



Neutral Citation Number: [2024] EWHC 314 (Fam)

Case No: FD23P00365

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF ARTICLE 21 OF THE 1980 HAGUE CONVENTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2024

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

NW
- and -
SW

Applicant

Respondent

Re Z and X (Visit to Ukraine)

Paul Pavlou (instructed by **MSB Solicitors**) for the Applicant (father)
Sam Pentony (instructed by **Blackfords Solicitors**) for the Respondent (mother)

Hearing dates: 12-13 February 2024

Approved Judgment

This judgment was given on 14 February 2024, and this typed note of the judgment was circulated to the parties or their representatives by e-mail and by release to the National Archives on 20 February 2024.

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THE HONOURABLE MR JUSTICE COBB

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.

The Honourable Mr Justice Cobb :

The application

1. The application before the court concerns two children: a girl aged 16 ('Z') and her younger brother ('X') aged eleven. They are the two children of the Applicant, NW (who I shall refer to as 'the father'), and the Respondent, SW (I shall refer to her as 'the mother'). The parents are Ukrainian nationals. The children currently live with their mother in the south of England. They have been in this country (travelling here in circumstances which I shall describe at §6 below) since April 2022. Their father is currently in Kyiv, Ukraine. The parties are now divorced. The mother has a partner in England with whom she has been in a relationship for about 18 months; he is English.
2. The current application before the court is brought under Article 21 of the Hague Convention 1980, which in its domestic application proceeds by way of an application for an order under section 8 of the Children Act 1989 ('CA 1989'). The father seeks a contact, or 'time spent with', order – specifically an order that the children travel to Ukraine for a holiday visit with him at Easter, and/or in the summer of 2024, and for repeat holidays thereafter, so that he may see them there in person.
3. This is the second application concerning these children to come before the English Courts. The first was brought by the father in September 2022 under the Child Abduction and Custody Act 1985, incorporating the 1980 Hague Convention; in those proceedings he sought the summary return of the children to Ukraine. However, when the situation of conflict in Kyiv deteriorated further in early 2023 he applied to withdraw that application; Mr Dexter Dias KC, sitting as a Deputy High Court Judge of the Family Division, gave him permission to do so. Mr Dias' judgment, setting out his reasons, is reported at [Z and X, Re \(Children: Article 13\(b\): Return to Kyiv\) \[2023\] EWHC 602 \(Fam\) \(17 March 2023\) \(bailii.org\)](#). I have anonymised this judgment in a comparable way to maintain consistency.
4. For the purposes of determining this application, I heard the oral evidence of the Cafcass officer (Ms Alison Baker), and from the parties, in each case assisted by interpreters; I received the written and oral submissions of the parties' counsel, Mr Pavlou for the father and Mr Pentony for the mother. I have been provided with publicly available material relevant to the risks which are said to exist in Ukraine at present; on analysis of that material some of it was in fact somewhat out of date, and some of it lacked a degree of objectivity and/or relevance for the task with which I am charged. I found most useful, in the end, the FCDO current advice in relation to travel to Ukraine which I summarise at §26 below.

Background facts

5. The father is in his early fifties; the mother is soon to be forty. Z and X are their only children; the father has two older adult children. Prior to February 2022, the family lived together in an apartment on the outskirts of the southern part of Kyiv. When the war in that country began on 24 February 2022, the father hurriedly assisted the mother to move with the children to safety, from Kyiv to the furthest western reaches

of the country; he himself returned to Kyiv as he was obliged to do. Given that martial law had been imposed, he was not able to leave Ukraine.

6. On 3 March 2022, the mother and the children crossed the border from Ukraine into Slovakia. They stayed in a monastery for a month. The mother learned of the ‘Homes for Ukraine’ visa scheme being offered in the United Kingdom, and applied for a place. Her application was successful and she arrived in England with the children on 4 April 2022. The mother then arranged for her parents to travel from Ukraine to England in May 2022. The mother has therefore lived in England for nearly two years now with the children, who are both in a fee-paying school in the city where they now live; the school fees are being covered by donations from the other parents and/or by bursary from the school.
7. Under the initial Hague Convention 1980 application, it was the father’s position that he knew nothing of the mother’s plan to leave Ukraine in March 2022 and that she had unlawfully removed the children from their state of habitual residence without his knowledge or consent in breach of his rights of custody when she travelled to Slovakia. As I have earlier referenced (§3 above), he ultimately withdrew that application in March 2023, and the final order which confirms this included the following recital:

“It is recorded that the mother and father have agreed that the father will have regular audio/visual contact with the children and that this will continue and further that during the present hostilities in Ukraine the father can have direct contact with the children outside the State of Ukraine which is to be arranged between the father and the mother” (Emphasis by underlining added).

8. I am told, indeed there is no dispute, that the video contact has taken place as planned; the children speak with their father about twice or three times per week. There is no restriction on this. The children enjoy seeing their father in this way, and I was told that X enjoys playing his guitar to his father.

The parties’ positions

9. The father understandably desperately misses his children, and craves to see them. He describes in his witness statement his close emotional bond with the children. He asserts that he has always provided for the family and was, during their earlier childhoods, the “sole breadwinner” of the family. Additionally, he describes how he took the children to school and sports classes and helped them with their homework. As a family, he says, they often went cycling, and went on holiday to the Carpathians and to the Black Sea coast. He says that the family have been to Transcarpathia four times, most recently in May 2021, with family friends who know the owner of the hotel where they stayed; the children know the area.
10. It is the father’s case that, going forward, in each school holiday starting with Easter 2024 the children should travel to Transcarpathia, a region in the far west of Ukraine, which he says is sufficiently safe for such a visit. His proposal is that the children should fly to a city in one of the neighbouring countries (Slovakia, Romania,

Hungary, Poland), and then make the final approach to the border by road. Once across the border he would meet them in order to spend time with them.

11. The father told me of his pleasure in seeing the children at least two or three times per week using the app Viber. He told me that he pursues this current application because he desperately wishes to see the children; he spoke of his plans to take them fishing, walking and swimming. He described Transcarpathia as “safe”; he drew attention to the fact that there have been no reported missile attacks in the region for many months; there are no martial hours or laws in place there, and he says that the businesses are running normally. He told me that he plans to stay with the children in a hotel or sanatorium in Transcarpathia. He confirmed that he had no intention of taking the children to Kyiv, certainly not without the written agreement of the mother, and was adamant that he would not put them into danger. He disputed that there are any significant problems or delay in crossing the borders from Slovakia, Hungary, Poland or Romania into Ukraine.
12. He proposes that the mother should accompany the children on their journey to and from Ukraine. However, in oral evidence for the first time he told me that his sister, who lives in Germany, and who had travelled recently from Germany into Ukraine, may “theoretically” be able to accompany them. The father’s evidence was that his sister would be able to assist only ‘out of season’ (as she works in a hotel) which, it was accepted, would not be practical with the children’s schooling commitments in the UK. This proposal had not been foreshadowed in any of the documents, nor in the cross-examination of the Cafcass officer (notwithstanding that I specifically asked whether anyone else had been suggested for this chaperone role). The father also told me that his older daughter had travelled from Vienna to Lviv (Ukraine) in August 2023 without complications, but this evidence was not investigated further.
13. It is the father’s case, confirmed in his oral evidence, that the mother should pay all of the expenses for the trip including all of the flights, trains, taxis, buses, hotels, and/or meals in transit. He said that he would cover the expenses of the children while they are in his care in Ukraine. He told me that he thought that there would be surplus left from the £400 he pays monthly by way of child support to cover the expenses of these journeys.
14. The mother supports the current level of indirect contact; she acknowledges (sincerely it seemed to me) that the children love their father very much, and she would support the children visiting their father in Ukraine were it safe to do so. She says in her statement:

“I have ensured that the children are in regular contact with him. I have gone out of my way to keep him informed on our movements and provided him with every detail of our lives (i.e. location, school details, photographs of the children and our surroundings etc). I wanted to include him, as much as possible, in the children’s lives. The [father] was always provided with key information about the children, their whereabouts and where possible, I tried to consult him before making any key decisions.”

She opposes the application for the children to make visits to Ukraine at this stage on the basis of practicality, cost and because the children are themselves currently reluctant to make the long and potentially difficult journey.

Cafcass

15. Ms Baker of Cafcass was directed by Poole J at a case management hearing in July 2023 to prepare a welfare report; she filed a report in October 2023 and gave short oral evidence before me. The report was directed to the following issues:

“(a) whether the children should see the [father], (b) how often and for how long the children should see the [father], (c) the wishes and feelings of the children so far as they can be ascertained, (d) the parties’ wishes and feelings, (e) the concerns of the [mother] with regard to the proposed venue, (f) how the children would be affected by the proposed change of arrangements for contact, and (g) if direct contact is not appropriate, whether there should be indirect contact and, if so, in what form”.

16. Of Z, and her views, she reported as follows:

“[Z] understood we were meeting because her parents are unable to communicate and she remarked “I don’t know why they can’t speak on the phone and solve this idea”. With regards to her father’s proposals, she told me “it’s still safe but it’s hard to get there and expensive”. [Z] understands the journey will entail a flight followed by a long journey by bus or train and told me “I don’t think we can do it, visit him. It’s hard for money and the time and we’d need someone who can do it with us”. She then considered being able to manage the journey independently, but impressed that [X] will need to be accompanied by an adult ... [Z] did not think that it was “a good idea to do something now” and she proposed waiting until the war ended when either her father could visit the children here or they could visit him. [Z] feels that the prolonged gap in direct arrangements was “hard for both sides” (the children and their father). If the war ended this month [Z] would be happy to visit her father during the forthcoming Christmas holiday. She told me “I want to see him, but now it’s unreal. Maybe not every holiday, but a few times a year.” (Emphasis by underlining added).

Mr Pavlou rightly drew particular attention to the fact that Z had described western Ukraine as ‘still safe’ (see above), which was perhaps notable and revealing.

17. X reported his views to the Cafcass officer; they are reported as follows:

“If the war in Ukraine was over [X] would like to return there, told me “then I would come back here again” and

suggested that his father could then come to England. However, because of the war [X] did not want to visit western Ukraine. I explored this with him, pointing out that his father said it was a safe area where there had been no trouble. [X] then considered the prospect of visiting western Ukraine before the end of the war if his mother went with him, although he understands that like him, she is reluctant to do so. [X] wants [the father] and Snowflake, the family's cat, to visit him in England." (Emphasis by underlining added).

18. Ms Baker's written conclusions read as follows:

"I would not recommend for (sic.) spending time arrangements to take place in Ukraine whilst the war continues there and the general level of uncertainty related to any travel arrangements to that country. Upon the conclusion of the war between Russia and Ukraine, I recommend for direct arrangements to include [Z] and [X] travelling to Ukraine to see their father and arrangements taking place in the UK and/or any other country agreed by the parents in consultation with the children. I recommend for indirect arrangements to continue at a minimum frequency of two times each week during term time and three times a week during school holidays". (Emphasis by underlining added).

19. Ms Baker told me in her oral evidence that the "context" of the journey to Ukraine had to be carefully considered within the father's proposal; from all that she had read and heard, she felt that it was likely to be "lengthy, arduous and unpredictable" (a description with which it is difficult to disagree). She continued: "a long journey is one thing, but a journey to a destabilised country is another and will have an impact on any concerns which the children may or may not have". Ms Baker was not drawn on a line of questions suggesting that the children had adopted a resistance to the visit which simply mirrored their mother's views, and/or that the mother had deliberately or unwittingly influenced them against the trip. Ms Baker told me that she believed that the mother was at present reluctant to support the visit for a number of reasons, and was bound to have discussed the issues with the children, but this was not the same as the mother setting out to influence them. She described Z as an independent thinking young person (see further below). Specifically, in as much as Z had expressed concerns about the cost of the visit, Ms Baker accepted that Z she was likely to be aware of the financial constraints under which the family are currently living.

20. Ms Baker confirmed that she thought that Z had developed in confidence in the year since she had seen her for the first set of proceedings. She was "more sure of herself, she was settled; she had a clear purpose; she struggled less in expressing herself". She added that "[Z] is bright, and knows her own mind". Ms Baker acknowledged that the absence of physical contact with their father was a loss to the children but she did not feel that she could recommend a visit to Ukraine while the war continues. She accepted that the border crossings could be difficult and with the lack of toilet

facilities, undignified and difficult for the children. In answer to a final set of questions from me she said this:

“... even if the mother travelled [with the children], I still think that they would be anxious, possibly highly anxious. It is hard to escape the news. They know what their country is still enduring. That will impact them, whether they express it or not. I think that it will impact them negatively. I think that [Z] would like to present herself as mature enough to do the journey without her mother but she would be anxious. They would struggle. If their mother went, that would help. It would be a reassurance. It would be wonderful to remove that anxiety.... But that anxiety will not be removed until there is no war”. (Emphasis by underlining was given in the original).

The issues

21. In determining this application, statute enjoins me to place the welfare of the children at the centre of my decision-making (section 1 CA 1989); I must have regard to all of the circumstances of the case, paying particular regard to the factors set out in section 1(3). Of those factors, the ‘ascertainable wishes and feelings of the children’, the ‘risk of harm’, and the ‘emotional needs of the children’ are the factors which acquire particular prominence. I also must consider whether (as far as Z is concerned, who is 16 years old) the “circumstances of the case are exceptional”; only if I am so satisfied can I make an order in respect of her: see section 9(6) CA 1989. Mr Pavlou asserted that the current circumstances are exceptional; Mr Pentony asserted that they are not.
22. The particular issues on which it is right to focus in this case seem to me to be these:
 - i) The importance for the children of maintaining and enhancing their relationship with their father; the children and the father’s mutual rights under article 8 of the European Convention on Human Rights to a family life should be respected fully;
 - ii) The parents’ wishes/views;
 - iii) The physical risks associated with the proposed contact in Ukraine; and the risks of emotional harm to the children (which may be caused by anxiety, distress, upset at the long and arduous journey to get there not to mention their current resistance to travel);
 - iv) Risk of abduction of the children to Kyiv by the father, and their retention there;
 - v) The practicalities of the proposal for the children to travel to Ukraine, and the cost of this proposal;
 - vi) The views expressed by these children given their age and level of maturity.

As to these points I say as follows.

23. The application is governed by the well-known principles enshrined in legislation (see §21 above). I bear much in mind “that involvement of that parent in the life of the child concerned will further the child's welfare” (section 1(2A) CA 1989). Article 8 of the ECHR provides that the father and the children have a right to respect for their family life; European and domestic caselaw is clear that contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
24. There is no doubt that the father earnestly wishes to see the children; this is undisputed. There is also no doubt that the mother wishes the children to see their father but is anxious about the proposal of a trip to Ukraine at this stage, and is not encouraging of it. She supports and actively promotes and facilitates the current indirect contact; I am satisfied that this mother is complying with the obligations on her at present. I am not surprised that she has imparted her views to the children; indeed it would be surprising if she had not done so. But I am satisfied that she has not set out to influence the children against the notion of a visit; and I am equally satisfied that while the children will have reached their decisions informed by their mother's stance, they are nonetheless truly the children's views. I return to this below.
25. It is nearly two years to the day since the war in Ukraine began; it shows no current sign of abating. The father has sought to persuade me that the region of Transcarpathia would be safe enough for the children to visit, even if the situation in Kyiv has changed little from when Mr Dias KC considered the case in March 2023. He described the situation in Kyiv then as “serious”, and one which would pose a “grave risk” to the children (see [26]/[30] of his judgment).
26. As I mentioned above, in relation to the safety / security issues, some of the material presented to me was in fact out of date or of dubious objective reliability. I fall back on the FCDO advice, currently published, which is that:

“The FCDO now advises against all but essential travel to the western regions (oblasts) of Zakarpattia, Ivano-Frankivsk, Ternopil, and Chernivtsi, and continues to advise against all travel to the rest of Ukraine ('Warnings and insurance' and 'Regional risks' page)”. [Zakarpattia is known in the west as Transcarpathia].

It continues:

“There is an ongoing risk of harm to British nationals from Russian attacks across all of Ukraine, including from missiles and drones that hit unintended targets or from falling debris. Whilst these are more frequent where FCDO advises against all travel, they could also happen in the western regions, where FCDO advice is against all but essential travel.

The situation in Ukraine can change quickly. Local rules and measures may change at short notice or with no

notification. FCDO cannot confirm that all information here reflects the latest situation in Ukraine.”

27. Mr Pavlou encouraged me to focus on the individual plans proposed in this case, and not to take any general view of the dreadful conflict in the region; he prayed in aid the decision of Williams J in *Q v R* [2022] EWHC 2961 (Fam) referencing in particular [54] of that judgment which reads as follows:

“It seems to me one has to avoid generalities, and in so far as is possible evaluate the particular risk to this particular child in a return to this particular area, rather than to apply a general or a broad brush; one must apply a rather more detailed and finer brush to this. Of course, if it were suggested that E were to return to Izyum or one of the other areas which has just been liberated, or which may soon be more directly in an area of active war, would plainly bring with it a grave risk of harm. However, when a return is to somewhere quite different, that requires a different consideration.

In light of all of that I have read and heard, I am prepared to accept that Transcarpathia is not intrinsically unsafe at present; as indicated above, the FCDO is not warning against all travel there, but against all “but essential” travel to this area. It seems unlikely that conflict will break out in the region now on the information before me, although it cannot of course be completely ruled out.

28. The mother is concerned about the children being removed from Transcarpathia by the father, taken to Kyiv and retained there; the father denies that he has any such intention. In my judgment, this is not a significant risk, as I do not believe that the father would be likely to take any step which would expose his children to the real risk of harm from military engagement in and around that city. That said, I was surprised that the father did not rule out altogether a visit to Kyiv with the children, but he was keen to emphasise that he would not take the children back to their old home without express written permission of the mother. He denied that he had any intention to retain the children in Ukraine if they visited him there.
29. It is clear that the journey from the mother’s current home to Transcarpathia, across multiple borders, would be long and tiring. It is on any view no less than about 10 hours; if I were to accept the mothers evidence the journey time could be many times that length. The mother gave persuasive evidence about the problems at the borders, recounting anecdotes of those she knows who have undertaken the journey, for whom it has taken 27 hours or so simply to pass through the checkpoints/security. Whatever the length of the security checks, she suspects (with good reason it seems to me) that border crossings would take longer in holiday periods when the father proposes that the children visit. The mother had done her research in relation to journey time, investigating the flights from the UK (and the specific airports), the need to catch a train or bus, and having regard to their limited frequency, needing a night in a hotel in a foreign city before embarking on the final leg. She talked me through a suggested itinerary which could take them up to 48 hours to complete, having regard to flights and other transport connections.

30. It was a matter of both surprise and disappointment that the father appeared to show little insight into the challenges of the travel for the mother and children. He told me that he thought that the journey would be no more arduous than the trip the family took once from Ukraine to Majorca for a holiday. He told me that his sister has not had the difficulties described by the mother.
31. As to the cost, the father proposes that the mother funds this travel, notwithstanding that she is of very limited means. She has a part-time job; she is in receipt of some benefits. Even taking into account the child support which she receives from the father (which I may add is relatively modest having regard to the cost of living in the UK currently), she has no excess income over expenditure. I was told in the oral evidence that the mother's partner contributes to the costs of the household, including recent short holidays abroad, but the cost of this contact cannot of course fall on his shoulders.
32. It would not in my judgment be practicable or reasonable to expect the mother to accompany the children to Ukraine at this stage; quite apart from the cost, she would find herself having either to occupy herself in Transcarpathia while the children spent time with their father; or would have to make trips to the Ukrainian border from England twice – at the start and end of each visit. Quite apart from the absence of any jurisdiction vested in the court to order the mother to travel, I regard this expectation of the father as placing too onerous an obligation on her.
33. The mother told me that the children do not discuss the war or their country “because they are trying to enjoy the life they are living now. They don't want to live in mourning”. They do not often refer back to the time they lived together save to mention their family cat. I was left wondering whether there is an extent to which the children are suppressing a degree of emotional distress, having left their old home and their former life in the appalling circumstances described above.
34. The children are inevitably emotionally conflicted; I am satisfied that they love their father, but are anxious about making the journey to see him; perhaps that reluctance masks an apprehensiveness about what awaits them when they arrive. I am conscious that Z is an independent young person with her own mind and a “very clear idea of what she wants” (per the mother). The father agreed that Z is an independent, mature and articulate young person who is likely to know her own mind. The father also confirmed that X is also ‘maturing’, adding, poignantly, that in that regard he particularly now needs his father.
35. The Cafcass officer confirmed the views expressed by the parents, reporting:

“[Z] questions [the] feasibility [of the father's plans] and has clear reservations about returning to Ukraine ahead of the conclusion of the war. Aged sixteen, [Z] struck me as being an intelligent, mature young woman who is becoming more independent and whose views should be given considerable weight. She is no doubt capable of independently accessing information from more than one source about developments in her home country and is therefore able to come to an informed decision. Whilst less vocal than his sister, [X] also conveyed his reservation

about visiting his father in western Ukraine due to the war,
but suggested he would go if his mother accompanied him.”
(Emphasis by underlining added).

36. Ms Baker reported that the children “are clearly anxious to embark on this journey” to western Ukraine to see their father. In a key section of the report she said this:

“The children are clearly saying that they do not want to visit a country experiencing an ongoing war and they will invariably feel anxious about returning to Ukraine. They would need [the mother’s] emotional and practical support to visit their father, but both children are alert to the fact that she currently has reservations about [the father’s] proposals. I think the children and their mother will naturally have had conversations about the evolving situation in Ukraine, which is the country they all have important connections with. [Z] and [X] clearly stated that they want to return to Ukraine to see their father once the war is over. Before then they should not, and arguably cannot, be forced to undertake the journey, either separately or together, with or without their mother. My considered opinion is that this would severely compromise their sense of security and their general wellbeing.” (Emphasis by underlining added).

37. The mother describes the life which the children lead now, in England; she makes the valid point that the children are growing up with a new life; they:

“... are occupied with afterschool activities, friendships, hobbies etc. Most of their time is occupied with age-appropriate activities and I do not think spending time with either parent will always be their priority as they grow older. They are establishing their own independent lives away from both parents which is normal for children their age. This is not to say they should not spend time with the father but a reminder that the father needs to be more realistic with his expectations of both children.”

38. She added, somewhat sombrely it seemed to me:

“... the children miss their father, and we all miss our lives in Ukraine, before the war. Sadly, life in Ukraine, as we all remember it, is gone forever”.

Conclusion

39. Let me say again, as I said at the outset of the hearing of this application. I have very considerable sympathy for both of these parents. I cannot begin to imagine the trauma which the war has inflicted on them as individuals, on their close family, on their friends, on their wider families, on their citizens and on their country. I acknowledge the sadness and the frustration of the father, who earnestly wishes to see his children again, to hold them and – as he told me – to hug them. While video

contact offers valuable opportunities for these children and this parent to see and hear each other in real time, 24 hours per day, 7 days a week, I do not doubt the obvious limitations of this medium. It is an extremely poor substitute for actual, human, physical contact.

40. I recognise the positive obligation on this court, as an instrument of the State, to take measures to maintain and to reconstitute in the most meaningful way the relationship between this father and these children. It is my positive duty (and I so regard it) to attempt to promote contact. I have, during this hearing, sought to grapple with all the available alternatives for achieving direct face-to-face contact before I abandon hope of achieving it at the moment. I have guarded myself against according excessive weight to what may be short-term or transient problems created by the current (albeit enduring) conflict. I would only be faithful to the obligations on me as a family judge if I can honestly say that I have taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case. I believe that I have given this case this level of care.
41. My powers in this case are in material respects limited; for instance:
 - i) I may make section 8 orders in respect of Z only if I find that the circumstances of the case are exceptional. The circumstances *are* exceptional in the sense that unusually this applicant father seeks direct contact with his children in a country which is currently at war; but looked at from Z's perspective, there is nothing about *her* (as a mature and independent young person) or *her relationship with her father* (a loving one) which 'exceptionally' requires me to make an order;
 - ii) I cannot make any order requiring or compelling the mother to accompany the children to Ukraine; if the mother chooses not to travel, I am sure that the children would not go;
 - iii) I have limited (if any) powers to direct the mother to pay the not inconsiderable cost of travel either for herself and/or for the children as the father proposes; there has been no detailed examination of her means;
 - iv) While I have been encouraged by Mr Pavlou to accept undertakings from the father about returning the children and not placing them in danger, I have no assurance from the father or Mr Pavlou about the recognition or enforceability of any such undertakings in Ukraine.
42. As I have earlier said, there are a number of competing considerations which inevitably must inform and influence my overall judgment in this case. The touchstone in this dispute as in all such disputes is the welfare of the children; I start from the proposition that it would be in the children's interests – as it is generally in the interests of children – to have a meaningful relationship with both of their parents. All other things being equal, this would involve direct contact between this father and his children.
43. The statute requires me to consider any harm which the children have suffered or are at risk of suffering. These children have suffered significant displacement; they are aware that large tracts of their country, including their former home city, is being

destroyed; they are in my judgment, plainly not unaffected by the war. The anxiety which the children articulate about visit is deeply-held; it is entirely understandable. I accept the Cafcass officer's view that the children "should not, and arguably cannot, be forced to undertake the journey" back to Ukraine at this point. If I were to take any steps to compel them to make the trip, this would cause the children great anxiety, which I assess as significantly emotionally harmful.

44. I am influenced in my decision by the practical and financial implications of any visit, which I felt that the father had not sufficiently carefully considered. The father's proposal that his sister accompany the children was made for the first time during evidence in chief; it took us all (including his own legal team I detected) somewhat by surprise, not having been trailed in any of the written evidence. I am unpersuaded that this provides a solution in any event for the reasons outlined in §12 above.
45. I note that the order made in March 2023 (see §7 above) did not contemplate direct contact between the father and the children taking place in Ukraine while the war continues, but only "outside the state of Ukraine". That position, ostensibly agreed in March 2023, should in my judgment be maintained for the time being.
46. For the reasons set out above, I propose therefore to refuse the father's application for orders for direct contact by way of holiday visits in Ukraine at this stage. I shall make no further order in relation to contact in the expectation that the father's contact will remain indirect contact for the time being.
47. While there appears no imminent end to the hostilities in Ukraine in sight, nor any prospect of a relaxation of martial law, I earnestly hope that the time comes when the situation in either regard relaxes sufficiently for the father to travel outside Ukraine, to the United Kingdom, or to another third State (perhaps elsewhere in Europe), where contact can safely take place. I am sure that the children would travel to a geographically proximate European city to see their father now (subject to working out the practicalities/cost). Further, or alternatively, as/when the hostilities in Ukraine cease, I have been given every reason to expect that the children's anxieties will abate sufficiently as to enable the parents and children to make cordial arrangements for direct contact either in this country and/or in Europe, and/or in Ukraine.

[end].