Neutral Citation Number: [2025] EWHC 1598 (Fam)

Case No: FD24P00635

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

IN THE MATTER OF CHILD ABDUCTION AND CUSTODY ACT 1985
INCORPORATING
1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Date: 06/05/25

Before :

THE HONOURABLE MR JUSTICE CUSWORTH

- -

Between :

Y (THE FATHER)	**Applicant**
- and –	
Y (THE MOTHER)	**Respondent**

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- -

Ruth Kirby KC and Rachel Cooper (instructed by **Goodman Ray LLP**) for the **Applicant**
Ruth Cabeza (instructed by **Dawson Cornwell**) for the **Respondent**

Hearing dates: 30 April – 1 May 2025

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JUDGMENT

Cusworth J :

1. This case concerns the alleged wrongful retention of two children, C and B, by their mother, in England. At the time the proceedings commenced C was 12; and B was 9. Their father, seeks their summary return to Israel under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The mother defends the application based on the children's objections and Article 13(b) of the Hague Convention, citing grave risk of harm due to the Israel/Hamas conflict, both in terms of its direct impact on the children, and also importantly, in terms of its likely impact on her in the event of a return, and her ability to function as a parent in the event that a return order is made.

2. **Background.** In 2006 the mother moved to Israel from England, where she had been born and brought up, to live with the father. Initially, they stayed with his parents before moving to a studio apartment. The mother says that she found that she faced cultural challenges and felt homesick, missing her family in England. However, she stayed, and in 2008, the couple got married after the mother had converted to Judaism. In 2012 their first child, C, was born. The mother says that throughout her time in Israel she struggled with mental health issues, including anxiety, depression, and alcohol misuse. She sought therapy and psychiatric support in Israel, including medication management, and she adds that the 2014 Gaza War significantly impacted her mental health, leading her to an increased state of anxiety and depression. Notwithstanding this, in the next year, 2015, B was born. These boys have therefore grown up in the state of Israel. The are both joint British and Israeli citizens.

3. In 2019 the parents were divorced. After a process of mediation they agreed on a shared custody arrangement for the children, with the children transitioning between their homes frequently, usually every other day. Following the divorce, and despite the parents' agreement, C was diagnosed with dysthymia and anxiety disorder, receiving treatment from a psychiatrist in Israel. The mother says that she felt unsupported by the father and his family, particularly during times of illness and work-related travel.

4. After the attacks by Hamas upon Israel on 7 October 2023, the mother says that her mental health issues worsened, leading to heightened anxiety and depression. She described a constant fear of rocket attacks and the need to seek shelter. She felt unsafe and stressed, which impacted her ability to care for the children, during the periods when they were staying with her. The mother wishes to have B assessed for ADHD and autism, and has spoken to B's school about this. She believes that he is showing signs of trauma exacerbated by the ongoing conflict. In the immediate aftermath of the attacks the mother and children had been able, with the father's agreement and the assistance of the UK government, to travel to England for a few weeks, , which had provided a respite, but they had then returned to their lives in Israel.

5. Following their return, as she had since 2022, the mother engaged in therapy with a private therapist, but found it financially straining, and also continued to struggle with alcoholism, which was had been an issue for her previously but now, despite her efforts, she says became more pervasive. Her case is that despite attending Alcoholics Anonymous ('AA') meetings, both in person and online, she was never able to avoid

alcohol for more than 30 days. The father, although by then he had been in another relationship for some time, and had acquired both a step-son (D, aged 6 at the time of the father's statement in February 2025), and a daughter (E, then aged 4), provided support for the mother through spring and summer of 2024, and it appeared to the mother that such support might at one point have led to reconciliation. However, that did not happen, and the father made clear to the mother in September 2024 that he would not be leaving his new wife. The mother's problems and concerns persisted.

6. In October 2024, the mother travelled to England with the children for a holiday, once more with the agreement of the father. Then, on 29 October the mother's solicitors contacted the father, proposing that the children stay in England until the summer of 2025 due to the ongoing conflict in Israel. The father did not agree to this proposal, but the mother and children did not return, and the children were in due course registered by the mother into English schools in the area where she now lives with them,. The mother says that she decided to stay due to the ongoing conflict, and in particular the children's fear of returning to Israel. On 16 December 2024, the father filed a C67 application for the summary return of the children to Israel under the 1980 Hague Convention.

7. I heard the first directions hearing on 20 December 2024, and whilst the mother made clear that she did intend to rely on Article 13(b) of the convention in defending the application, she did not seek any psychiatric assessment of herself. I directed a CAFCASS report into the children's wishes and feelings. The matter then came before Henke J on 28 February 2025, just ahead of the listed final hearing, when the mother, for the first time, did make that application under Part 25 for her own psychiatric assessment. Her application was permitted, and the final hearing was adjourned to permit a report to be prepared by Dr McEvedy, to the two days which were originally listed before me – 30 April and 1 May 2025. Submissions concluded at lunchtime on the second day of the hearing. I heard evidence from Ms Doyle and from Dr McEvedy, and have received full written and oral submissions from Ms Cabeza for the mother, and from Ms Kirby KC, leading Ms Cooper, for the father.

8. During those submissions, I was handed by Ms Cabeza a series of open letters passing between the parties' solicitors in the week prior to the commencement of the hearing. By those letters the mother was broadly restating her position that the children should be permitted to remain with her in England, and that any return visits to Israel should be predicated on a sufficiently advanced process towards a cessation of hostilities there, such that for example, commercial carriers from other countries have resumed and are still flying to Israel, and that there had not been more than one siren sounded in a town, the town in Israel where the children formerly lived and where the father still does, in the three days before their departure.

9. The father for his part has instructed that he could agree to the children remaining in England, if they spend their summer and Easter holidays in Israel, as well as time at Christmas and one half term, and their religious and cultural needs are fully met. He made an alternative proposal for a return to Israel, with a mirror arrangement in respect of school holidays in England, and half of the half terms. He also offered to fund three months' accommodation for the mother on her return, in addition to support at the rate of a further £1,000pcm for those three months offered in these

proceedings. Various other terms and conditions were added and mediation was proposed. The mother indicated two days before this hearing commenced that she was agreeable to mediation, but felt that solicitors should continue to engage in correspondence given the shortness of time before this hearing.

10. Given that, in those letters, both parents were exhibiting a deal of goodwill and common sense in seeking to find practical and child-focused solutions to the issues between them, it is a great pity that I have had to hear this application at all. Any agreement between the parents is inevitably of much more value to these children than any solution imposed by the court, and especially so given the summary and inconclusive outcome created by any order made in Hague Convention proceedings. Whatever I determine, longer term decisions for these children will fall to be made later by other judges, in this jurisdiction or in Israel, on the focussed basis of the children's welfare interests, which is never truly possible after this summary process, even if the court's discretion is engaged. I am concerned that this entire hearing has been little more than an exercise in seeking to increase bargaining power in these negotiations by one or other side, and whilst that is not to be encouraged, it would equally be wrong for those discussions now to be called off, given the interim nature of any relief that my order can provide. What I am in effect being left to do is to set the framework against which those negotiations should continue to take place.

11. **The Law. Jurisdiction.** I start by setting out the authorities and principles within the reach of which this decision has to be made, albeit that the principles themselves have not been the matter of serious dispute. Having been provided with a list of no less than 18 authorities, I will identify those that are of most application before considering the factual aspects of each area of dispute.

12. The 1980 Hague Convention on the Civil Aspects of International Child Abduction was incorporated into UK law by the Child Abduction and Custody Act 1985. Article 3 provides:

    "The removal or the retention of a child is to be considered wrongful where

    "a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention ….."

13. Article 12 sets out that:

    Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith…

14. Article 13, so far as relevant, provides:

"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 –

…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."

15. **Art. 13(b).** So, under Art.13(b), the court is not bound to order a return and therefore must exercise its discretion if *'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'*. In *Re E (Children)* [2011] UKSC 27 Lady Hale and Lord Wilson explained the position thus:

> 35. …article 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to her home country… the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home… if the risk is serious enough to fall within article 13(b) the court is not only concerned with the child's immediate future, because the need for effective protection may persist.

16. So, on the basis of the evidence before this court, how should the test be applied? Again in *Re E*, the Supreme Court confirmed at [31]

> '…that there is no need for the article to be "narrowly construed". By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or "gloss".'

17. The Court then went on to assess the import of those words as follows:

> '33. … the risk to the child must be "grave". It is not enough, as it is in other contexts such as asylum, that the risk be "real". It must have reached such a level of seriousness as to be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm.
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> 34. …the words "physical or psychological harm" are not qualified. However, they do gain colour from the alternative "or *otherwise*" placed "in an intolerable situation" (emphasis supplied). As was said in *In re D* [2007] 1 AC 619, at para 52, "'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'". Those words were carefully considered and can be applied just as sensibly to physical or psychological harm as to any other situation. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate… [Counsel] accepts that, if there is

such a risk, the source of it is irrelevant: e g, where a mother's subjective perception of events leads to a mental illness which could have intolerable consequences for the child."

18. In *Re S (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257, Lord Wilson made the following observations about his earlier judgment in *Re E*, at paragraph 34:

> '…we must make clear the effect of what this court said in *In re E*. The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned.'

19. The appropriate process under Art. 13(b) has since been summarised by the Court of Appeal in *Re IG* [2021] EWCA Civ 1123, where Baker LJ said:

> "47. The relevant principles are, in summary, as follows.
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> (1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".
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> (2) The focus is on the child. The issue is the risk to the child in the event of his or her return.
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> (3) The separation of the child from the abducting parent can establish the required grave risk.
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> (4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then establish how the child can be protected from the risk.
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> (5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.
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> (6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.
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> (7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.
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> (8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.
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> (9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance..."

20. Macdonald J in *G v D (Art 13(b): Absence of Protective Measures)* [2021] 1 FLR 36 at §39 (approved by the Court of Appeal in *C (A Child) (Abduction: Article 13(b))* [2021] EWCA Civ 1354 at §60) added:

> "[39] Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example *Re H (Abduction: Grave Risk)* [2003] EWCA Civ 355, [2003] 2 FLR 141, *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and *Re L (Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433). In this context I note that Lowe et al observe in International Movement of Children: Law, Practice and Procedure (Family Law, 2nd edn), at para 24.55 that:
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> 'Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or, even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases.'"

21. I am well aware that the focus of these proceedings is not on the source of the intolerability, but on its impact on the children in the event that a return order is made. I bear in mind the words of Moylan LJ in *Re W [2018]* EWCA Civ 664 at [47], where he expressed the conundrum created for the court thus:

> 'It is also well-established that Article 13(b) through the use of the words "grave", "real", "harm" and "intolerable" is of "restricted application": Re E (para 31). It is in this context that intolerable means something "which it is not reasonable to expect a child to tolerate": Re E (para 34). The focus is on the child and not the source of the risk. Whilst, of course, the court must be astute to avoid providing opportunities for a parent to seek to act manipulatively, the ultimate question remains the same.'

22. **The evidence about the Art.13(b) defence**. The mother here accepts that the retention of C and B was wrongful, within the meaning of the Convention, and in breach of the father's rights of custody. Against that background I have considered two statements from each party, the report of Dr McEvedy, and the wishes and feelings report prepared by Ms Doyle. I have also seen a letter from the mother's Israeli therapist dated 9 March 2025, which concludes: '*During the approximately two- year period I met with the mother (2022-2024), the overriding theme detailed her desire and eventual need to drink as a means of self-medicating her overwhelming feelings of isolation and loneliness and lack of emotional support. Although she tried various therapeutic measures to maintain her sobriety while she lived in Israel, her success in this area was somewhat limited. Her ability to change the environmental factors that contributed to her increased alcohol intake was negligible because she did not feel comfortable in her environment in Israel, especially as a single mother with no familial support*.'

23. That is an important part of the context in which the mother raises her Art.13(b) defence, and the basis upon which she sought, and gained permission to instruct an expert to consider her likely reaction to any order that the children should return, and its impact upon her parenting of the children. Dr McEvedy's report is dated 11 April

2025, and was prepared on joint instructions. It describes that the mother has a history of depression, anxiety, and eating disorders, which she has struggled with since her teenage years. She also has a chronic history of alcohol abuse. Since returning to England, the mother told him that she had found it easier to manage her mental health with the support of her family. She has attended AA meetings intermittently and has remained in contact with her Israeli therapist, which she says has helped her stay sober and feel mentally healthier. She said that she had not had a drink since last November. She expressed fear that returning to Israel would significantly worsen her mental health and lead to a relapse in her alcohol abuse. She expressed herself to be very apprehensive of action in the Israeli courts, which she does not trust, and said that she fears that the children will be completely removed from her care if she returns.

24. Amongst Dr McEvedy's conclusions were that a diagnosis of mixed anxiety and depressive order were likely. He did not make a formal diagnosis of personality disorder. He found that problems in her upbringing may well be linked to her mood disorder, although he notes that she spoke of consistent anxious and depressed mood only from 2024 onwards. He recorded the view of her Israeli substance misuse therapist as set out above, and advised the re-prescription of anti-depressant medication, in addition to finding ongoing CBT to be appropriate. He advised continued involvement with a 12-step programme with AA. He concluded that a return to Israel for the mother with the children would have detrimental impact on her psychological wellbeing, and therefore on her functioning – he notes that she feels that her actions are likely to have alienated those that she previously knew. He considers there is likely to be an increased risk of a return to problematic drinking, which may in turn impact on her mood and ability to function, and to parent. He was evidently considering a permanent return.

25. However, Dr McEvedy also notes that even in the most difficult period for her, in the year before her removal of the children from Israel, she was able to care for the children adequately. He nevertheless opines that a return is likely to put her in a predicament which is more adverse than that which she left in October 2024. He believes that further incidents of self-harm to those described by the mother in 2024 are reasonably likely in the event of a return. He also feels that her described suicidal ideation would return, but could not say that any serious attempt to end her life by the mother was particularly indicated, notwithstanding that such an attempt reported in her early 20s, many years ago, and before she had had children.

26. I must therefore ask myself if his opinion, coupled with the mother's own evidence, is sufficient to demonstrate a grave risk of harm to the children in the event of a summary return, and do so in the light of the above recited authorities. I bear in mind that in the event of a return, the boys would not be in the mother's sole care but would return to the shared care arrangement which was in place before they were brought to this jurisdiction in October 2024. This of itself would be a significant protection for them if their mother began to struggle in the way that Dr McEvedy indicates that she might. Whilst I accept that the mother may well be better able to provide for the boys' care whilst she is in England, for the reasons which Dr McEvedy identifies, she would not be solely responsible for them in the event of a return, as she is in England. I should add that I do accept Dr McEvedy's evidence, and I was not persuaded, as Ms

Kirby KC for the father argued, that he was seeing everything from the mother's perspective, and not attempting to provide neutral evidence to the court.

27. In light of the negotiations which her counsel has shown me, however, it is clear that the situation is not one that should cause the mother to despair for her future. Whilst the father is prepared to countenance the children in due course residing in England, his proposal if they do remain in Israel includes trips to England up to five times per year, for not insignificant periods. Those negotiations I acknowledge are aimed at a longer term resolution of the issues surrounding the children's future, and the application before me is only one designed to establish the venue and circumstances in which those issues will ultimately be determined if not agreed. I am nevertheless satisfied that the fact of them, their open nature and their constructive content, are sufficient to provide the mother with appropriate and significant reassurance that sensible plans can be agreed for the future which balance both the boy's need for a positive relationship with both of their parents, and her own concerns and chronic issues.

28. I also bear in mind the evidence before me about the availability to the mother of ongoing therapy in Israel, whether through her potential re-engagement with AA, or the addiction therapist with whom she has previously engaged. I am satisfied that she has access to the Israeli health service in the event of any return, she having made clear that if the children need to return to Israel, she would be returning with them. She also retains some financial cushion in the balance of the sums received by her when she sold her former Israeli property, although that aspect has not been explored in any detail before me, nor urged as a particular reason why she cannot return. Whilst I am told that she has recently found a job here, the mother is evidently an able and resourceful employee, who is well able to find work in her chosen sector, as she had formerly in Israel before, and for some time after, her departure. Therefore, whilst I accept that the mother very much does not want to return to Israel, I am satisfied that she will be able, in partnership with the father, to provide appropriate care for the children, at least for the period whilst the longer-term questions of their and her futures are resolved. The question of how she would deal with a permanent requirement that the children are to remain in Israel is one for the Israeli courts in the event that they return. If the situation there is as bad for the mother as she fears that it will be, then she will need to make an application in Israel for the children's relocation.

29. Whilst I fully acknowledge the horrors of the current conflict, and the genuine fear and concern of all Israeli citizens about how it might unfold, I am not satisfied that there is a sufficient immediate threat of serious injury or worse for the boys in the event that they were to return to a town to comprise a sufficiently grave risk of physical harm to find Art.13(b) made out on that ground. Whilst by their very nature these things are fluid, the current state of the conflict is not such that the risks to these Israeli children who have lived all of their lives in that country, can be seen to be at any greater level than the many other hundreds of thousands who continue to live and go to school there. It is significant that, when real danger was perceived in October 2023, the mother was able to bring the boys back to England with the father's blessing. They then returned to Israel for nearly a full year before the mother brought them here once more and eventually retained them. The risk of physical harm is no

greater now than it was at any time in 2024 prior to the ceasefire, even if a swift resumption of that state cannot be guaranteed.

30. Consequently, whilst I have sympathy for the mother's position, and her health issues, I am not satisfied that a return to Israel will place the children in an intolerable position, either by reason of a prospect that their mother might struggle emotionally to cope with a return, or because they would be placed in sufficient immediate physical danger. It cannot be said that there is a grave risk that their return would expose either C or B to physical or psychological harm or otherwise place them in an intolerable situation. I will address the father's 'soft landing' proposals later.

31. **The Children's Objections.** I next turn to law in relation to the mother's case about the children's objections. In *H v K (Return Order)* [2017] EWHC 1141 (Fam), MacDonald J summarised the law in this area as follows:

> 46. The law on the 'child's objection' defence under Art 13 of the Convention is comprehensively set out in the judgment of Black LJ in *Re M (Republic of Ireland) (Child's Objections)(Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26 … and I have regard to the clear guidance given in that case. In summary, the position is as follows:
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> 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 Art 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.
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> 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.
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> 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.
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> 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.
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> 47. 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 (*Re M* [2007] 1 AC 619)."
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> 48. Finally on the subject of the law applicable in this case, it is always useful to recall that, as pointed out by Mostyn J in *B v B [2014] EWHC 1804*, the objective of the

> Convention is to ensure that a child who has been removed unilaterally from the country of his or her habitual residence in breach of rights of custody is returned forthwith in order that the courts in that country can decide his or her long term future. It is likewise important to recall that a decision by the court to return a child under the terms of the Convention is, no more and no less, a decision to return the child for a specific purpose and for a limited period of time pending the court of his or her habitual residence deciding the long-term position.

32. In *Re M and another (Children) (Abduction: Rights of Custody)* [2007] 3 WLR 975, Lady Hale in the House of Lords had confirmed at [40] that:

> '…it is wrong to import any test of exceptionality into the exercise of discretion under the Hague Convention. The circumstances in which return may be refused are themselves exceptions to the general rule. That in itself is sufficient exceptionality. It is neither necessary nor desirable to import an additional gloss into the Convention.'

33. She further said at [43]:

> '…in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare... [As to whether] the Convention objectives should always be given more weight than the other considerations. Sometimes they should and sometimes they should not.'

34. Finally, she added at [46]:

> 'Taking account [of a child's views] does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are authentically her own or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.'

35. Black LJ then said this in *M (Republic of Ireland) (Child's Objections) (Joinder of Children As Parties To Appeal)* [2015] EWCA Civ 26:

> '69. …the position should now be, in my view, that the gateway stage is confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views. Sub-tests and technicality of all sorts should be avoided. In particular, the *In re T* approach to the gateway stage should be abandoned.
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> 70. I see this as being in line with what Baroness Hale said in *In re M*, at para 46. She treated as relevant the sort of factors that featured in *In re T* [2000] 2 FLR 192 but, as she

described the process, they came into the equation at the discretion stage. It also fits in with Wilson LJ's view in *In re W* [2010] 2 FLR 1165 that the gateway stage represents a fairly low threshold.

36. Turning to the evidence about the children's objections, Ms Doyle's CAFCASS report was dated 24 February 2025, and dealt fully with the children's views, wishes and feelings as she found them. Her evidence is therefore crucial to considering the mother's case based on the children's objections.

37. In relation to C she recounted his position as follows:
'When discussing his views on returning to Israel, C said, 'I know I want to go back at some point, but I am not sure when'. During the meeting he gave this more thought and toward the end of the session explained that he was 'leaning toward staying for a bit more, because of family'... He doubts that [his parents] can be friends again and understands that his father wants himself and B to return to Israel. He is aware that his mother has suggested that they may return in the summer, at the end of the school year. He said that he feels, 'ok with that' but would like to be able to visit his father and for the father to travel to England in the intervening period. I asked C if he was worried about the conflict in Israel and if this influenced his views, wishes and feelings; as this did not occur naturally in our conversation. He said that 'if he went back, he would feel safe', confirming that his desire to remain in England was not affected by the War. He wants to be able to go to Israel to see his friends and family…' .

38. On 25 February 2025, the mother took C for a CAMHS assessment in Kettering. That assessment recorded the following information about C, under 'current presentation'. '*He feels that life is worth living. With the looming court proceedings C is unsure if he will live in the UK long-term however he wants to continue living in the UK. If he was to return to Israel, he does not believe it would result in a decline in his living standards*.' And later, '*Insight into current difficulties and needs was present*'. Taking these two pieces of evidence together, there is clearly no basis for suggesting that C is objecting to a return, as Ms Cabeza concedes. His is saying that his longer-term preference would be to remain in the UK.

39. In relation to B, Ms Doyle recorded as follows:
'He spoke about life in Israel and life in England, his responses suggesting that the Israel/Hamas conflict played heavier on his mind; as he referred to this several times when explaining his wish to remain in England. He was less balanced than C, with his desire to remain here being voiced clearly… Throughout our conversation B referred to the conflict in Israel. He told me that he thinks that he should, 'stay here until the war in Israel really, really stops and then maybe go back'. I asked what the war had meant for him and his family, he explained that he had to go to the safety place every day and that, 'it didn't really make me feel safe'. He said that the war did worry him when he lived in Israel. When sympathising with his experiences, I asked how he would feel if his parents and/or the Family Court decide that he should return to Israel, he replied that he would feel sad. He couldn't think of anything that would make him feel less sad, but clarified, 'if the war was completely over than maybe, maybe I would want to go back but it's still better here. I like it more'.

40. In considering the authenticity of the views he expressed, Ms Doyle continued that: '*I am of the view that B's views about returning to Israel are likely to be his own. The worries he expressed in respect to returning to a country in the midst of conflict is likely to be true. I am concerned of the picture he painted about his father and paternal family; it appeared as though he felt a need to strengthen his position by portraying his relationship with them negatively. Though I note the concerns raised in the mother's statement about the emotional pressure she asserts has been placed on the boys by the paternal family, the polarisation in his account was striking. Like C, being caught between his parents is a difficult position, unlike his brother, he has aligned with his mother and his maternal family. I do not consider this unusual, children within parental difficulties often have to align with one parent to emotionally survive the adversity'*.

41. She then considered the maturity of the views which he expressed, in contrast to C's more balanced opinions. She said: 'B *was more forthright in his views, he did not appear to hold empathy or understanding for his father's position or that of his paternal family. This is entirely understandable considering his age and stage of development, as he is yet to fully develop the aptitude to think about things from another point of view. His limited ability to consider the advantages and disadvantages of the decision, therefore would suggest that he may not hold the maturity to consider the potential long-term impact of the court decision. His rationale for wanting to remain in England and the effect of living in Israel during a time of conflict, however, was clear…B's behaviour and presentation very much aligns with that of a nine-year-old child. He was most interested in playing Jenga during our meeting and spoke about family issues in a straightforward and matter of fact way. He does not wish to return to Israel whilst there remains a threat of conflict. However, did not express an understanding of how remaining in England would affect his family or relationships. He did, at one point in our meeting, express that he missed those who he had left in Israel, though appeared most focused on sharing views and experiences of his life there that reinforced his position.'*

42. In those circumstances, I must consider whether B, unlike his elder brother, is expressing an objection to returning, and conduct, in Black LJ's words, *'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*.' I accept the written evidence which I have from Ms Doyle, from which she did not derogate in her oral evidence. B clearly is not opposed to any return to Israel in principle. He would certainly be willing to return if he was confident that the war had come to an end. Insofar as he is currently expressing his clear wish not to return in current circumstances, that might in principle have amounted to an objection for the purposes of the test if it was clear that his opinions were being voiced with sufficient maturity to demonstrate that he understood the wider implications of that position. However, I accept Ms Doyle's view, which I take to be that he has not yet come to a sufficiently mature understanding of the situation to weigh the issues in a balanced way. In those circumstances I am not persuaded that the discretion under Art.13 based on the children's objections arises in this case.

43. However, I must make it clear that if the evidence before me had been that B's views were of sufficient maturity that they should be accorded the weight necessary to

enable them to be considered in a general exercise of discretion, I would not have arrived at a different decision. It is important to bear in mind that, before October 2024 the care of B and C was shared between his parents, broadly equally. Although Ms Cabeza criticised the strength of the relationships between the boys and the father's daughter (their half-sister) and step-son, these are clearly important family relationships which should have the opportunity to flourish as the children grow. It clear that C, at least, feels able to vocalise his desire to see his father, sooner rather than later. There is nothing to suggest that both boys have not suffered and will not continue to suffer emotional harm from their being deprived of regular time with him, let alone with the extended paternal family.

44. Both boys have grown up in Israel, had been schooled there and must be steeped in their Israeli identity. Their mother does seek to criticise their relationship with their father, and I have to remind myself that these are two boys who have grown up in a place where the threat of conflict has never been very far away at any point in their lives. They have also benefitted since their parents' divorce from the arrangements which were then agreed between their parents which left them being cared for jointly. There is evidence that C in particular has struggled with his parents' separation, and clearly needs a relationship with both of them. If B were a little older, it would be very likely that he would have come to feel the same. Even if their parents eventually decide that they will make their lives in different countries, their sons should be able to travel freely and regularly between them.

45. **Protective measures.** In *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415, Cobb J sitting in the Court of Appeal comprehensively addressed the considerations that arise where there is or may be concern about the need for, and availability of, protective measures. He said this:

> 47. …the court will be required to examine "in concrete terms" at the final hearing (see Re B at [22]/[23]) the situation which would face a child on a return being ordered:
>
> "In deciding what weight can be placed on undertakings as a protective measure, the court will take into account the extent to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance. The issue is the effectiveness of the undertaking in question as a protective measure, which is not confined solely to the enforceability of the undertaking" (Practice Guidance: PFD: 2023 [3.11])…
>
> 48. Protective measures are those measures which are designed to address the issues of grave risk or intolerability raised within the article 13(b) exception; they may take one of many forms. In this regard, the HCCH 2020 Good Practice Guide offers this view at [44] …:
>
> "Protective measures may be available and readily accessible in the State of habitual residence of the child or, in some cases, may need to be put in place in advance of the return of the child. In the latter case, specific protective measures should only be put in place where necessary strictly and directly to address the grave risk. They are not to be

imposed as a matter of course and should be of a time-limited nature that ends when the State of habitual residence of the child is able to determine what, if any, protective measures are appropriate for the child" (HCCH 2020 Good Practice Guide at [44])…

46. Here, of course, the question of protective measures does not to relate to any risk or threat emanating from the left behind parent – the father – but rather from the political and military situation in Israel and over its borders, and the support available in Israel for the mother. This is not therefore a case where any undertakings by the father can have the effect of truly ameliorating or abrogating the issues which lie behind the mother's raised defences. However, the father does offer a 'soft landing' package which includes the cost of the children's flights home, and as explained three months' funding of suitable accommodation close to the children's former schools, together with financial support of a further £1,000pcm for the same period, to enable the mother to find employment and stabilize her situation whilst sharing the care of the children with him. He accepts that he will maintain the former shared care arrangements, not attend the airport on their return, and not pursue any criminal proceedings against the mother in relation to the wrongful retention. All of these measures should be put in place.

47. As to the available mental health support, the father points to the fact that the mother can continue to progress with her former therapist in Israel on her return, and that she remains a member of Kupat Holim Clalit, a large Israeli health fund providing comprehensive psychiatric and psychological services if the mother has need of such support. Whilst I acknowledge that the mother disputes the father's claims about the availability and quality of mental health services in Israel, and describes what she found were the challenges of accessing English-speaking therapists, I am satisfied that the mother will be able to access a reasonably sufficient level of support, in the immediate circumstances of her return as I have explained above, to ensure that the boys will be properly cared for on their return. Whilst she also cites trust issues with the father, I accept that his offers of support for her are genuine, and available if the mother finds herself in a situation of short-term need. Equally, I am satisfied that AA and Narcotics Anonymous ('NA') are also available to her, either online or in person, in the event of her return to Israel.

48. Finally, although I acknowledge that nowhere in Israel can be said to be entirely safe at this time, I am satisfied that a town is not in an especially 'high-risk' area, and that Israel generally is a country which has invested heavily to protect its citizens from the very real military threats which exist in its region. It is the country in which the mother has chosen to make her life for nearly two decades, and has been the home country for both of these boys throughout their lives. If she believes that a change is now in their best interests, then that argument is one that she should be making there, to the courts in that jurisdiction. In the event that the mother identifies any further practicable measures which would assist the boys' return to Israel with her, then the father has indicated that he would consider them, and I expect that, if reasonable, they will be actioned.

49. **Conclusion.** I must emphasise that the decision which I make, which is that the mother's defences must fail and that a return order for both boys is merited under the provisions of the 1980 Hague Convention, does not determine where their future will be. It simply decides that the country where the courts would be asked to decide their future will be Israel, if their parents cannot bring the current negotiations about their future to a successful conclusion. As I have said, it is the place where the boys have been habitually resident until their retention by their mother in this country last October. And absent parental agreement, that is therefore the country where they should live until that decision is made.

50. Whilst this decision may set the scene within which those negotiations take place, I do emphasise that it does not make a long-term determination, of the type that the parents in the negotiations which I have been shown have been seeking to achieve. They should continue to pursue those negotiations, the last proposal in which was made only two days before this hearing began; the parents should not see this determination as the end point of this discussion.

51. Further, in circumstances where the boys have now been at school in the UK since October of last year, and there is every indication from them that they are enjoying their English school, I am not persuaded that any return now needs to be immediate. Being pulled from school now mid-term would be disruptive. Rather, they should continue to complete the current summer term in their current schools, and return to Israel with their mother at the beginning of the school summer holidays, so in the last week of July 2025, and in any event before the end of that month. That will give the mother an opportunity to make suitable arrangements for housing, and possibly to find employment before she returns. This also accords with her original proposal that the boys should stay with her in the UK until the summer of this year before returning, although that is no longer a proposal that she makes. It is one which Ms Doyle asks the father to consider.

52. Given what C has said about his desire to travel to visit his father in the meantime it would be entirely appropriate and very much in their interests for both boys to travel to see him in Israel with the rest of their paternal family during the school half term holiday at the end of May, ahead of their full time return in July. I will leave the details of that for the parents to agree, but I will determine any issue about its details or duration on paper if required.

53. In the meantime, I hope that the parents' comprehensive negotiations will continue, and that they find themselves able to come to a longer-term agreement about both boys' future living arrangements without the need for any more court proceedings in either jurisdiction. Counsel should please draw an order accordingly.

54. That is my judgment.