Neutral Citation Number: [2025] EWCA Civ 911

Case No: CA-2025-000980

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM HIGH COURT OF JUSTICE
FAMILY DIVISION
MRS JUSTICE MORGAN
FD24P00600

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 July 2025

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE NEWEY
and
LORD JUSTICE SINGH

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Re: F (A Child) (Habitual Residence)

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Mark Jarman KC and Jonathan Evans (instructed by **Duncan Lewis Solicitors**) for the **Appellant**
Robert George KC and Natasha Miller (instructed by **Dawson Cornwell LLP**) for the **Respondent**

Hearing date: 5 June 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Moylan:

1. The mother appeals from the dismissal of her application under the 1980 Hague Child Abduction Convention ("the 1980 Convention") on 24 March 2025 by Mrs Justice Morgan ("the judge") on the basis that the parties' child, F, was habitually resident in England and Wales at the date of F's wrongful retention in England by the father.

2. F, now aged 7, had always lived in Colombia, where the mother and father also lived, until she came to England at the very end of 2023 for the purpose of an agreed stay in England of just over three months. The parents had separated in 2018 after which F lived with her mother and had contact with her father. The purpose of the trip, as described in a notarised travel permit was to "visit family": the father's family (or at least some of them) live in England.

3. The father and F travelled to England on 28 December 2023 with the return date, as stipulated in the permit, being 6 April 2024. F and the father stayed with the father's parents. The mother also travelled to England on 28 January 2024 and stayed with a family she knew. She and F had frequent contact (including, it appears, alternate weekends) and the family also spent time together. The mother returned to Colombia as a result of work commitments on 16 April 2024. At that date, F's passports were not available (an application had been made for a UK passport), so the mother returned without F.

4. The judge found that the father had wrongfully retained F in England on 30 May 2024 because, contrary to the parties' agreement, he unilaterally decided that F should stay in England and not return to Colombia. The judge, as referred to above, determined that F was habitually resident here at that date so the 1980 Convention did not apply. She did not determine whether, if it did apply, there were any grounds for refusing a return order, the father having relied on Article 13(b).

5. There are four Grounds of Appeal but, in summary, the mother contends that the judge did not apply the correct legal approach when determining the issue of F's habitual residence; wrongly took into account immaterial evidence (being evidence of matters after 30 May 2024); and reached a decision that was wrong. It was submitted that, on any proper analysis of the facts, F remained habitually resident in Colombia on 30 May 2024. One of the Grounds also challenged the judge's finding as to the date of the wrongful retention but, during the course of the hearing, Mr Jarman KC indicated that he was no longer pursuing that point.

6. For the reasons set out below, I have decided that the judge's decision was flawed and that her conclusion that F was habitually resident in England at the end of May 2024 was wrong. I have also concluded that this court is in a position properly to determine the issue, without the need for a rehearing, and that F was habitually resident in Colombia at the relevant date.

7. The mother is represented by Mr Jarman KC and Mr Evans. The father is represented by Mr George KC and Ms Miller. Both junior counsel also appeared below.

Background

8. The father is a national of Ecuador and of the UK. He was born in Ecuador but brought up in England. The mother is a Colombian national. She and the father met in 2012 when she was studying in London. They married in 2014, in London, and moved to live in Colombia.

9. F was born in 2017. The parents separated in 2018. Although the father did not accept that the mother was F's primary carer, this was clearly an apt description because, pursuant to a notarised agreement between the parties in August 2020, F spent alternate weekends and half the holidays with the father. The mother and the father both worked in Colombia and they each had their own accommodation.

10. As referred to above, the parents agreed that F would spend a few months in England "to be exposed to the English language and culture, to spend time with her paternal family and so as to obtain a British passport for her". Although the judgment records these as being the three reasons for F visiting England, it is clear that a British passport can be applied for from outside the UK.

11. The judge accurately noted that F's life "has been rooted since birth in Colombia", she having never lived anywhere else and, I would add, never having visited England before December 2023. She went to school in Colombia, was "well integrated with her maternal family there" including cousins "who she told the Cafcass officer she misses", had school friends and undertook a number of typical activities for a young child.

12. I have referred to the permit which the parents signed. This was an official document which authorised F's travel outside Colombia and had to be shown to immigration officials when F left Colombia in December 2023. It was expressly provided that F would be returning to Colombia on 6 April 2024. The temporary nature of the visit can also be seen from the fact that F's place at her school in Colombia was kept open for her by the payment of the required fees and by the fact that the father retained his apartment and made arrangements for someone to look after his dog while he was in England.

13. After arriving in England, F and the father lived with his parents in their home. She attended school and participated in a range of activities.

14. The mother arrived in England on 28 January 2024. She was able to maintain her work in Colombia remotely and, as referred to above, she and F had frequent contact.

15. At the hearing before the judge, the mother raised questions as to whether the father had misled her in April 2024 about F's passports and whether he had already been secretly planning that she should remain in England. Further information has now been provided which makes clear that F's British passport did not arrive until shortly after 13 April 2024. However, the mother still questioned whether the father was open with her because he did not tell her that he had received an email on 13 April 2024 stating that the British passport would be delivered "in the next few days" and that the other documents (probably including F's Colombian passport) would arrive within two weeks. We were told that this was because the father did not see the email until some days later, although the mother pointed to a text message from the father

on 29 April 2024 in which he was still saying that he had been told that "the remaining documents … may take another two weeks to 2 months and that I should wait". We were clearly unable to resolve these issues which, in any event, would only have been relevant to the date of the wrongful retention, an issue which, as referred to above, Mr Jarman did not pursue.

16. Of more significance, it is clear, in any event, that the father was still telling the mother until at least the end of April 2024 that he and F would be returning to Colombia. For example, in a text message dated 2 April 2024 the father said "I told you, I'm coming back" and on 25 April 2024 the father said that he "was praying" for the passports to "arrive quickly and trying to save for the new tickets".

17. For reasons that are not addressed in the judgment below, the mother only issued proceedings under the 1980 Convention on 27 November 2024. This was following receipt of an application from the Colombian Central Authority which is dated 15 October 2024. The father opposed the application on the following grounds: habitual residence, acquiescence (which was not pursued at the hearing), child's objections and grave risk of harm/intolerability (Article 13(b)).

18. Cafcass prepared a report dated 18 March 2025 and the Cafcass Officer gave oral evidence. As set out in the judgment, her evidence was to the effect that F "had expressed a clear preference for living in the United Kingdom" but there "was nothing … that amounted to an objection to a return to Colombia".

19. In his skeleton argument for the hearing below, the father said that he would not return to Colombia in the event of a return order being made. As there had been no prior indication that this was his position, the judge decided to hear limited oral evidence from the father on this issue. As referred to below, the judge found the father "a most unimpressive witness" and she was left with "the impression" that this sudden, unheralded change was tactical "to seek to strengthen his defence under 13(b)".

20. I, finally, record that, fortunately, the mother has again been able to stay in England since the commencement of the proceedings and she and F have been having frequent contact.

Judgment

21. The judge set out the background and summarised the parties' respective cases and the father's and the Cafcass Officer's oral evidence.

22. As referred to above, the judge found the father was "a most unimpressive witness on this aspect of the case", namely his assertion that he would not return to Colombia. She considered that the "logic of his position was near impossible to follow". The judge recorded that the father "had no satisfactory answer" when:

> "Questioned about the illogicality about the first part of his grave harm defence, that the child would be returning to a situation of intolerability were she to be returned to her mother given that even on his own case it had been his intention, as evidenced by the ongoing discussions about it at an earlier

> stage to bring [F] back, leave her with her mother with a view to perhaps later as a family unit moving to the UK."

23. The judge's summary of the law in respect of habitual residence focused largely on Hayden J's summary in *In re B (A Child) (Custody Rights: Habitual Residence)* [2016] 4 WLR 156 ("*Re B (FD)*"), at [17]. She then summarised the position as follows:

> "As I have considered the degree of integration [F] has in this jurisdiction I have reminded myself that it is she, the subject child, who is the focus of that consideration. *Her own integration in social and family environment here is what matters.* It need not be complete, and that when what has frequently been described as 'some degree' of integration is considered, the stability of that integration is of importance, as is the fact that the notion of 'stability' is to be regarded as distinct from the notion of 'permanence'. Since there are here (as is almost inevitably the case) competing claims for Habitual Residence as between the mother's case (Colombia) and the father's (England and Wales) an element of the analysis of 'some degree of integration' and its sufficiency or otherwise to establish Habitual Residence involves a balancing of the connection and integration between the child and each of those jurisdictions i.e. that which [F] had with the State where she resided before her arrival as well as that which she has here. It would be wrong for me to approach the factual analysis of her integration here without regard to her life lived elsewhere and her deep roots in another State." (emphasis added)

It can be seen that the judge correctly identified at the end of this passage that she needed to consider and balance F's respective connections with and integration in each of England and Colombia. However, in the highlighted passage, the judge set out her view that it was F's integration *here* which mattered. This approach was further reflected later in her judgment as set out below (paragraph 25).

24. The judge next sets out a number of factors. I propose to recite these in full:

> "[43] Mr Evans makes the powerful point that before her trip to the United Kingdom – as to the purpose of which he submits the intentions of her parents are both clear and important – [F] had never lived anywhere other than Colombia. She had no connection with the United Kingdom in the sense of social and family integration other than tangentially in legal, rather than social terms, in the sense that her father holds British as well as Ecuadorian nationality. That is what entitles her to a British passport. It is right that her parents spoke to her in both Spanish and English and I have taken careful note of the mother's statement in which she emphasises that [F] was enrolled in a bilingually English school. Whilst the evidence suggests that her first language is Spanish the mother's evidence that she had an 'impressive' level of English is

congruent with the impression of the Cafcass reporter and of the school she has since attended in England. It is reasonable to infer from all of that that whilst having her roots and all of her life lived in Colombia, [F] is likely to have had an awareness of the English side of her heritage. She had however, until December 2023, never visited the UK even for a holiday.

[44] [F] as well as living all her life in Colombia was well integrated with her maternal family there. Her Grandmother …, school friends, cousins (who she told the Cafcass Officer she misses) are all part of her social and family integration and have been a part of her life to date. A life which has been rooted since birth in Colombia.

[45] [F] will, from both of her parents, have understood the trip to England to be something less than permanent. I express it in that way because for a child then aged 6 (now 8) involving as it did enrolment in a school from January 2024, is less likely to be understood by her as a holiday but there is no suggestion that there was, for example, anything in the sense of her saying a final goodbye to her school friends. To the contrary the evidence is that the school place in Colombia was held open by payment of fees to secure it.

[46] [F] will, on the evidence from both parents, have been aware of part of the purpose of the trip being to secure a passport for her. Although I treat with some caution the mother's evidence of [F] 'praying' for the passport so that she could return to Colombia I accept that this will have been part of her understanding of why she was coming to England for 3 months.

[47] By contrast with her experience of living in Colombia across two homes with her parents, here she has lived in comparatively cramped living conditions with her paternal family. This submits Mr Evans in effect will have been a disrupted living arrangement which will have militated against her achieving a sufficient degree of social integration to establish Habitual Residence. As I understand his submission it is the disruptive effect on her opportunity to integrate that he invites me to attach weight to rather than a qualitative comparison of the homes in each jurisdiction.

[48] [F] was, with her mother's agreement enrolled only temporarily in a school in England for a period of 3 months from January 2024 and this was on the basis of a temporary arrangement to support her improving her English.

[49] [F] has since moved to a new school, a move Mr Evans relies in as an indicator of lack of stability in her life, since to the Cafcass officer that school reports [F] as performing in

> January 2025 as 'below expected levels'. It is further submitted on the mother's behalf that this underperformance is to be ascribed to the fact that she is not taught in the medium of her first language and that this in itself is further evidence of instability and further evidence that she would not have acquired by the summer of 2024 a new Habitual residence.
>
> [50] Adult intentions whilst not determinative remain relevant. I accept the clear evidence that at the outset it was intended [F] should be returned to Colombia – even if it be right that the father had in his own mind determined that he would relocate. In oral evidence before me (albeit in relation to why he now would not accompany [F] back in the event of a return order), the father himself asserted that (before changing his mind) he had foreseen [F] returning to Colombia, and he had intended packing up and settling his affairs there even if the plan would ultimately become one where what he called 'the family' moved to England …."

25. The next paragraph in the judgment is significant because it misstates the approach the judge should have taken when determining the question of habitual residence:

> "[51] In considering the mother's case on Habitual Residence, I have been careful to avoid the trap of thinking of it in terms of whether [F] has lost her habitual residence in Colombia and considered instead *whether the matters on which the mother places reliance are such that when I look at the degree and stability of her integration here I should conclude that [F] had not gained Habitual residence here*." (emphasis added)

This reflected what the judge had said, in paragraph 42 as quoted above, namely that F's integration "*here* is what matters" (emphasis added). The judge appeared to consider that there was a "trap" to be avoided which required her to focus on F's integration in England and whether she should conclude that F "had not gained Habitual residence here". This distorted the judge's analysis, which required a balanced consideration of whether F was habitually resident in Colombia or England at the relevant time. Inevitably, this would involve a loss of one habitual residence and the acquisition of another so there is nothing wrong, and no trap, with the court considering it in such terms provided that the court does not unduly focus on one half of that equation and, as a result, does not conduct a balanced analysis of the relevant factors. In this case, in seeking to avoid a tilted analysis by asking merely whether F had lost her habitual residence in Colombia, the judge adopted an alternative tilted analysis by asking whether the mother could establish that F had not become habitually resident in England.

26. The judge then summarised the father's submissions:

> "[52] Ms Miller for the father asserts [that at] the relevant date – whether 30th May 2024 or 15th or 30th July 2024, [F] was habitually resident in England and Wales. [F] had by July been resident in the UK for seven months (by May 2024 five

months). She invites the court to accept what she submits is strong evidence that [F's] Habitual residence lies in England.

[53] Submissions on behalf of the father as to [F's] upbringing even when in Colombia having a strong component reflecting her British heritage, echo almost exactly the mother's own evidence about the promotion of English language in her life and its importance long before the events which give rise to these proceedings. To that extent there is a connection with her heritage on her father's side albeit that until December 202[3] she had not so much as visited England and Wales.

[54] [F] is living with her paternal family at her father's home. That includes her paternal grandmother and until recently included her uncle though he has moved out easing the cramped space. She sees and spends time with the wider paternal family across London, which includes cousins an aunt and an uncle. I bear in mind that this is clear evidence of some integration into family life.

[55] Ms Miller submits that the fact that when [F] came to London with her father in December 2023, her mother came soon after, in January 2024 to join them, remaining until April 2024. As a consequence of this any disruption or lack of stability from the move for [F], a child used to having two parents in her life, was likely to have been mitigated. It is a reasonable inference to draw and I draw it, that [F] will have understood her mother as approving of her enrolment in a school in England and so her experience of that will have been of something which had the support of both her parents – in whose shared care from January to April she spent her time in England.

[56] F has been enrolled in school in England since January 2024, moving on in September 2024 to a new school. The school in Jan 2025 reports her performance as below expected levels. She was reported (by the first school as at July 2024) as having many friends at school, and (by the second as at January 2025) as getting on well with her peers.

[57] Outside school [F] has extracurricular activities which include ballet, singing, craft and church groups. She is described as 'passionate' about ballet The mother is expressly supportive in her written evidence of the ballet classes in which [F] has been enrolled since 2024 although she now regards the father's motivation, in enrolling her as malign. From the Cafcass report emerges a picture of a child with many activities, many friends and popular with other children at her school(s).

> [58] F is registered with a general practitioner, a dentist and an optician. There is evidence at this hearing that she has been referred to - and in June 2024 had a consultation with [a specialist at a hospital]."

27. The judge's reasoning is contained in two paragraphs:

> "[59] Mr Evans in his skeleton argument had made a most attractive and initially persuasive case that [F's] habitual residence lies in Colombia. The more I have engaged in the exercise to which the long line of authorities directs me, of looking at the factual situation of this particular child however the less convinced I have become of that initial persuasiveness. It has underscored for me the value of engaging in that exercise. I have striven not to allow that factual analysis to become infected by the notion of whether one or other parent is more or less 'deserving' of being able to establish Habitual Residence. Such a notion has no business in the exercise which is a dispassionate consideration of what [F's] factual circumstances in this particular case tell me. *In this case I am satisfied that [F] has a sufficient degree of social and familial integration to establish Habitual Residence here*. In reaching that conclusion I have had regard to and taken care to re-read before finalising my view, the long and detailed statement of evidence filed by the mother insofar as those parts of it which are relevant to Habitual Residence are concerned. I have considered carefully that by no means all, but a good deal, of her social integration, as is often the case for a child of this age, comes from her involvement in school life. Mr Evans relies strongly on the point that the mother only agreed to enrol her in the school until the date of the expiration of the permit to travel and that any agreement to allow her to finish her academic school year was as he puts it on a very practical level. That may perfectly well be so, but it does not affect my consideration of [F's] own situation. To the extent that that is relevant I consider that the mother, ironically, in recognising pragmatically that there would be benefit to [F] in continuing at the school and completing the school year was acknowledging, perhaps unwittingly, that [F] had a degree of social integration in the school which it would not be in her interests to disrupt. Mr Evans makes the further submission that the fact that the father unilaterally changed her school in September so any integration in the earlier school becomes irrelevant is not one which I accept detracts from the conclusions I have reached having regard both to the relevant dates and to her overall degree of social integration.
>
> [60] This child has in my judgment by 30th May (and therefore even more so by any date in July) achieved not just some degree of social and familial integration in this jurisdiction but

> a significant and I find sufficient degree to establish that her habitual residence lies here. Whilst it had during the early part of the hearing appeared to me to be a finely balanced case in the question of Habitual Residence, on a proper review of the evidence and acknowledging the conspicuous skill with which Ms Miller advanced that aspect of her case, that is no longer my view." (emphasis added)

28. In the light of her decision on habitual residence, the judge considered it unnecessary for her "to speculate as to any approach that I might have taken to the 13(b) defence since it does not arise". It is implicit in this observation that the judge must have accepted the evidence from the Cafcass Officer that F did not object to returning to Colombia so that this ground of opposition was not established in any event.

Submissions

29. Mr Jarman submitted that the judge had misdirected herself and had not applied the correct approach. If she had, she would have concluded that F was habitually resident in Colombia at the end of May 2024 and he invited us to substitute this finding for that made by the judge.

30. The judge had misdirected herself because, Mr Jarman submitted, she had considered, as set out in paragraph 42, that F's "integration in [a] social and family environment *here is what matters*" (emphasis added) and, as a result, had not properly undertaken a balanced analysis of F's connections with Colombia and with England. In addition to what the judge had said in paragraph 42, Mr Jarman submitted that this could be seen from what she had said in paragraph 51. In the latter, the approach the judge said she would adopt was to consider "whether the matters on which the mother places reliance are such that when I look at the degree and stability of her integration here I should conclude that [F] had <u>not</u> gained Habitual residence here". This, Mr Jarman submitted, again reflected a weighted approach in favour of finding that F was habitually resident in England because the judge had asked herself whether F had not become habitually resident in England rather than asking herself either where F was habitually resident or whether she was habitually resident in Colombia or England.

31. Mr Jarman submitted that the result of this misdirection was that the judge undertook an insufficient analysis of the circumstances of this case as reflected in her conclusion in paragraph 59. The judge focused largely on F's "involvement in school life" in England and made no reference to F's "deep roots" in Colombia or, indeed, the temporary nature of her stay in England which did not appear to feed into the judge's analysis. There was no comparative analysis of F's respective connections with England and Colombia but simply the one-sided conclusion that F had "a sufficient degree of social and family integration to establish Habitual Residence here". Mr Jarman submitted that habitual residence requires a broader assessment and that, despite the judge's reference in paragraph 42 to the need to balance F's connections and integration in each country, she had not in fact done this.

32. Mr Jarman also submitted that the judge had taken into account matters which post-dated 30 May 2024 which were not relevant to the question of F's habitual residence at that date. This could be seen, for example, from the judge's reference to the uncle having moved out "recently"; to F's activities up to March 2025 as set out in the

Cafcass Report; and to the fact that F had moved school in September 2024 as well as her school reports from January 2025.

33. Finally, Mr Jarman submitted that the judge's decision on habitual residence was wrong, in the sense of not being supportable on the facts of this case. The circumstances of the case were such that the only proper conclusion was that F was habitually resident in Colombia at the end of May 2024. He pointed, in particular, to the extent of F's "deep roots" in Colombia and the temporary nature of her visit to England which was agreed by both parents, with the father continuing to say that he would be returning with F to Colombia until, at least, the end of April 2024 with the delay being said by him to be due to delays in respect, principally, of the passports.

34. Mr George submitted that, when considering the substance of what the judge did, she had applied the correct legal approach to the facts of this case. She had not focused simply on the question of "some degree of integration" and had referred to F's connections with Colombia as well as England. She had set out a number of factors relevant to the question of whether F was habitually resident in England or Colombia and the absence of a paragraph in which the judge had balanced them was not, he submitted, a valid criticism of her judgment.

35. In respect of the judge's approach as set out in paragraph 51 of her judgment, Mr George submitted that the judge had had to decide whether F was "still habitually resident in Colombia" or "had become habitually resident in England". This was the "binary choice". Accordingly, the judge's reference to having to decide whether F had "not gained" habitual residence here was a distinction without a difference. The judge's question did not presuppose the answer and, further, how the judge phrased her approach was not as important as what she in fact did.

36. During the course of the hearing, Singh LJ pointed to the factors in the judgment which would appear to support the conclusion that F was habitually resident in Colombia, including the temporary nature of F's visit to England, and asked Mr George to identify those factors which tipped the balance in favour of F being habitually resident in England. Mr George submitted that "temporary" can cover a wide range of stays and some might be said to be more temporary than others. In addition, in his written submissions, he pointed to the following "key factors" as supporting the judge's decision: (i) F's life here with her paternal family; (ii) the presence of the mother in England from January to April 2024, including F's inferred understanding (paragraph 55 of the judgment) that the mother approved of her enrolment in school in England: (iii) F's attendance at school since January 2024 with the school reporting "as at July 2024" (paragraph 56 of the judgment) that F had "many friends" there; (iv) F's extra-curricular activities outside school, including ballet, singing, craft and church groups, with the mother having been expressly supportive of the ballet in particular; (v) F's registration with a GP, dentist and optician. In this respect, Mr George submitted that factors which go to the issue of integration are also factors which establish habitual residence.

37. As for the submission that the judge took into account later factors which were not relevant to F's habitual residence at the end of May, Mr George submitted that this was, again, a criticism of form over substance. He relied on the general approach, as set out Lord Hoffmann's speech in *Piglowska v Piglowski* [1999] 1 WLR 1360, at p.1372 G, that a judge's "reasons for judgment … should be read on the assumption

that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account".

Law

38. I start by addressing the onus of proof.

39. The preamble to the 1980 Convention includes the following:

> "Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,"

Articles 3 and 4 of the 1980 Convention provide as follows:

> "Article 3
>
> 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.
>
> The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.
>
> Article 4
>
> The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

It can be seen that these provisions do not expressly set out which party has the burden of proving any of the relevant factors under these Articles. This is in contrast to Article 13 which expressly places the burden of establishing the matters set out in that Article on the party opposing the return of the child.

40. The judge stated that "the burden of establishing habitual residence in Colombia lies with the mother". Although we heard no submissions on this issue, I address it briefly because it is possible that the judge's reference to the burden being on the mother was one of the elements which led her to apply the wrong approach. In my view, it is not

helpful to refer to the burden of proof in this context. I quote below what Baker LJ said in *In re X (A Child)* [2023] 4 WLR 46 ("*Re X*") about it not being "simply … an adversarial issue". This is because the court *has* to decide where the child was habitually resident at the relevant date to determine its jurisdiction and habitual residence does not have a default position in the absence of it being established. Each party will, if there is a dispute, inevitably be contending for different countries (or in unusual circumstances, one party might be contending that the child has no habitual residence) and the court will have to decide between them, applying an objective analysis.

41. As Baker LJ said in *Re X*, when addressing a submission as to the burden of proof under the 1980 Convention:

> "[65] Mr Gration submitted that the structure of the Convention is that the burden of proving that there has been a wrongful removal or retention under article 3 lies on the applicant and, where established, the burden then shifts to the respondent to prove one of the defences under article 12 or 13. Habitual residence, however, is not a matter that arises simply as an adversarial issue on which the judge adjudicates between the parties' respective arguments. The question of habitual residence goes to the heart of the court's jurisdiction to order the child's summary return under the Convention. Having identified the date on which the child was retained in this country, it was then necessary for the court to establish whether it had jurisdiction by examining the evidence to determine his habitual residence at that date."

42. I have referred to this issue because the approach the judge took, as set out in paragraph 51, appeared to place the onus on the mother of establishing that F was not habitually resident in England as at 30 May 2024. The issue the judge had to decide was not, as she described it, whether F had "not gained Habitual residence here". It was where F was habitually resident and whether it was Colombia or England. The judge, as referred to above (paragraph 25), applied a tilted balance which appeared also to be based on the presumption that "the degree and stability of [F's] integration here" was such that she was habitually resident here unless the mother proved she was not.

43. I next propose to address the judge's reference to a "trap" because it seems possible that this also might be what lay behind the judge applying a flawed approach. Counsel were agreed that this reference probably arose from my judgment in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2021] 2 FLR 60 ("*Re M*"). In that case, the lower court's finding as to habitual residence was overturned because, at [21], the judge had not carried out a balanced assessment of the evidence: "the judge's key focus was on whether the children had lost their habitual residence in Germany"; and, at [70], the judge "phrased the key question he had to answer as being whether the children 'had lost their German habitual residence'". As I pointed out, at [62], "the critical question … is where is the child habitually resident and not, simply, when was a previous habitual residence lost".

44. I did not intend to suggest that there was a "trap" nor, indeed, that the issue of whether a child's habitual residence had changed, which would necessarily involve one habitual residence being lost and another gained, was not or could not be part of a judge's reasoning. Indeed, by way of example, Lord Wilson referred to "when a child gains a new habitual residence" and "loses an old one" in *In re B (A Child) (Reunite International Child Abduction Centre and others intervening*) [2016] AC 606 ("*Re B (SC)*"), at [45], and in *Re X* Baker LJ made a similar observation:

> "[66] If, as stated in the order, the court found as a fact that the date of retention was July 2021, it was necessary for the court to examine the evidence of integration in this country at that date to determine whether his habitual residence had changed. Regrettably, but understandably in the light of the way the case was presented, no such analysis was carried out by the judge in this case."

I would also repeat what I said in *Re M*, at [66]:

> "I suppose, in some respects, it may not matter how a judge phrases the question he has to ask provided it is clear that he has correctly approached the issue as being, to adopt what Lord Wilson said in *Re B*, the 'identification of a child's habitual residence'. What is important is whether the way in which the question has been phrased leads to the judge failing to apply the proper approach and, again to adopt what Lord Wilson said, applying a 'gloss', namely an approach which 'distorts [the] application of' the proper approach to the determination of a child's habitual residence."

45. So, to repeat, it is not a "trap" to think in terms of whether a child has lost her habitual residence and gained another. The relevant issue is *where* a child was habitually resident at the date of the wrongful removal or retention but this will typically involve consideration of whether a child's habitual residence has changed from one country to another. This would, in turn, inevitably involve the loss of one and the acquisition of another so, as pointed out by Singh LJ during the hearing, the issue could easily be phrased in the present case as being whether F was still habitually resident in Colombia or had become habitually resident in England. The risk to which I was drawing attention in *Re M* was not that of considering habitual residence in that way but rather the risk that, by focusing solely or largely on whether a child had *lost* their habitual residence in a country, a judge would not carry out a properly balanced and comparative consideration of the nature and extent of a child's connections with each of the potential countries in which they might be habitually resident.

46. I now turn to consider *Re B (FD)*, the case relied on by counsel below and adopted by the judge when dealing with the issue of habitual residence. The summary which the judge quoted is often cited and it was referred to, in passing, with approval in *In re C and another (Children) (International Centre for Family Law, Policy and Practice intervening)* [2019] AC 1 ("*Re C*"), at [56], and more directly in my judgment in *Re M* in which I said, at [63], that, save in one respect, it was a "helpful summary".

47. The present appeal has caused me to reconsider whether it remains a helpful summary in particular because of what is set out in [17(i)] and [17(x)] which state:

> "(i) The habitual residence of a child *corresponds to the place which reflects some degree of integration* by the child in a social and family environment (*A v A*, adopting the European test); and
>
> (x) *The relevant question is whether a child has achieved some degree of integration in social and family environment*; it is not necessary for a child to be fully integrated before becoming habitually resident (*In re R*) (emphasis added)."

In my view, it is probably these paragraphs, perhaps combined with the matters referred to above, which led the judge to adopt the flawed approach which she did. As explained below, and as I sought to explain in *In re A (A Child)* [2024] 4 WLR 49 *("Re A")*, if taken literally these paragraphs are liable to be misleading.

48. For an issue of fact, habitual residence has received a surprising degree of attention from the Court of Appeal and the Supreme Court: *A v A and another (Children: Habitual Residence) (Reunite International Child Abduction Centre and others intervening)* [2014] AC 1 ("*A v A*"); *In re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2014] AC 1017; *In re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] AC 1038 ("*Re LC*"); *In re R (Children) (Reunite International Child Abduction Centre and others intervening)* [2016] AC 76 ("*Re R*"); and *Re B (SC)*. In each of them, various observations have been made of a general nature but there has been an evident and understandable concern to avoid glosses. For example, in *A v A*, Lady Hale said, at [54(vii)]:

> "The essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce."

This was said in a paragraph, [54], in which Lady Hale drew "the threads together". Lord Wilson's similar concern to avoid glosses or "sub-rule(s)" can be seen in *Re B*, at [46].

49. Returning to *Re B (FD)*, although what is set out in [17(i)] and [17(x)] reflected what had been said in earlier authorities it has become clear that, as the present case demonstrates and as referred to above, they are liable to mislead. To quote Lady Hale, applying those paragraphs would risk producing "a different result from that which the factual inquiry would produce". This is because, as set out in *Re A*, at [46], "some degree of integration" is not the test and is not *the* relevant question. Nor does habitual residence necessarily *correspond* to the place in which a child has *some* degree of integration. It is not a bar which, once surmounted, determines the issue of habitual residence. Social and family integration is an element which needs to be considered when determining habitual residence and, indeed, the conclusion that a child is not integrated is likely to lead to a conclusion that they are not habitually resident in that country, but "some degree of integration" is not *the* test and its

existence does not determine habitual residence. I repeat what I said in *Re A*, at [42] and [45]-[47]:

> "[42] It is clear, however, not only from *Proceedings brought by A* itself but also from many other authorities, that this is a shorthand summary of the approach which the court should take and that "some degree of integration" is not itself determinative of the question of habitual residence. Habitual residence is an issue of fact which requires consideration of all relevant factors. There is an open-ended, not a closed, list of potentially relevant factors"; and
>
> "[45] I refer to the above, not to put forward any gloss on the meaning of habitual residence, which the Supreme Court cautioned against in *In re B (A Child)* [2016] UKSC 4; [2016] AC 606 …, para 46, but simply to demonstrate that "some degree of integration" is not a substitute for the required global analysis.
>
> [46] I would add that, self-evidently, a test of whether a child had "some degree of integration" in any one country cannot be sufficient when a child might be said to have some degree of integration in more than one state. This is why, as referred to in my judgment in *In re G-E (Children: Hague Convention 1980: Repudiatory Retention and Habitual Residence)* [2019] EWCA Civ 283; [2019] 2 FLR 17, para 59, ("*In re G-E*"), the "comparative nature of the exercise" requires the court to consider the factors which connect the child to each state where they are alleged to be habitually resident. This is reflected in Mr Tyler's written submissions when he referred to the relevance of a child's "degree of connection" with the state in which he/she resided before they arrived in the new state.
>
> [47] In *In re G-E*, I also quoted the "expectations" set out by Lord Wilson in *In re B 2016*, at para 46, which bear repeating, namely: "(a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state; (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it".

In addition, in *Re B (SC)*, at [42], Lord Wilson quoted with approval what Lord Hughes had said (in a minority judgment) in *A v A*, at [80(ii)]:

> "(ii) One of the great values of habitual residence as a base for jurisdiction is proximity: *Proceedings brought by A*, para 35; by this the court clearly meant *the practical connection between the child and the country concerned*." (emphasis added)

50. Although it further lengthens this already lengthy judgment, I propose to repeat passages, first, from *Re G-E (Children) (Hague Convention 1980: Repudiatory Retention and Habitual Residence)* [2019] 2 FLR 17 ("*Re G-E*") and, then, from *In re B (A Child) (International Centre for Family Law, Policy and Practice intervening)* [2020] 4 WLR 149 ("*Re B (EWCA)*").

51. *Re G-E*, at [59], included an important passage from the CJEU decision in *Proceedings brought by HR (With the participation of KO and another)* (Case C-512/17)]2018] Fam 385 ("*Proceedings brought by HR*"):

> "[59] The 'global analysis' required, as well as the comparative nature of the exercise referred to by Lord Wilson JSC, were highlighted by the Court of Justice of the European Union (CJEU) in *Proceedings brought by HR* …, at paras 54 and 45. I quote from this decision at some length to put in context my later reference to the parents' respective intentions and the nature of the residence as being among the relevant factors."
>
> '41. According to case law, *the child's place of habitual residence must be established on the basis of all the circumstances specific to each individual case*. In addition to the physical presence of the child in the territory of a member state, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent and that it <u>reflects</u> *some degree of integration* of the child into a social and family environment: see *A*'s case [2010] Fam 42, paras 37 and 38; *Mercredi v Chaffe*, paras 44 and 47–49 and *OL v PQ*, paras 42 and 43.
>
> 42. It is apparent from that case law that the child's place of habitual residence for the purpose of Regulation No 2201/2003 is the place which, in practice, is the centre of that child's life. Pursuant to article 8(1) of that Regulation, it is for the court seised to determine where that centre was located at the time the application concerning parental responsibility over the child was submitted.
>
> 43. In that context, it is necessary, in general, to take into consideration factors such as the duration, regularity, conditions and reasons for the child's stay in the territory of the different member states concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those member states: see *A*'s case [2010] Fam 42, para 39 …

> …
>
> [The court then addresses the situation of a child who is not of school age when the circumstances of the person with whom the child lives will be "particularly important".]
>
> …
>
> 46. Lastly, the intention of the parents to settle with the child in a given member state, where that intention is manifested by tangible steps, may also be taken into account in order to determine the child's place of habitual residence: see *A*'s case [2010] Fam 42, para 40; *C v M* [2015] Fam 116, para 52 and *OL v PQ*, para 46.
>
> …
>
> 54. However, as has been recalled in para 41 above, determining the child's place of habitual residence for the purpose of article 8(1) of Regulation No 2201/2003 *requires a global analysis of the particular circumstances of each individual case. Therefore, the guidance provided in the context of one case may be transposed to another case only with caution*.'" (emphasis added)

52. I quote the following passages from *Re B (EWCA)*:

> "[86] In *In re G-E*, at [59], I also pointed to "*the comparative nature of the exercise*", which can be seen, for example, from [43] in *HR v KO* (when the CJEU referred to factors relevant to a child's connection with the different member states) and from the comparative exercise carried out by Lord Wilson in *In re B (A Child) (Reunite International Child Abduction Centre intervening)*, at [49] and [50] (when he considered the child's connections in terms of "disengagement" from one state and "integration" in another). I would also refer to what Lord Hughes said in *A v A*, at [80(ii)], when, after referring to the CJEU decisions of *Proceedings brought by A* and *Mercredi v Chaffe*, he identified a number of propositions from these cases, one of which was the following: "(ii) One of the great values of habitual residence as a base for jurisdiction is proximity: *Proceedings brought by A*, para 35; *by this the court clearly meant the practical connection between the child and the country concerned*." This reference to the word "proximity" as meaning "practical connection" was quoted by Lord Wilson in *In re B (A Child) (Reunite International Child Abduction Centre intervening)*, at [42], providing further context for his subsequent comparative evaluation in that case." (emphasis added)

53. Returning to *Re A*, at [48], I quoted from Black LJ's judgment in *In re J (A Child) (Finland) (Habitual Residence)* [2017] 2 FCR 542 ("*Re J*"), at [57], when she referred to "the relevance of the circumstances of a child's life in the country he has *left* as well as the circumstances of his life in his new country" (emphasis added). I also quoted briefly from *Re J*, at [62], but I now do so more extensively:

> "I do not wish to be taken as suggesting that there is only one way in which to approach the making of a finding of fact about habitual residence. Habitual residence is a question of fact and the scope of the enquiry depends entirely on the particular facts of the case. *What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence.* The court's review of all of the relevant evidence about habitual residence cannot be allowed to become an unworkable obstacle course, through which the judge must pick his or her way by a prescribed route or risk being said to have made an unsustainable finding. In some cases it will be necessary to carry out quite a detailed analysis of the situation that the child has left; in other cases, less detail of that will be required and the judge will be able to explain shortly why that is and focus more on the circumstances in the new country." (emphasis added)

It can be seen that this presupposed that the child had an "old" life and a "new" life which may or may not be the case.

54. I would also, in passing, note that the need to undertake a global analysis mirrors the approach taken in other jurisdictions: see, for example, the High Court of Australia's decision of *LK v. Director-General, Dept. of Community Services* [2009] HCA 9, 237 CLR 582; the Canadian Supreme Court's decision of *Office of the Children's Lawyer v. Balev* [2018] SCC 16; and the US Supreme Court's decision of *Monasky v. Taglieri* 589 US (2020), which are all accessible through the Hague Conference of Private International Law's case search database, INCADAT.

55. In *Re R*, the Supreme Court upheld the decision of the Inner House of the Court of Session which had overturned the first instance judge's decision on the issue of habitual residence because he had considered that "a shared parental intention to move permanently to Scotland [was] an essential element in any alteration of the children's habitual residence from France to Scotland". Lord Reed summarised, at [9], the decision of the Inner House as follows:

> "The court considered that the Lord Ordinary had erred in law, in the passage which I have just quoted, in treating a shared parental intention to move permanently to Scotland as an essential element in any alteration of the children's habitual residence from France to Scotland. This error had deflected him from a proper consideration of the factors relied on by the mother. Considering the matter afresh, in the light of the guidance provided by this court, the Extra Division concluded

> that the children were habitually resident in Scotland at the material time, at para 14:
>
> > 'If the salient facts of the present case are approached in accordance with the guidance summarised earlier, the *key finding* of the Lord Ordinary is that the children *came to live* in Scotland. The real issue is whether there was a need for a longer period in Scotland before it could be held that there had been a change in their habitual residence. For our part, in the whole circumstances we would view four months as sufficient.'" (emphasis added)

56. Finally, I quote what Lord Reed said, at [17]:

> "As Baroness Hale DPSC observed at para 54 of *A v A*, habitual residence is therefore a question of fact. It requires an evaluation of all relevant circumstances. It focuses on the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It is necessary to assess the degree of integration of the child into a social and family environment in the country in question. The social and family environment of an infant or young child is shared with those (whether parents or others) on whom she is dependent. Hence it is necessary, in such a case, to assess the integration of that person or persons in the social and family environment of the country concerned. The essentially factual and individual nature of the inquiry should not be glossed with legal concepts which would produce a different result from that which the factual inquiry would produce."

57. In conclusion, I start by reiterating part of what Black LJ said in *Re J*, namely first that there is no "prescribed route" and *not* "only one way in which to approach the making of a finding of fact about habitual residence" and secondly that "the scope of the enquiry depends entirely on the particular facts of the case" with the nature and extent of the analysis depending on the circumstances of the particular case. As with any judgment, what is important it that there is a sufficient analysis and explanation of the court's determination.

58. The determination of habitual residence is not a formulaic exercise because it requires a broad consideration of the child's and the family's circumstances and because different factors will be present in different cases with the same factor being more significant in one case than another. Accordingly, as was said in the case of *HR*, at [54], "guidance provided in the context of one case may be transposed to another case only with caution". With those caveats, I set out the following elements (which are not intended to be exclusive) drawn from the cases:

> (a) "The identification of a child's habitual residence is overarchingly a question of fact": *Re B*, at [46]. It is "focussed on the situation of the child": *Re A*, at 54(v) and *Re R*, at [17]. It is an issue of fact which requires the court to undertake a

sufficient global analysis of all the relevant factors. There is an open-ended, not a closed, list of potentially relevant factors;

(b) As set out, for example, in *Proceedings brought by HR*, at [41]: "In addition to the physical presence of the child in the territory of a [member] state, other factors must be chosen which are capable of showing that that presence is not in any way temporary or intermittent";

(c) Factors of relevance, as set out in *Proceedings brought by HR*, at [43], and reflected in many other domestic cases, include: "the duration, regularity, conditions and reasons for the child's stay in the territory of the different [member] states concerned, the place and conditions of the child's attendance at school, and the family and social relationships of the child in those member states";

(d) The intentions of the parents are also a relevant factor and there is no "rule" that one parent cannot unilaterally change the habitual residence of a child: *Re R*, at [17];

(e) As set out in *Re R*, at [16], it is "the stability of the residence that is important, not whether it is of a permanent character" but there "is no requirement that the child should have been resident in the country in question for a particular period of time" because habitual residence can be acquired quickly: e.g. *A v A*, at [44];

(f) The "degree of integration of the child into a social and family environment in the country in question" is relevant, *Re R*, at [17]. It is clear that "full integration" is not required, "*Re B (SC)*", at [39], but only a degree sufficient to support the conclusion, when added to the other relevant factors, that the child is habitually resident in the relevant state;

(g) The relevant factors will reflect the age of the child (see *Mercredi v Chaffe* [2012] Fam 22, at [53]-[55]; *A v A*, at [54(vi], and *Re LC*, at [35]). Accordingly, "The social and family environment of an infant or young child is shared with those (whether parents or others) on whom he is dependent. Hence it is necessary to assess the integration of that person or persons in the social and family environment of the country concerned": *Re A*, at 54(vi);

(h) The court is considering the connections between the child and the country or countries concerned: *A v A*, at [80(ii)]; *Re B (SC)*, at [42]; and *Proceedings brought by HR*, at [43]. This is a comparative analysis as referred to, for example, in *Re M*, at [60]; *Re B (EWCA)*, at [86]; and *Re A*, at [46]. As observed by Black LJ in *Re J*, I repeat:

> "What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence."
>
> An example of this is seen in *Re B (SC)* in which Lord Wilson, at [49]-[50], referred to the factors which pointed to the child having "achieved the requisite degree of disengagement from her English environment" and those which pointed to the child having "achieved the requisite degree of integration in the environment in Pakistan".

Determination

59. Having dealt with the legal framework at considerable length, I can state my conclusions relatively briefly.

60. I recognise, as set out by Lord Reed in *Re R* at [18], the "limited function of an appellate court in relation to a lower court's finding as to habitual residence". I also recognise the risk of adopting an overly analytical approach to a judgment. In this respect, Mr George is right that I have to consider the substance of the judgment and I should not undertake an overly textual analysis of the judge's decision. The real question in my view in this case is whether, as Black LJ put it in *Re J* the judge has demonstrated "sufficiently that … she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence" or, as I put it in *Re B (EWCA)*, at [129], the judge has carried "out a sufficient comparative or balancing exercise of the factors connecting" F with Colombia and England. In answering this, I also agree with Mr George that it is not necessary for there to be a paragraph in the judgment in which a judge expressly undertakes a comparative analysis and in which the relevant factors are balanced.

61. I have, however, come to the clear conclusion that the judge has not demonstrated that she had the relevant connecting factors in mind nor carried out a sufficient comparative or balancing exercise when deciding where F was habitually resident at the end of May 2024. As referred to above, the judge probably adopted the approach she did because of, in particular, the parties' reliance on *Re B (FD)*, without reference to later decisions such as *Re A*, so that the judge focused on F's "degree of integration" in England and did not properly engage with her connections with Colombia. This led the judge to consider (paragraph 42) that "what matters" was F's "integration … *here*" (emphasis added) and to phrase the issue (paragraph 51) as being whether the mother could demonstrate why F "had <u>not</u> gained Habitual residence here" (paragraph 51, emphasis in original) rather than considering where F was habitually resident. The result was that the judge did not conduct a balanced assessment of F's connections with Colombia and with England.

62. If the judge had conducted such an assessment, I consider that she would inevitably have concluded that F was habitually resident in Colombia at the end of May 2024. The depth and strength of F's connections with Colombia would have required strong countervailing factors to justify the conclusion that F had become habitually resident in England by that date.

63. The judge described F as "well integrated" in Colombia but I consider that this understated the position because F was deeply integrated there. Until the end of December 2023, she had spent her whole life (nearly 7 years) in Colombia which was where both her parents also lived. Her *only* home, or homes after her parents separated, were in Colombia. The mother was clearly F's primary carer in that, as referred to above, her primary home was with the mother. Her maternal family lived there; her school was there, as were all her friends; she had a full life in Colombia with a number of activities; and she had never visited England. F had profound connections with and roots in Colombia.

64. Of critical importance, and only briefly mentioned by the judge, was the fact that F came to England for a temporary stay. Putting it directly, F never "left" Colombia or moved to "live" in England. She had come to England for a short-term visit of a few months. The judge discounted the short-term nature of F's stay in England for a number of reasons which, in my view, lack substance. Her visit was agreed to be temporary and this agreement continued as such until at least the end of April 2024 so that it was not only "at the outset [that] it was intended [F] should be returned to Colombia" as stated by the judge. The intended duration of F's stay in England was a key factor in the same way that the children moving to "live" in Scotland was the "key" factor in *Re R*. The duration was extended because F's passports were not available but the character of her presence here did not change but remained a temporary visit away from her long-term home. This has particular significance when looking at the "stability" of F's presence and the extent of her integration in England. Both were impacted by the temporary nature of the visit, a factor further underlined by the fact that F and her father were staying with his parents in "comparatively cramped living conditions" (which included them sharing a bedroom).

65. I also disagree with the judge that the temporary nature of F's stay could be described from F's perspective as "something less than permanent". Nor do I consider that the judge's comparison with a "holiday" was apt or impacted on the fact that F's stay was temporary. Three months cannot be described as other than a short-term visit. F's connections, both in respect of Colombia and of England, needed to be assessed in the context of the overarching factor that she was here for a temporary visit which significantly weakened or diminished, to use the judge's phrase, "the degree and stability of [F's] integration here" and, in contrast, maintained the importance of her connections with Colombia.

66. This is also relevant to the judge's assessment of the effect of F's attendance at school in England, a factor which the judge clearly regarded as pivotal (see paragraph 59) when considering F's integration in England. Again, her attendance at school was in the context of its being for a limited period. The fact that the mother approved of "her enrolment in school" (paragraph 55) did not change its temporary nature and did not significantly add to the stability of F's presence here.

67. I also consider that the judge's reliance on the mother being in England as supporting F becoming habitually resident here was misplaced. Although Mr George sought to suggest that there was no "fixed" intention that the family would return to Colombia, there is no hint of this in the judgment and it is not supported by the father's text messages saying that he and F would be returning. The whole basis of the family's stay in England was that it would be for a limited period of a few months. The child's primary home in Colombia had been with the mother and the mother's presence here

on that limited basis, rather than supporting F becoming habitually resident in England, maintained her connections with Colombia.

68. Further, the mother's (that is F's primary carer's) return to Colombia was a significant factor, not taken into account by the judge, which further undermined the stability and integration of F in England. Mr George accepted, in response to an observation by Singh LJ during the hearing, that this was a relevant factor. Its omission from the judgment cannot, in my view, be supported, as suggested by Mr George, by the inference that the judge decided that it did not weigh sufficiently in the balance to be included. The return of F's primary carer to Colombia in April 2024 was another significant factor which weakened F's integration in England and the stability of her presence here and, again conversely, maintained her connections with Colombia.

69. There is, additionally, a strong argument that the judge took into account subsequent events when determining F's habitual residence but it is not necessary to consider that further having regard to the matters referred to above.

70. Accordingly, in my view, the appeal must be allowed. On any balanced assessment of the relevant connecting factors, F remained habitually resident in Colombia as at the end of May 2024. The depth and strength of the factors connecting her to Colombia which lead to this conclusion are not counterbalanced, let alone outweighed, by factors which would lead to the conclusion that she had become habitually resident in England.

71. It is, however, regrettably necessary to remit the case for rehearing to determine whether the father can establish the matters set out in Article 13(b) of the 1980 Convention (grave risk of harm). There is a high threshold to surmount but it would not be appropriate for this court to determine that question in this case. I would, simply, emphasise the high threshold and invite the father to consider his position.

72. Finally, despite Mr George's suggestion that it remained a live issue, it is not necessary to remit the issue of whether F objected to returning to Colombia. As referred to above, the judge plainly accepted the evidence of the Cafcass Officer that F did not object and, although not expressly stated in the penultimate paragraph of her judgment, the reference there to only Article 13(b) makes clear that the judge would have rejected this ground if she had determined that the 1980 Convention applied.

Lord Justice Newey:

73. I agree.

Lord Justice Singh:

74. I also agree.