behind closed doors save for one or two exceptional occasions.'*
- (d) *'[M]'s conduct has made the Child afraid of Father. [She] taught the young girl to scream when Father touched [her] so that she drew the neighbours' attention to herself who would rush to her rescue her and then when the Child screamed in the presence of [M]² because Father had lifted her up she laughed.'*
- (e) *'Despite contact [being] regularly supervised by her, [M] repeatedly claimed that F posed a risk of harm to the young girl by shouting and generated fear in her which resulted in the Child [wetting] herself again'.*
- (f) *'After M was fined for refusing contact, she permitted it to take place for a few occasions from the beginning of February 2021 to 10 April 2021. However, [t]he handover took place in the presence of several strangers in an overcharged emotional atmosphere, Mother made the handover difficult and the persons present made camera recordings. The respondent gave the Child an audio recording device for the contact and also taught her how to use it. During weekdays contacts she closely followed Father and Child in her vehicle.'*

² The judgment refers here to 'the Claimant' (i.e. F) but in context I think this must be a typographical error

- (g) *'[M] exposed the Child to [numerous] expert psychological examinations [which were] particularly burdensome to her because of the groundless accusations against [F] and by doing this caused serious harm to her personality.'*
- (h) *'the Respondent has paranoid personality disorder which primarily and essentially affects her life-style and the way her personality relates to the outside world periodically or regularly.'*
41. Despite M's calculated endeavours to frustrate contact, the court was able to make positive findings about F and his relationship with the child, including that:
- (a) *'he not only had better parental capacity but he had endeavoured to have and maintain contact for the past two years since February 2019 by using lawful routes, consistently and continuously sparing no effort, time and money and even enduring the on several occasions hurtful and humiliating conduct of the Respondent who also took no notice of his parental and human rights. While acting properly to comply with the interim measures, he gave priority to the points of view of the Child being mentally heavily burdened which is beyond dispute and did not literally apply the provisions but adjusted them to the Child's actual mental condition, needs and limit of endurance while placing his own points of view second after the Child's and thus also showing his sincere feelings towards her.'*
- (b) *'he went out of his way to make psychological help possible for the Child by accepting the opinions of the professionals and even made financial sacrifices for this purpose.'*
- (c) In relation to the resumption of contact in February 2021, *'Taking into consideration the long period of time [which had] passed without being together and the traumas the Child had experienced, Father paid the utmost attention to the young girl's needs during the contacts in the interest of the Child, and when asked by the Child returned her before the end of the contact even after one day. With the passage of time, the Child became more relaxed in the Claimant's environment and enjoyed herself.'*

The Hague Convention proceedings

42. Following the removal of the child to England, F promptly submitted an application for her return to the Hungarian Central Authority. This was transmitted to the International Child Abduction and Contact Unit, acting as Central Authority for England and Wales, who instructed Bindmans solicitors to act on F's behalf.
43. On 7 July 2021 these proceedings were issued. On that date I made disclosure orders and gave directions, including for the preparation of a Cafcass report. I listed the matter for a final hearing on 12 August 2021.
44. On 27 July 2021, at M's request, Arbuthnot J adjourned the final hearing to 6 September 2021 to allow M further time to apply for legal aid and to file her evidence. Paragraph 5 of her order recites that *'The court accepted that this is an urgent case and that no other delays or adjournments should take place'*.
45. On 2 September 2021 M made an application to Williams J for a further adjournment. That application was refused. M renewed her application for an adjournment before me; I also refused it.

Asylum claim

46. A potentially complicating feature of the background is that on 5 July 2021 M caused a claim for asylum to be made on behalf of L; she also made her own asylum claim. The basis of the child's claim was that she had been sexually abused by F in Hungary. On 16 July 2021 L's asylum application was ruled inadmissible under paragraph 326E of the Immigration Rules. On 27 August 2021 solicitors instructed by M wrote to the Secretary of State for the Home Department, pursuant to the pre-action protocol, inviting the SSHD to restore the claim. This step was taken as a precursor to the initiation of judicial review proceedings. On 9 September 2021 a preliminary response was sent on behalf of the SSHD; this stated that further time was needed by her to provide a substantive response to the letter sent on M's behalf.

Local authority information

47. Since coming to England, as a result of orders made by the court, welfare checks have been undertaken by Herefordshire County Council. The local authority's initial response to the request for safeguarding information records at paragraph 6 that M had stated that F has sexually abused the child *'by placing his hand on the child's genitals'* and that *'[M] has said that [F] wanted to sleep in the same bed and sexually touch [the child], the last time he saw her'*. It also records other concerns including some relating to domestic abuse alleged by M; M's *'observable hostility'* towards F was noted. There were no concerns expressed about the accommodation in which M and the child are residing or in relation to the care which M provides her. L appeared to have settled well in school.
48. When asked by the social worker to complete a *'three houses'* exercise, the child placed F into the house of worries *'because he is bad'*. She said that if she saw him she would *'kill him'* and that she would cry, explaining that *'he is mean to my family'*. She would scream at him if he wanted to speak on the telephone. She could think of no nice or fun times she had spent with F or the paternal family. Included in the house of dreams was a wish to live *'here [in the town in England where she has been staying]'*.
49. There have been two more recent visits undertaken by social workers on 25 August 2021 and 1 September 2021. These did not give rise to any concerns about M's care of the child, who appeared to be more settled and spoke about having enjoyed the summer holidays. It was noted that the child only wants to be called by an English name different from her actual name which could suggest that she is rejecting or struggling to accept her Hungarian identity or her relationship with F.

Cafcass

50. Ms Lynn Magson prepared a report dated 1 September 2021 and gave oral evidence for just over two hours. She interviewed L at the Worcester Cafcass Office on 29 July 2021. At the time of the interview, M informed Ms Magson that the child was receiving therapeutic support to address the trauma of sexual abuse. Ms Magson commented in her oral evidence that it was difficult to see how this could have a positive benefit for L given the findings of the Hungarian court. Her view was that the child would need psychological support either in the UK or in Hungary, but of a different kind.
51. Ms Magson referred in her report to a Child and Family Assessment being undertaken by the local authority, stating that it was not evident to her how the risks about M identified within the Hungarian proceedings (including M being found to have a paranoid personality disorder) were being addressed within that assessment.

52. In her interview with Ms Magson, the child stressed that she wished to be known by the English name she has adopted since coming to this jurisdiction, as opposed to her given name. Ms Magson observed her to respond positively to M, whilst also being content and confident about speaking to Ms Magson alone.
53. L spoke positively about her school in England and described English as her best language. She was able to identify some positive aspects of her life in Hungary, speaking fondly of her cousins and the fact that she had a lot of school friends who had lived close by to her and with whom she had enjoyed playing and going ice-skating. She recalled spending time living with her parents and grandmother and remembered going swimming and to the swings. She later spoke positively about going to the playground, a pizza restaurant and some swings.
54. The child volunteered that F had cheated on her mother when she was young, giving a somewhat confused account of him having a girlfriend which she repeated several times. She explained that *'Mummy saw it online and on Instagram'* and recalled M being distressed and crying. She spoke about being happy when, aged 5, M had kicked F out of the house. Asked about the time she spent with him thereafter, L spoke about F remarrying; she had attended the wedding which she described as *'boring'*. She also described seeing F as boring, complaining that she would play with dolls while he would be on his telephone. She referred to the judge in Hungary as having been *'mean'* to her for ordering her to stay with F twice a week. She told Ms Magson that F's partner was present when she stayed with him, but *'it would have been better if she was not there'*. She referred to the fact that on one occasion she had cried during contact and that F had allowed her to go home sooner than the anticipated end time.
55. L told Ms Magson that F was evil as he did not wish her to live with her mother or to *'see her forever'*. She said that although F would say he was at work, in fact he would be *'hanging out'* with his girlfriend. She stated that F would shout at her and that he had slapped her across the face, which she demonstrated with an open palm. She said that she had been slapped ten times on one occasion when she was aged 7. She told Ms Magson that the only thing F was good at was *'paying the judge'* to allow him to spend time with her and referred to the fact that M was required to pay money (presumably a reference to the fine) which had upset her. She scored school in Hungary as 8/10 whereas in England it was 10/10.
56. L made no mention of sexual abuse during the interview. In her oral evidence Ms Magson said that it had surprised her to a degree that it did not come into the conversation at all. She pointed out that the child had volunteered other information, such as F having smacked her.
57. The child made plain that she did not wish to return to Hungary either to live or to enable a judge in that country to make decisions about her welfare. She stated that she would *'cry and say no'*. Ms Magson observed her to become more agitated and upset when she said this, having previously been *'rather flat'* until this comment. She maintained her opposition to returning even in the event that M were to return herself, stating that she would *'run away and say no'*. She volunteered that she believed that she would have to live with her father and that her mother would go to prison, information which M had

communicated to her. In her oral evidence Ms Magson described the threat to run away as an expression of feeling as opposed to something the child would actually do.

58. Towards the end of the interview, L made it clear that she wanted it to conclude stating that she was '*sick of questions*' and that she had spoken to '*billions*' of people.
59. Information from the school suggests that L has settled in quickly and made friends. She is apparently doing well academically and has been described by a teacher as '*a confident girl whose maturity was at least commensurate with her age*'. This was in contrast to Ms Magson's own observation that she presented as '*a young 7-year-old girl and she needed encouragement at times to remain focussed*'. The school have no safeguarding concerns about M's care of the child.
60. Ms Magson noted in her report that over the last two years L has been subjected to repeated interviews and assessments by a range of professionals and that she has an inappropriate level of knowledge of the adult matters relating to the parents' separation and subsequent court proceedings.
61. Ms Magson expressed the view in her report that should the child's summary return be ordered, this would require careful planning. Separation from M will result in initial distress for her which will be compounded if M remains in the UK with no arrangements for contact, a view Ms Magson repeated in her oral evidence; she added that it would assist L if she could be supported and reassured by M in returning. Ms Magson also expressed the view that, if M does not return with the child, it may be beneficial if she can spend some time with F in a supported setting in the UK to assist in re-establishing their relationship before returning to Hungary. She recognised however that this could be difficult and that such a process would be undermined if it was not supported by M. In her view, the allocated social worker would be best placed to provide such support.
62. In her oral evidence, Ms Magson confirmed the content of her report. Despite being pressed by Mr Hames QC, she felt unable to reach a conclusion as to whether the child's inappropriate knowledge was the product of direct influencing by M or as a result of things she had overheard; she acknowledged, however, that the child had told her that M had communicated to her that she would be sent to prison in Hungary. She said that these matters were likely to cause the child anxiety and to have an impact upon her feelings about F.
63. Ms Magson did not consider that the child had been '*overly primed*' for the interview. Her view, however, is that she is entirely negative about F and has aligned herself with M. She was being raised in an environment that was not supportive of contact or of her relationship with F.
64. Ms Magson acknowledged that the issue of how any return order should be implemented was difficult. She saw a benefit to the child in M being able to return with her and any handover taking place in Hungary, but recognised that this might not be possible. The child would, however, find it more difficult if the handover was to take place in England. Ms Magson stated that, ideally, any handover should happen in a '*planned*' way with local authority support, but there should not be huge delay in the process. The type of support she envisaged would involve some sessions of reintroduction to F together with practical and emotional support for M.

65. Ms Magson spoke about the importance of M supporting any process of reintroduction leading up to a handover. If she was unable to do so, she said that the process may have to be very quick, '*over a few days*' or even that '*it could happen with one handover*'; Ms Magson's hope, nevertheless, was that it could be less sudden than that. She agreed with Mr Hames QC that if the process were to be long and drawn out, this would cause further emotional harm to the child. In response to a question from M, Ms Magson spoke of the need to strike a balance between taking time to reintroduce the child to F and minimising the pressure that would result from the process taking too long. She stated that the process may well be distressing and that it may need to take place over a couple of days rather than weeks. An important consideration was M's ability to support the process.
66. Ms Magson acknowledged that there were concerns about M's mental state and that as the pressure upon her increased, this would give rise to increased concern. If a return order were to be made, that would lead to added pressure and stress and '*a feeling of options being closed down*'.
67. Ms Magson agreed with Mr Hames QC that the sooner the child's relationship with F is repaired the better. She did not consider that this could happen if the child remained in this jurisdiction.

The law

Overview of the 1980 Hague Convention

68. The aims and objectives of the 1980 Convention are recorded in its preamble and in Article 1. They can be summarised as follows:
 - (a) To protect children from the harmful effects of being subject to a wrongful removal or retention.
 - (b) To ensure the prompt return of abducted children to the country of their habitual residence.
 - (c) To respect rights of custody and rights of access held in one Contracting State in other Contracting States.

One of the ways in which the Convention is intended to secure its objectives is by deterring would-be abductors from wrongfully removing or retaining children.

69. The welfare of the child is not 'the paramount consideration' under the 1980 Convention. However, the preamble records the general principle that '*the interests of children are of paramount importance in matters relating to their custody*'. In *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 it was held by the Supreme Court that each of the following is '*a primary consideration*' in Convention proceedings:
 - (a) The best interests of the children subject to the proceedings;
 - (b) The best interests of children generally.
70. The Supreme Court explained at paragraph 18 of that decision that a faithful application of the provisions of the Convention will ensure compliance with Article 3.1 of the United Nations Convention on the Rights of the Child (which provides that in all actions concerning children, the best interest of the child shall be a primary consideration).

71. Where (as is accepted in this case) a child is subject to a wrongful removal and an application for the return of the child is lodged within a year, Article 12 of the Convention provides that the court must order the return of the child forthwith. This has to be read in conjunction with Article 13 which provides (so far as relevant to this case) 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 its return establishes that -

a) ...

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 or administrative 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 13(b): grave risk

72. The burden of establishing the grave risk defence lies on the respondent to an application (in this case the mother).
73. The leading authorities are *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10. In *Uhd v Mackay* [2019] EWHC 1239 (Fam) MacDonald J summarised the key principles as follows:

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).

74. It is relatively common in Hague Convention proceedings for allegations to be made by one party and denied by the other. As the proceedings are summary in nature and it is rare for the court to hear oral evidence, the court is usually not in a position to resolve such disputed allegations. This can give rise to difficulties where a respondent's assertion that Article 13(b) is satisfied is founded upon factual assertions which the court is unable to resolve. In this connection, the Supreme Court said the following at paragraph 36 of *Re E*:

‘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. Mr Turner submits that there is a sensible and pragmatic solution. 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.’

75. The court is not obliged to follow the approach suggested in paragraph 36 of *Re E* in every case. In *Re K (1980 Hague Convention: Lithuania)* [2015] EWCA Civ 720 Black LJ said the following at paragraph 53:

‘I do not accept that a judge is bound to take this approach if the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13b risk. That is what the judge did here. It was for the mother, who opposed the return, to substantiate the Article 13b exception (see *Re E* supra §32) and for the court to evaluate the evidence within the confines of the summary process.’

The features of that particular case which allowed the judge to depart from the guidance in *Re E* were summarised as follows:

‘Hogg J found the mother's evidence about what had happened to be inconsistent with her actions in that she had continued her relationship with the father and allowed him to have the care of E, see for example what she said in §37 about the mother not having done anything to corroborate her evidence. She also put the allegations in context, bearing in mind what Mr Power had said about something good having happened in E's parenting, which she took as a demonstration that E would not be at risk if returned to Lithuania (§36). The Article 13b argument had therefore not got off the ground in the judge's view. The judgment about the level of risk was a judgment which fell to be made by

Hogg J and we should not overturn her judgment on it unless it was not open to her (see the important observations of the Supreme Court on this subject at §35 of *Re S*, supra). Nothing has been said in argument to demonstrate that the view Hogg J took was not open to her; in the light of it, it was unnecessary for her to look further at the question of protective measures. She would have taken the same view even if the child had been going back to the father's care, but the Article 13b case was weakened further by the fact that the mother had ultimately agreed to return with E.'

76. In *Re C (Children) (Abduction: Article 13(b))* [2018] EWCA Civ 2834 Moylan LJ also gave specific consideration to paragraph 36 of *Re E* holding that '*In my view, in adopting this proposed solution, it was not being suggested [by the Supreme Court] that no evaluative assessment of the allegations could or should be undertaken by the court.*' He emphasised however that '*Of course a judge has to be careful when conducting a paper evaluation but this does not mean that there should be no assessment at all about the credibility or substance of the allegations.*'

77. In *Uhd v Mackay MacDonald J* summarised the approach to be taken as follows:

'In the circumstances, the methodology articulated in *Re E* forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see *Re S (A Child)(Abduction: Rights of Custody)* [2012] 2 WLR 721), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.'

78. Article 13(b) was again considered by the Court of Appeal in *Re A (Children) (Abduction: Article 13(b))* [2021] EWCA Civ 939. Moylan LJ provided a comprehensive summary of the relevant principles at paragraphs 84 to 89 of the judgment, which it is unnecessary for me to set out in full. At paragraph 92 he considered what had been said in *Re C* and *Re K* about the ability of the court to depart from the core guidance given by the Supreme Court in *Re E* and to undertake an evaluation of disputed allegations, emphasising that:

'Black LJ [in *Re K*] was referring to discounting the *possibility* that the allegations would *give rise* to an Article 13(b) *risk*. She was not otherwise diverging from the approach set out in *Re E*. It is also plain that she was referring to the end of the spectrum, namely when the court was able *confidently* to discount the possibility that the allegations gave rise to an Article 13(b) risk. This is not to dance on pins but is a distinction of substance derived from the court not being in a position to determine the truth of the allegations relied on as establishing the Article 13(b) risk.' [emphasis in the judgment]

79. Moylan LJ further held at paragraph 94:

‘In the *Guide to Good Practice*, at [40], it is suggested that the court should first "consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk" before then determining, if they could, whether the grave risk exception is established by reference to all circumstances of the case. In analysing whether the allegations are of sufficient detail and substance, the judge will have to consider whether, to adopt what Black LJ said in *Re K*, "the evidence before the court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13(b) risk". In making this determination, and to explain what I meant in *Re C*, I would endorse what MacDonald J said in *Uhd v McKay (Abduction: Publicity)* [2019] 2 FLR 1159, at [7], namely that "the assumptions made by the court with respect to the *maximum level of risk* must be reasoned and reasonable assumptions" (my emphasis). If they are not "reasoned and reasonable", I would suggest that the court can confidently discount the possibility that they give rise to an Article 13(b) risk.’

He went on to emphasise, however, that a judge must be ‘*careful*’ when undertaking an evaluative exercise, because of the limitations created by it being invariably based only on an assessment of the written material. It is not permissible for a judge to discount allegations of abuse merely because he or she has doubts about their validity or cogency. On the contrary if the judge concludes that allegations would ‘*potentially*’ establish the existence of a grave risk, the court ‘*must*’ consider how the risk can be ameliorated.

Child’s objections

80. The leading authority on the child’s objections exception - at least so far as the so-called ‘gateway’ stage is concerned - is *Re M (Republic of Ireland) (Child’s Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26. As to discretion, the leading authority is *Re M (Children) (Abduction: Rights of Custody)* [2007] UKHL 55.
81. In *Re Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490 (Fam) at paragraph 50, Williams J summarised the relevant principles to be derived from both of the *Re M* cases as well as the later decision of *Re F (Child’s Objections)* [2015] EWCA Civ 1022 as follows:
 - i) The gateway stage should be 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.
 - ii) Whether a child objects is a question of fact. The child’s views have to amount to an objection before Article 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.
 - iii) The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child’s views are one factor to take into account at the discretion stage.

iv) There is a relatively low threshold requirement in relation to the objections defence, the obligation on the court is to 'take account' of the child's views, nothing more.

v) At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about 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 if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.

vi) 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 the child's own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which are relevant to the child's welfare, as well as the general Convention considerations.

The same summary appears in the judgment of MacDonald J in *B v P* [2017] EWHC 3577 (Fam), [2018] 1 WLR 3657. I respectfully agree with the summary and adopt it.

82. As Williams J also pointed out at paragraph 51 of *Re Q & V*, in some cases an objection to a return to one parent may be indistinguishable from a return to a country. This is one such case.

Submissions

Mother

83. M began her oral submissions by pointing out to me what she described as a '*lie*' in the initial statement of F's solicitor where it is stated that he was born in Hungary as opposed to Ukraine, his actual place of birth. This, she submitted, was intentional, as in her view a significant number of bad people originate from Ukraine.
84. M made it clear in her submissions and through her cross-examination of Ms Magson that the reason she brought L to this jurisdiction was to evade the justice system in Hungary which she considered had treated her unfairly. As she put it, '*we did not come here for a holiday*'.
85. M is convinced that L was sexually abused by F when she was aged 5. She strongly disagrees with the police authorities and the courts which have come to a different conclusion. She told me that her lawyer had advised her that if she did not leave Hungary her daughter was '*going to be raped in the name of the law*'. She alleged in her oral submissions that F had resumed his sexual abuse of L in March 2021 (when L was aged 7 ½) and that this had caused the child to start crying and losing weight.
86. M was strongly critical of the Hungarian court system. She did not understand how the courts could have awarded F '*full custody*' when, as she put it, he had abandoned his child at the age of two. She asserted that the courts had been wrong to place reliance upon the court-commissioned joint reports of the psychiatrist and psychologist – especially the two supplemental reports prepared without her being reassessed – and to refuse to take into account other reports which she had obtained unilaterally and which supported her case (I have read those other reports, which are exhibited to her statement).

It is M's view that the child should have been subject to a further assessment by an organisation called BH, which apparently specialises in assessing whether children have been abused through monitoring their reactions by means of hidden cameras; she considers that such an assessment should now be undertaken in this jurisdiction.

87. M's view is that the child has '*gone through torture*' and that she needs protection from F to avoid suffering '*life-long trauma*'.
88. M was critical of the conclusion of the experts that she may be suffering from a personality disorder. She told me that '*believing your child is not something that makes you crazy*'.
89. In terms of the Hague Convention, M submitted that it would be intolerable (I paraphrase; she did not use this word) for L to be returned to Hungary as there is a likelihood she would be raped. A return would result in her becoming separated from M pursuant to the order of the Hungarian court in circumstances where the order makes no provision for contact; M believes that if she were to return she would be sent to prison. She pointed to photographs exhibited to her statement which she said demonstrated that F had shown a lack of interest in his daughter.
90. M further submitted that L has no wish to be returned in the circumstances described above. By contrast with the position in Hungary '*she sees that we have got help here*' and she is receiving counselling to deal with the sexual abuse she has experienced. She praised the authorities in England for taking her allegations seriously and in particular the police for installing a panic alarm at her home. Her daughter's strength of feeling was, in her view, illustrated by the fact that she had wanted to change her name to an English name '*so that nobody finds me here*'.
91. M submitted that it was '*very strange*' that F had got married during the course of proceedings in Hungary, believing that this had been done in an attempt to demonstrate that he was a good person. She was prepared to consider allowing F to visit the child in England '*under protective measures*'.
92. Following the conclusion of submissions, M sent me further written submissions in which she said that an application for judicial review (in respect of the rejection by the Home Office of her asylum claim) had been lodged on 3 September 2021 (this is a mistake; what she was referring to was her solicitors' pre-action letter). She again emphasised that the child would be placed at grave risk if returned and drew my attention to an assessment prepared by Csaba Mitok and Dr Andrea Somogyi exhibited to her statement which, she said, was not taken into account by the courts in Hungary. She also pointed out that the child had alleged during her interview with Ms Magson that F had on one occasion slapped her on the face ten times, a matter which M said would require investigation by the authorities.
93. M submitted that she and the child should not be separated in the event that she is able to return to Hungary (in contrast to her stance to date in the proceedings whereby she has said that she would not return) and that she would like to have an agreement that is enforceable in Hungary. Inconsistently with this, M also submitted that if a return order is made, the child should be given time to prepare through a process involving a few sessions of contact being facilitated by the local authority over a period of three weeks.

94. M further submitted that implementation of any return order should be delayed to await the outcome of the judicial review application.

Father

95. Mr Hames QC, Mr Wilding and Ms Chaudhry emphasised that in circumstances where M accepts that the child had been subject to a wrongful removal, the court is obliged to make a summary return order unless M is able to establish one of the Article 13 exceptions.
96. They submitted that Article 13(b) was not satisfied and that M's case falls '*far short of the high threshold*' that is required. The emphasised the following points in their skeleton argument:
- i. There are no criminal proceedings against M in Hungary and F has offered the usual non-prosecution undertaking.
 - ii. M's allegations of sexual abuse have been determined to be '*groundless*' by the Hungarian court after extensive assessment and investigation [C268].
 - iii. There is no evidence before the court to support M's assertion that F would breach undertakings and orders of the court. The evidence demonstrates the contrary – F has also complied with orders of the Hungarian Court. In any event, F has agreed to arrange for the registration of his undertakings in Hungary pursuant to the 1996 Hague Convention.
 - iv. M has proved to be an able litigant and has extensive experience of engaging in litigation from abroad (she was not in the jurisdiction but represented at the May and June hearings in Hungary). If she wishes, she is able to make an application for relocation, either in person or with legal representation and either from Hungary or elsewhere.
 - v. M co-owns a property with her brother in Budapest and has family in Hungary. She has a good work history in Hungary. She is well able to return if she so wishes.
97. In his oral submissions Mr Hames QC made the point that M's entire case is predicated upon a refusal to accept the findings of the Hungarian court that F has not perpetrated sexual abuse against the child; in contrast the court has found that M has caused emotional harm to the child by frustrating F's relationship with her and causing the child to be fearful of him.
98. Mr Hames QC submitted that in addition to the protective measures proposed by F by way of undertaking, an additional safeguard for the child was the fact that she remains subject to the protection of a Guardianship Authority in Hungary. He described this as the English equivalent of a child either being on a child protection register or the subject of a supervision order (in the sense that the authority has a responsibility to maintain some oversight over the child).
99. Mr Hames QC submitted that during the course of this hearing M had raised for the first time yet further allegations of sexual abuse by F against the child, claiming that he had perpetrated such abuse when L was aged 7 ½ (i.e. a few months ago). Mr Hames described it as '*incredible*' that such allegations should not have been raised before, either in the proceedings in Hungary or within these proceedings (in fact, in a document exhibited to M's statement at C125, she does make reference to the abuse having started again after the

child began staying with F in 2021, the child apparently having reported it ‘3 times’ and having alleged that ‘F wanted to sleep with her’; the same allegation is at C145; it also appears from the June judgment that M had made allegations that F sexually assaulted the child on repeated occasions, which allegations were held by the court to be unfounded). Mr Hames QC submitted that M is ‘obsessed’ with the issue of sexual abuse and has displayed a determined refusal to consider any other alternative.

100. Mr Hames QC pointed out that during her oral submissions M had made the suggestion that the child may be self-harming, an allegation not raised in the Hungarian proceedings.
101. Mr Hames QC, Mr Wilding and Mr Chaudhry did not concede that the child’s expressed views amounted to relevant objections for the purposes of the Convention or that she had the necessary degree of maturity to cross the gateway threshold. In this connection, they emphasised a number of points in their skeleton argument:
 - i. There is an extremely concerning history to this matter which must be considered when considering the context and circumstances of the child’s interview with Ms Magson on 29 July 2021.
 - ii. The child has not seen F since 27 April 2021 and has had no indirect contact with him since this time either. She has been residing in M’s sole care since this time and is likely to have been exposed, both directly and indirectly, to M’s views about F and the application for return. Many of the comments made by the child to the Cafcass Officer are clearly the direct result of the mother’s malign influence. For example, M has told the child that if she is returned to Hungary M will go to prison. Unsurprisingly this has been assessed to have a direct impact on her wishes and feelings.
 - iii. The child has adopted a new name, spoke to the Cafcass officer in English and not Hungarian, and appears to have been encouraged to adopt a new English identity.
 - iv. The child was able to recall many positive aspects of life in Hungary such as her school, friends and cousins, going to restaurants and doing various activities there.
 - v. Although the child stated that she would cry and say no if a return order was made she was rather flat in her presentation at that point in the interview.
102. Mr Hames QC, Mr Wilding and Ms Chaudhry further submitted that if the court were to find the gateway limbs of the objections exception to be satisfied, the court should exercise its discretion in favour of ordering a return. They made a number of points in support of this contention at paragraph 32 onwards of their skeleton argument, which I can summarise as follows:
 - (a) The policy of the Convention should carry considerable weight as this is a hot pursuit case in which M fled the family’s home in the middle of welfare proceedings in Hungary.
 - (b) The Hungarian court has delivered a considered and detailed final welfare decision which should be respected.
 - (c) The court in Hungary has primary jurisdiction and will be hampered in undertaking any investigation unless the child is returned to Hungary.

- (d) Children’s services in Hungary have been involved since March 2019 and have a wealth of knowledge about the family. In contrast the social services in this jurisdiction have not grasped the complexities of the case or fully understood the risks identified in Hungary.
- (e) Welfare considerations have been the subject of detailed consideration by the court in Hungary which has concluded that the child has suffered psychological harm as a result of M’s actions and that she is at risk of harm in M’s care.
- (f) M does not accept the court’s findings and continues to maintain that the child was sexually abused by F. It is not open to M to relitigate these matters. Her stance in these proceedings amounts to forum shopping.
- (g) M has repeated her allegations to the police and social services in England and made arrangements for the child to receive therapeutic support predicated on the basis that she has been abused. She has also had a panic alarm fitted in her property.
- (h) M has recently emailed around 100 employees at F’s company repeating allegations of abuse against him.
- (i) M’s overall conduct demonstrates that there is an ongoing risk of serious harm to the child while she remains in her care.
- (j) The child’s views should carry little weight as she is aged only 7 and has been subjected to M’s influence.
- (k) If the child is not returned M will not be able to promote her relationship with F and will continue to expose her to harmful beliefs. It will thus be impossible for the father-daughter relationship to be rebuilt.

Analysis and conclusions

Article 13(b)

103. I do not consider that the Article 13(b) exception is satisfied in this case. In my judgment, this falls into the category of cases in which the court can confidently discount the possibility that M’s allegations give rise to an Article 13(b) risk.
104. M’s case is predicated entirely on the premise that the court in Hungary and various authorities and professionals that have investigated the matter have reached the wrong conclusion about F’s sexual abuse of the child and that they are also wrong the risks which she poses to the child.
105. I do not consider myself bound by the conclusions of the Hungarian court in the sense that they give rise to an issue estoppel. Nevertheless, a recent judgment of a court of competent jurisdiction delivered following a lengthy process of investigation must inevitably carry very significant weight in any ‘*reasoned and reasonable*’ analysis of risk.
106. Having given careful consideration to all of the materials that have been placed before me (including the reports which M complains were not taken into account in Hungary), I am unable to find any reasonable basis for criticising or undermining the approach adopted by the courts in Hungary or the ultimate conclusions set out in the June judgment (even if it were permissible for me to embark upon such an exercise, which I doubt).
107. The conclusions of the court were consistent with the outcome of two separate police investigations as well as the detailed reports prepared by the independent psychiatrist and psychologist who acted as expert witnesses. The June judgment seems to me to be cogent and well-reasoned.

108. It is not a legitimate basis for complaint that the court in Hungary refused to admit other reports which were obtained unliterally by M. An English court might well have adopted a similar approach, having regard to Part 25 of the Family Procedure Rules 2010.
109. M cannot sensibly argue, in my view, that the court simply dismissed her concerns without giving them proper consideration. On the contrary, there was an initial period in which F was only permitted to have limited contact with the child. It was only after the court had come to the conclusion that M's allegations were groundless that more extensive contact was ordered. M was fined after a repeated breach of court orders. The court acted to transfer the custody of the child as a last resort. It did so, having reached the conclusion - on the basis of substantial evidence - that over a prolonged period of time M had engaged in behaviour which was profoundly harmful to the relationship between the child and F and which was causing the child serious emotional harm. This pattern of damaging behaviour culminated in M's clandestine removal of the child to England.
110. The steps which M has taken since coming to England will inevitably have aggravated the harm which the child has already experienced and worsened her relationship with F. She has made contact with the police and had a panic alarm installed at home, sending the child an obvious message about her need to be fearful of F. It is apparent from Ms Magson's evidence that M has shared information with the child; contrary to Ms Magson's ambivalence, I consider it highly likely, having regard to the history of the case, that M will have imparted much of this information to the child deliberately in order to harm yet further her relationship with F (I do not consider that this is a case in which the child has simply overheard inappropriate things). Additionally, M has refused to facilitate any contact between the child and F since coming to England, causing yet further harm to that relationship. The child's adoption of a new name is likely to represent a rejection of her Hungarian identity and, in my judgment, is a further manifestation of the harm which she is suffering in M's care.
111. The yet further allegations of sexual abuse which M has raised are wholly inconsistent with the findings made by the Hungarian court about the contact which took place between February and April 2021. M has alleged in Hungary that F has sexually abused the child not once, but on repeated occasions; all of her allegations have been held to be unfounded. Not only that, she has been found to have caused very serious emotional harm against the child, in the manner described above; for over two years she has acted in ways calculated to make the child fearful of F. It is also remarkable, as Mr Hames suggests, that M's further allegations of abuse did not feature at all in the body of her statement in these proceedings (they were buried away in a document appended to the statement). It is also noteworthy that the child herself made no allegation of sexual abuse to Ms Magson in circumstances where she did raise other criticisms of F (for example describing his recent wedding as boring).
112. L did make a serious allegation to Ms Magson that she had been slapped repeatedly by F on one occasion, but did not provide any real context for this alleged incident. There is no suggestion in M's evidence that F has slapped the child in the way suggested. The allegation is wholly inconsistent with the findings of the Hungarian court about the positive and sensitive steps F has taken to improve his relationship with the child in exceptionally difficult circumstances. In view of the findings made by the Hungarian

court and the overwhelming evidence about the exceptional and prolonged manipulation to which the child has been subjected, in my judgment, I am entitled to discount the allegation as one which wholly lacks credibility. Even if I am wrong in that assessment, I do not consider that this allegation – even if true – would give rise to an Article 13(b) risk in view of the Hungarian court’s findings about F’s ability and sensitivity as a parent. As Mr Hames QC submits, the child will be further protected in any event by the continued involvement of the Guardianship Authority.

113. One issue which has given me cause for concern is the impact upon the child of being returned to Hungary without any provision for ongoing contact with M. I acknowledge that the Hungarian court has not ruled that there should be no contact; it has merely deferred making a decision until it has more recent information about M, her circumstances (for example, where she will be living) and her reaction to the transfer of custody to F. This is an understandable position for the court to have taken. Given the history, there is obviously a serious risk that M will use any contact to undermine the child’s new home with F; any contact may well need to be supervised, at least in the short term. Nevertheless, in the absence of information as to the likely timescale for the resolution of a contact application by M in Hungary, I propose to make the return order conditional upon F providing an undertaking that following the return, until such time as the matter can be considered by the courts in Hungary, he will facilitate contact between M and the child for *a minimum* of one two hour period each fortnight (assuming that M herself returns to Hungary); such contact may need to be supervised, which will be a matter for F’s discretion. If M does not return, then F should facilitate at least one video call with M each week (for approximately 20-30 minutes). This condition as to contact will only apply if M is willing to give an undertaking to the court that she will not do or say anything to L to undermine the child’s residence with her father, that she will make no allegations about F to the child and that she will not in any way denigrate F. Should she fail to comply with that undertaking, F would be entitled to suspend contact.
114. I acknowledge that returning the child to Hungary where she will be in F’s care is likely to cause her distress. In my judgment, however, such distress is an inevitable consequence of the prolonged emotional harm to which the child has been subjected by M and the need to remove her from that harmful situation. A transfer of residence in a case where a child has been subject to parental alienation will often cause significant short-term distress for the child; the courts do not, however, shy away from taking such a step when it is necessary to do so in the child’s medium and long-term interests. I accept Ms Magson’s evidence that any distress which the child suffers is likely to occur ‘*initially*’ or, as she put it in her oral evidence, ‘*in the initial phase*’ of the transfer (in other words it will be short-term). This conclusion is supported by the Hungarian court’s findings about the manner in which the child’s relationship with F was improving in the period between February and April 2021. F has been found by the court to be sensitive to the child’s situation and I am confident that he will take such steps as may be appropriate to arrange therapeutic support for the child. He may be assisted in this regard by the ongoing involvement of the Guardianship Authority.
115. The short-term distress which the child may experience must be contrasted with long-term harm she will suffer, in my judgment, if no return order is made. The Hungarian court has made clear findings about the harm that has been caused to her already by M. I accept Ms Magson’s evidence that it is desirable to repair the child’s relationship with F as soon as possible and that this cannot happen if she remains in the UK. I moreover

entirely accept the conclusion of Hungarian court that it is in child's best interests to live with F in Hungary.

116. The undertakings which F has offered, in particular the non-prosecution undertaking, will enable M to return to Hungary and participate in proceedings before the courts. There is no foundation for her assertion that F is likely to break his undertaking and take steps to have her sent to prison. M has accommodation available to her in Hungary and she is an experienced litigant.

Child objections

117. In spite of Mr Hames QC's submissions, I find that the child's expressed views amount to a relevant objection to returning to Hungary.
118. As to the child's degree of maturity, I accept Ms Magson's evidence that she presented as a young 7-year-old in preference to her teacher's assessment that she was somewhat more mature than that (I bear in mind that the teacher was not undertaking an evaluation for purposes of Hague Convention proceedings, whereas Ms Magson has not only done so in this case, but also has extensive experience of doing so in other cases). Nevertheless, I conclude that by a narrow margin the child does cross the age and degree of maturity threshold. In so concluding I bear in mind that there have been cases in which children aged only just six have been held to cross the relevant threshold.
119. Having concluded that the gateway conditions of the child's objection exception are satisfied, I have no hesitation in exercising my discretion in favour of ordering a summary return. With one exception, I agree with all of the points made by Mr Hames QC in relation to the exercise of discretion (which I have summarised at paragraph 102 above and which I need not repeat). As M denies responsibility for sending the email to F's fellow employees and I have not heard oral evidence, I am not in a position to make any finding about it. It is not a matter I have taken into account.
120. In my judgment, this is a case in which the policy of the Convention carries maximum weight. M has accepted that she fled Hungary to evade the jurisdiction of the court. Her continued retention of the child in England is in breach of that court's final order. Conversely, the expressed objection of the child carries very little weight in this case by reason of her young age and the extent of the manipulation to which she has been subjected. As I have already stated, it is clearly in the child's best interests to be returned to Hungary without delay for all of the reasons found by the Hungarian court. For so long as she remains in England, she will continue to be subject to M's harmful influence without any realistic prospect of being able to repair her relationship with F. The Hungarian court has been properly seised of matters; the vast majority of the evidence relevant to the child's welfare is in Hungary; it is plainly in the child's interests that future decisions about her welfare should be made by that court.

Implementation

121. In *G v G* [2020] UKSC 9, the Supreme Court held that a child who is the subject of a pending asylum claim has protection from refoulement and, as a consequence, any return order cannot be implemented for so long as that claim remains unresolved. The same principle applies where an appeal is pursued against a refusal to grant the child asylum.

122. In this case, the child’s asylum claim has been declared inadmissible by the SSHD. It is not possible to pursue an in-country appeal against such a decision, although it may be open to the child to challenge it by way of judicial review. No application for judicial review had been made when I heard this case; it is possible that the position will be different on 14 September 2021.
123. Mr Hames QC, Mr Wilding and Ms Chaudhry submit that, by contrast with an ordinary appeal, an application for judicial review does not confer upon the applicant automatic protection from refoulement. They have drawn my attention to paragraph 150 of the speech of Lord Stephens, JSC in *G v G* where he held as follows:
- “However, where there is no right of appeal, there is no aspect of the asylum process which prevents a return order being implemented after a decision by the Secretary of State has been taken. If there is a judicial review application, then it would be in the discretion of the judge hearing the application whether to grant interim relief by way of an order suspending removal.”
124. I accept Mr Hames QC’s submission that a potential or actual application for judicial review does not prevent a Hague return order from being implemented. To the extent that I have a discretion to suspend implementation, it is not in my judgment appropriate to do so. Any delay in implementation is likely to cause further harm to the child. Moreover, I cannot see that there is any real prospect of an application for judicial review being successful on the facts of this case.
125. I will hear further submissions about the practicalities of implementation. I make it clear, however, that I consider that Ms Magson has been over-optimistic in contemplating that it may be possible for M to support a managed process of reintroduction over several days. I accept that it would benefit the child if M could manage to overcome her feelings and provide at least some support for the child about the change in residence that must take place. I do not think, however, that a prolonged process in which the child is subjected to repeated handovers and exposed to M’s hostility and distress will be in her interests.