



Neutral Citation Number: [2019] EWHC 490 (Fam)

Case No: FD18P00794

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/02/2019

Before :

**MR JUSTICE WILLIAMS**

Between :

MR  
- and -  
JN

**Applicant**

**Respondent**

**Re: Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return)**

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**Cliona Papazian** (instructed by **Makin Dixon Solicitors**) for the **Applicant**  
**Christina Omideyi** (instructed by **Wilson Solicitors**) for the **Respondent**

Hearing dates: 30th January 2019

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILLIAMS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice Williams :**

1. I am concerned with the two children of the applicant father MR and the respondent mother JN. Their eldest child is Q (born in 2002 and is now 17 years old) and their younger child is V (born in 2006 and is now 12 years old). The father who lives in Poland has made an application for the return of Q to Poland pursuant to the inherent jurisdiction of the court with respect to the children and an application for the return of V to Poland pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (The 1980 Hague Convention).
2. The applicant father has been represented today by Cliona Papazian, counsel instructed by Makin Dixon solicitors Ltd. The respondent mother has been represented by Christina Omideyi, counsel instructed by Wilson solicitors.
3. The application arises out of the removal of Q and V from Poland by the mother in about August 2018. Prior to that date they had both lived all of their lives in Poland. As the children were habitually resident in Poland prior to August 2018, and as the mother accepts they were wrongfully removed from Poland in breach of the father's rights of custody, the 1980 Hague Convention is engaged in respect of V. Because Q is over 16, The 1980 Hague Convention does not apply to him and hence the application in respect of Q is brought under the inherent jurisdiction of the High Court, that conferring jurisdiction in respect of young people who have not yet reached the age of 18.
4. I hope that Q and V will forgive me for referring to them in this judgment as 'the children'; I do so only because they are the children of the applicant father and the respondent mother and I am considering applications relating to them as the children of their parents. I am very conscious of the fact that Q is a young man rather than a child in the colloquial sense and that V is on the cusp of adolescence.
5. The parents have been involved in litigation in respect of the children since about November 2010, shortly after the parents separated. Although I do not have a complete picture of the Polish courts involvement in this family's life over the eight odd years that have followed, it is clear that the parents have been in conflict over the arrangements for the children ever since their final separation in September 2010. At times the children have lived with their mother and at times the children have lived with their father. Since August 2014 the children, pursuant to an order of the Warsaw appeal court, either have been or should have been living with the father; that court having determined that they should do so.
6. In or about April 2018 the mother removed V from the father's care. Within a short period, thereafter Q also ended up living with the mother. The father says that since then he has had virtually no contact; the mother seems in general terms to accept there has been little contact although she says that the father saw them in around July 2018. The father appears to have issued proceedings in the Polish courts to enforce the order that determined the children should have been living with him but it does not appear that that had been determined prior to the children's departure from Poland. It seems that there is a hearing in Poland, probably in connection with the father's application, listed for 31 January 2019. In about August 2018 the mother brought them to England and since then they have been living together with the mother, her partner and their two-year-old son. V commenced school in about December 2018 and Q has been attending an English language school since about January 2019.

7. The proceedings commenced in this court on 29 November 2018 when Mr Justice Newton made a location order without notice to the respondent mother. On 18 December the matter came before Ms Justice Russell. Both parties were represented by counsel and directions were given including the court dispensing with the need for the making of a written application in respect of Q. The mother confirmed that she intended to defend both applications albeit she had had little time to seek advice but an indication was given that she would be relying on the Article 13(b) exception of grave harm or intolerability. She was directed to file an answer setting out the details of any defence and a statement in support by 5 January 2019. The father was directed to file evidence in response by 15 January. Regrettably the order did not specify that the mother should identify any protective measures that she sought in order to ameliorate any Article 13(b) risk. Nor did the order required the father to identify any protective measures that he relied on to ameliorate any Article 13(b) risk identified. A Cafcass officer was directed to meet with the children to ascertain their maturity, their position on a return to Poland and whether either raised an objection. A final hearing with a time estimate of one day was listed at risk on 24 January 2019.
8. Unfortunately, the mother did not file an answer as required by Ms Justice Russell's order and so her defence to the application has to be divined from the witness statement that she filed. The position statement filed on behalf of the mother for this hearing identified only Article 13(b) grave harm or intolerability as a defence. However it is self-evident from the Cafcass report filed that the article 13 child's objections exception was also potentially engaged.
9. The father's statement in response joined issue with the mother's account of the history. No protective measures were identified in the statement that addressed the concerns raised by the mother. Having seen the Cafcass report the father offered an undertaking that the children should reside with their paternal grandparents for a period of time. This had not been capable of refinement although I was unable to get to the bottom of why this was so given that the matter had been due to be heard on 24 January and the father had both specialist English solicitors and a lawyer in Poland.
10. On 24 January 2019 no judge was available to hear the case and so the matter was adjourned over until 30 January 2019 and came before me. Ms Papazian provided a detailed skeleton argument for which I am very grateful. Ms Omideyi appears only to have been instructed on 29 January and she relied on the position statement filed by her solicitors.
11. The jinx that had affected the preparation of the case continued on the 30<sup>th</sup>. Despite the court having booked two Polish interpreters as required by the order of Ms Justice Russell the contracting agency mistakenly cancelled the booking and so as at 10.30 there was no interpreter for the mother to enable Ms Omideyi to take instructions from her or to assist her in following the hearing. As it happened her English was sufficiently good to enable she and her counsel to confer and for her to follow the proceedings and give instructions. Her proficiency in English was demonstrated by the statement that she had provided to the court which was prepared in English and without the need for it to be translated or interpreted to her. It was also evident in how she followed and gave instructions in response to what I was saying and what the Cafcass officer and Ms Papazian were saying. The absence of an interpreter for the father prevented Ms Papazian being able to take instructions from the father or his Polish lawyer; although given that court interpreters are only booked for the commencement of hearings at 10:30am the emphasis should be on solicitors ensuring

that they have taken instructions prior to the commencement of the hearing. Thus the hearing commenced without interpreters. At some point after 2:00pm whilst Ms Demery was giving her evidence, an interpreter for the mother arrived and later an interpreter for the father.

12. At the commencement of the hearing I raised with the parties the issue of Q's position. As a 17-year-old whose return was sought against his expressed wishes it seemed to me that there was potentially an argument that he ought to be joined as a party. Ms Omideyi told me that she too had raised this issue upon her arrival at court. Having heard Ms Demery's evidence, in her closing Ms Omideyi submitted that the court ought to join Q and adjourn the determination of the case to allow him to seek separate representation. Ms Demery said that she had not been asked to consider separate representation in the order but said that in retrospect she wondered why it hadn't occurred to her of her own motion. I shall return to this issue.
13. The hearing proceeded with Ms Demery giving evidence before and after the short adjournment and the parties making submissions thereafter. We drew stumps at about 5:00pm. At that point I indicated that I would not be in a position to deliver a decision still less a judgment that afternoon. Ms Demery had identified that both children wanted to meet with me. Earlier in the day I had declined to meet with the children prior to considering and circulating my judgment having regard to the difficulties highlighted by the case of *Re KP (abduction: child's objections)* [2014] 2 FLR 660. I indicated that I would see the children in order to explain my decision to them I being fully satisfied that their views had been comprehensively explored by Ms Demery and her meetings with them and in the letters they had written to me and that it was not appropriate to see them to further reassure them that I understood their position prior to giving judgment. The difficulty of them seeking to give further evidence to me or to persuade me of their views seemed to me to be too great in this case in particular having regard to Ms Demery's views on the extent to which the children have been exposed to chronic parental conflict over a period of many years and the pressure they might feel under. Thus in the exercise of the discretion given to me and having regard to the 2010 Practice Note (Guidelines for Judges meeting children who are subject to family proceedings) and *Re KP* I concluded it was most appropriate to see them after I had prepared my judgment. I therefore directed that enquiries were made of Ms Demery and the children to ascertain whether I could see them on Wednesday 6 February by which time I hoped to have some information relating to the hearing that was due to take place in Poland on 31 January and to have finalised this judgment.

### **The Parties' Cases**

14. Given that no issue was taken with the habitual residence of the children prior to August 2018, and nor was it suggested that the removal of the children from Poland was anything other than a wrongful removal, the essential conditions for the applicability of the Article 12 summary return remedy were met. Thus the obligation on the court is to order the return of V forthwith to Poland unless an exception under Article 13 is established.
15. The mother's case is summarised in her position statement and evidenced in her witness statement of 4 January 2019. The essential elements of her case are as follows:

- a. Following the separation in September 2010 the children lived with her and in the court proceedings she was assessed by a psychologist who concluded that she was properly looking after the children. She asserts that the psychologist concluded that the father would hinder the mother's time with the children and limit co-decision making in matters regarding them were they to live with him. The court noted he had good relations with them and ordered contact with the children.
- b. The mother makes a brief reference to having received treatment for domestic abuse at some point in the past she also alleges that the father has been convicted for killing a man and has killed a woman.
- c. The appeal hearing was a violation of her rights to a fair trial and that the court's conclusions were incorrect and false. She says the court incorrectly stated the children wanted to live with their father despite them not having been heard.
- d. The children opposed a change of residence and the mother sought to vary the order. Mother alleges the father was harassing her and that the police were searching for the children and that the father abducted V from school by force.
- e. At a hearing on 7 November 2014, Q told the court he did not want to live with his father and said his father would set them up against their mother and isolate them from her and that he was not interested in their emotional or medical needs. The court ignored this and on 24 February 2015 Q was taken to his father's. The mother alleges that her application to enforce contact with V was unlawfully rejected by the court.
- f. The mother filed a complaint with the European Court of Human Rights in February 2015. It is not clear what has happened to this complaint.
- g. She alleges that the father was hostile during contact with the children which took place for a while at his home before switching to school and after a further court and Cafcass enquiry staying contact commenced.
- h. The mother alleges that the father neglected her son's education, his health needs and failed to meet their basic physical needs for clothes or food. Enquiries by the court were limited to one interview in which the 'curator' concluded that the children were learning well and that the father did not neglect their needs.
- i. In July 2017 the mother says V complained about chest pain and said it had happened before in February 2015. She says the medical records show that in February 2015 V had a life-threatening supraventricular tachycardia attack. She says that the cardiology clinic indicated that when symptoms returned, a doctor or an ambulance should be called. The mother says that the father failed to take V for appointments and told V when she complained to him about pain that she was okay. She says that during contact she took V to a cardiologist who wanted an ECG record and identified treatment. The mother says that she made a request to the court for the father to forward the ECG records. She says the father denied the illness. Also in October 2017 she says V began to write SMS messages indicating she was having suicidal thoughts and the mother

took her to a psychologist who assessed that the atmosphere in the father's house was bad for the mental state of the child.

- j. The mother says that V was bullied in her school and although the father intervened the situation did not improve following which the mother says the father denied the whole situation with school, V, and the court.
- k. The mother says she took Q to a psychologist who recommended therapy for addiction to computer games.
- l. In February 2018 the court was involved and the children were asked by the court who they wanted to live with. The mother says that they told the court they wanted to live with her but the court declined to transfer residence because they did not say anything bad about their father
- m. In Easter 2018 the mother says that V was suffering chest pains and she was at home alone. The mother says she went to the house and called an ambulance who took her to hospital. The mother says that when the father arrived he denied that she had a cardiac problem and that the hospital staff examined V and concluded that she did not have supraventricular tachycardia but sinus tachycardia caused by strong emotional agitation. The mother says after this that V asked to go home with her mother and that an argument then developed because the father and grandfather tried to prevent the mother and V going to the mother's home. The mother says the police were called by the father and V said she wanted to go with her mother.
- n. Since then the mother says she has taken over the care of V. She says V has seen a psychologist and a psychiatrist to address the basis of her ailment. She says V did not return to school following a doctor's recommendation.
- o. She says that the district prosecutor commenced an investigation into the psychological abuse of the children by the father. [One of the documents the mother has produced in Polish appears to confirm an investigation was opened. The letter from the father's lawyer asserts that the enquiry was closed in August 2018.] The mother says that at a hearing on 15 November 2018 her lawyer requested the results of the investigation but the court dismissed this as being late.
- p. After V moved to live with the mother she says that the father prevented Q from going to school and left him with the grandparents before he moved to live with her. She says this occurred on 12 April 2018 and that there were blows and physical fights between the father and Q. She says he continued to go to school and did outstanding work. The mother says that whilst he had been living with his father he had not been treated for a problem with his larynx. The mother says that the father continued to neglect this medical condition and refused to accept the treatment was needed. The mother says that in June 2018 she took Q to a specialist clinic who carried out a medical procedure to remove a blockage.
- q. The mother says that there were further proceedings in Poland (I think after April 2018) and that a curator talked to V and made a report.
- r. She says that after the children moved to hers the father saw and heard from the children regularly until the end of June 2018. She elaborates on this which

seems to state that in fact the father did not see V but had contact by phone and text save for seeing her at school at the end of the school year.

- s. The mother says that in August 2018 she saw a paediatrician who had previously issued certificates (I think to the father in respect of the children's health) and that he had completed them solely on the basis of what the father told him and he refused to correct them even when shown documentation about the children's medical conditions.
- t. The mother alleges that the father delayed initiating Hague Convention proceedings to take financial advantage of the situation and obtain financial orders against the mother. She says that he has wrongly secured the sale of the mother's apartment in Warsaw and has been misusing the funds.
- u. She says that the father has tried to conduct proceedings against the mother in Poland in her absence to deprive her of parental authority and to impose punitive measures. It seems there was a hearing in November 2018. She says that the father withheld material from the court. She also alleges that he has bypassed the English court and is probably planning to abduct V before the hearing.
- v. Attached to her statement are exhibits which are said to support Q's medical problems, V's admission to hospital, the mother's application to the European Court of Human Rights, the commencement of an investigation by the police in April 2018, a psychological recommendation in respect of Q and his computer addiction, a referral of V in December 2018 for a cardiac issue, and some school documentation.

16. Taken together with the position statement filed on her behalf (and the Cafcass report I approach the mother's defences as amounting to the following:

- a. Grave risk of harm or other intolerability arising from
  - i. the father neglected the children's needs physical, medical, educational and emotional and would continue to do so if they were returned to his care (grave risk of harm),
  - ii. the children are exposed to the conflict that the father creates in respect of their contact with the mother (grave risk of harm)
  - iii. living with him would be against their clear and long held wishes (intolerable)
  - iv. returning V would separate the two siblings (intolerable)
  - v. returning the children would separate them from their mother (intolerable)
- b. Child's objections in respect of V.
- c. Returning Q contrary to his expressed wishes would be contrary to his welfare given his age and maturity and his well-founded desire to remain in England with his mother, sister, and the rest of the family here.

17. In her submissions Ms Omideyi emphasised the following points:

- a. The evidence shows that V is capable of providing an accurate factual history in respect of how she came to move from her mother to her father in 2014 and thus her account in respect of other matters such as her health problems, school problems her desire to live with her mother and her dislike of her father should be also taken as accurate.
- b. Her account is authentically her own, is strongly held and should carry great weight.
- c. If the court is exercising its discretion her welfare points to her remaining here.
- d. Q is mature and articulate and he also has expressed good reasons for wanting to remain with his mother. His account also can be considered to be reliable and should carry considerable weight.
- e. The evidence shows that if the children are returned they will be returned to a highly conflicted situation where they will be unable to have a proper relationship with the mother.
- f. Returning the children to their paternal grandparents would remove them from the care of their mother and place them in the care of somebody who they are not close to.
- g. The evidence shows that their living conditions in Poland were unsatisfactory, neglectful and harmful. The father's failure to address V's medical problem create a grave risk of harm.
- h. The children should not be separated; they have suffered together and are a support to each other.

18. The father's case is set out in the initial statement filed by his solicitor and supplemented by his own statement dated 18 January 2019. Not surprisingly his account is very different to the mother's although there are areas in which they appear to agree.

- a. After the initial separation the children remained with him but were then taken by the mother to live with his brother. Initially the district court provided for the children to live with their mother in October 2013 but the Court of Appeal ordered that they should live with him. He says that the mother did not comply and ran away with the children, the police located the mother, and in due course the mother returned to Warsaw and father then collected V from school and she lived with him. In respect of Q the court ordered the mother to return him to her care and this was undertaken with the help of police and court officials. The father says that at some point during this process Q said that he wanted to live with his mother but the court psychologist concluded that he was not saying this voluntarily. Subsequently he says Q wrote a letter indicating he wanted to live with the father.
- b. The father says that the mother made various allegations against him whilst the children were living with him alleging he had mistreated the children. He



says that these were false allegations and they were dismissed after having been checked by the Prosecutor's Office. He says this was the case in 2018.

- c. Whilst the children lived with the father they had regular contact with the mother initially at his home then it was extended to every other weekend.
- d. The father denies the mother's allegations in respect of V's medical problems. He says that he took her for medical appointments including in 2015 when she suffered chest pains. The investigations revealed no heart defect. He produces very brief documents confirming the children are healthy.
- e. The father alleges that the mother began to influence the children seeking to persuade them that they were unwell. He denies that V had suicidal thoughts. He says he's never seen such messages and nor has anyone else. He says this particularly happened when the children were staying with the mother at weekends. He seems to agree that the children were seen by the court and says the court concluded the children were being forced by the mother and they did not say anything bad against him.
- f. In respect of the bullying he says that the school investigated the mother's concerns which were not made out. He says V had friends at school. He says she got an outstanding achievement certificate at the end of the 2017/18 school year even though she wasn't attending school after April 2018.
- g. He says that in April 2018 he had taken Q to a medical appointment and whilst they were at the hospital the mother took V to another hospital on the basis that she was suffering a heart problem. He says at the hospital she was examined and she was not found have any problem. He says the mother argued with the hospital about it before disappearing with V.
- h. In relation to Q's health, he says an ENT doctor identified some minor problems with his sinuses but said that treatment was not obligatory.
- i. He says that later in April Q did not come home from school and he went to the mother's home address but no one was there. Later he went to Warsaw to collect them and spoke to the mother's partner, who told him that he would not see the children any more. He said he was unable to speak to the mother. The police were called as the mother's partner threatened him but they had no power to remove the children.
- j. Since April 2018 he says he has had almost no contact with the children and has not seen them. He says there was one occasion when he spoke to V and she was crying on the phone.
- k. The father denies manipulating medical experts, being convicted of killing anyone or wanting to re-abduct V. He alleges that the mother herself has been accused of abducting another child and produces a copy of the indictment against her.

19. Ms Papazian has filed a detailed skeleton argument on behalf of the father in which she helpfully sets out the relevant legal tests for both the inherent jurisdiction application and The 1980 Hague Convention application. Her principal submissions are as follows

Q's views

- a. Q does not truly object to returning to Poland; he has positive memories of it. Although he says he does not want to live with his father his reasons are not substantiated and it is a reasonable inference that he is saying what he is in order to keep the peace with his mother and thus his expressed wishes and feelings must be discounted to take account of influence.

V's views

- b. It is clear that V also has been influenced. She did not demonstrate any emotional connection with her complaints, being described by Ms Demery as flat. Her complaints mirrored those of her mother (inattention to health) and in interview she appeared to Ms Demery to be positive about school and yet when she wrote a letter later (in the company of the mother) she complained of being bullied. Having not seen her father, whether the influence arise from direct manipulation or absorption of the atmosphere the views she expresses are not authentically her own. They are not clearly an objection and may be a preference.

Harm

- c. The allegations that the children were neglected by the father, that he left V alone, that there was no food, that he neglected their medical needs do not reach the Article 13(b) threshold. In any event the evidence establishes that the Polish authorities have investigated the mother's complaints and they have not been established.
- d. The mother's refusal to return with the children cannot form a foundation for an argument of grave risk of harm on the basis of separation of the children from the mother. This would be a self-created and self-serving defence.
- e. Nor can the mother rely on the children being returned to an atmosphere or environment of conflict when she is the cause of conflict in failing to abide by Polish court orders and by repeatedly making unfounded allegations.
- f. Although it would be preferable for the children to remain together this is not a case where their separation would create an intolerable situation or a grave risk of harm. Baroness Hale noted in re E that when one is considering children of quite different ages and where one is on the cusp of leaving home in any event the consequences of separation may be quite different from separating two much more closely connected children who might be expected to live together for many years to come.

Discretion

- g. If V's views are an objection then taking account of the factors which inform the court as to the weight to be given this is a weak objection. Ms Demery is clear that there is evidence of influence both in terms of what she says but also the school's concerns. She was not at all clear that she had got either V or Q's

authentic views. There is also clear evidence that V has no perspective; her inability to describe anything positive about Poland or her father illustrates this and there are signs that they were content living with the father. Given the Polish authorities did not move them this suggests the concerns were not made out. It is likely that her expressed views would alter upon a return. At present she is having no contact with her father and this is not conducive to her welfare. When in Poland living with her father she had regular contact with the mother. Policy considerations in this case weigh very heavily given the mother has failed to comply with Polish court orders in 2014, has breached Polish court orders in 2018 and has abducted the children from Poland; the mother's wrongful actions should not be condoned. The Polish courts continue to hear proceedings concerning the children and as a matter of comity a return should be ordered.

- h. Given the children's expressed wishes it may be that a return to the grandparents initially will ease their transition as suggested by Ms Demery.

#### Inherent Jurisdiction

- i. Q clearly misses Poland and has not put down any roots in England. His recently started to attend an English school so is not even in mainstream education. He can return to his high school where he has friends and where he was doing well. His removal to England was away from the country that he was born and brought up in. His description of missing hearing Polish voices indicates his connection with Poland. All of his extended family who he has relationships with are in Poland; his maternal grandparents and his paternal grandparents. Although he is 17, a summary assessment of his welfare shows a return would be in his best interests

#### Separate Representation

20. Ms Omideyi advanced an application for separate representation for Q and sought an adjournment to put that into effect. She submitted that the mother was unable to advance a case on behalf of Q. She said that he has a clear understanding and clearly expressed wishes which cannot be adequately represented by the Cafcass officer. At his age he should have a lawyer. Although he has not asked for a lawyer, he is new to this country and this should not be held to be a bar. At present the court doesn't have enough information about whether Q will comply with an order for return and this would need to be explored with his own representation.
21. Ms Papazian opposed the application. She submitted that it was not essential for a 17-year-old in this situation to be separately represented. There was nothing from Q which indicated that he wanted a lawyer or to be involved in these proceedings. Given his age and his exposure to litigation over the years had he wanted to be more involved he would probably have said. She points out that if he were to become more involved he would no doubt come under intense pressure from the mother to drive her case which would be harmful to him. At present it is reasonable to infer that the views he expresses derive from a desire to align himself with the mother and to avoid being pressed by her. In particular in relation to Skype if he says he is complying with a court order this insulates him from any maternal condemnation. His views are fully

before the court and his case has been articulated by the mother balances in favour of him not being separately represented whether for welfare reasons or for autonomy reasons.

22. The test for joinder of a child as a party is set out in FPR 16.2(1).

*The court may make a child a party to proceedings if it considers it is in the best interest of the child to do so.*

23. The proceedings in relation to Q are brought under the inherent jurisdiction and so pursuant to FPR 16.6 (1) Q would be able to instruct solicitors directly. He would be entitled to public funding (subject to means) PD 16 A paragraph 7 identifies particular circumstances where it may be appropriate to make a child a party. The Supreme Court also gave guidance in the context of 1980 Hague Convention proceedings in *Re LC* (reunite: international child abduction centre intervening) [2014] 1 AC 1038. The Court of Appeal considered the position in relation to private law proceedings in *Mabon-v-Mabon* [2005] 2 FLR 1011. I have in mind what those courts said and in particular I am very conscious of Q's age and the Court of Appeal's indication that in private law proceedings concerning fundamental decisions in older children's lives that they should be involved in the decision-making. I note that the decision I am asked to make is in no sense a final determination of where or with whom Q should live. It is a decision which would involve him returning to Poland so that the courts there could consider his position; those courts being far better placed given their long-term involvement in this family to understand his position and what would be appropriate for him. Although I don't underestimate the importance of the decision to Q it is not in its nature comparable to a leave to remove with long term permanent consequences. I also observe that none of the categories identified in 7.2 (a)-(j) are apt to apply to Q's situation. In particular sub paragraph (e) whilst it might *prima facie* apply has to be viewed in the context of what Lord Wilson said in *Re LC* where he identified that in child's objections cases that paragraph should not be taken to indicate joinder in every case. I also note that Lord Wilson referred to Baroness Hale's observations in *re M* taking account of whether joinder would add sufficiently to the court's understanding to justify the additional cost, intrusion and delay.
24. In determining whether it is in a young person's best interests to be joined to proceedings the court must take account of issues relating to the autonomy of the young person and their own desire to participate. The court must also take into account matters such as the need for them to have a separate voice in order to ensure that their position is adequately advocated or understood. The court must weigh the impact of separate representation on their welfare and the potential negative impact of them being drawn into the parental conflict and the court arena but also positives in relation to what they might bring to the process and how it might ensure they bought into the outcome. Lastly the court must also consider the impact on the proceedings in terms of delay or expense.
25. Ms Demery is a very experienced Cafcass officer. She has worked for many years in the High Court team dealing with Hague Convention cases. She has considerable experience also of acting as a Guardian for children. When she said in the witness box that she had not thought about separate representation for Q she seemed surprised herself that she had not. However I conclude that she was probably being too hard on herself. In most cases where separate representation is considered by a Cafcass officer it is because either the court has invited them expressly to consider the issue or

because it becomes apparent to the Cafcass officer through their interview with the child either that the child's own attitude to the case is such that they are either expressly requesting their own lawyer or they are demonstrating an approach which indicates that they would want a lawyer if they knew that option was open to them. Alternatively the situation itself may demand consideration of separate representation. It seems clear from Ms Demery's interview with Q that he was not expressing himself in a way that indicated a powerful desire to play a role in the proceedings. There are many examples both in the reported cases and otherwise of children, sometimes relatively young children, expressing themselves in a way which plainly indicate their desire to play a fuller role and to have lawyers. I accept Ms Papazian's point that the children's exposure to court proceedings and professionals over the years is such that had Q wanted to be more involved he would have been able to say so. In fact Ms Demery noted that when she spoke to him about previous interviews with social workers or similar he gave the impression of not really recalling that and I infer from that that he wished to distance himself from the process. Given the very highly conflicted situation between the parents it seems most likely that Q feels caught in the middle and would prefer not to become more involved in the parental dispute than is absolutely necessary. Thus in terms of Q's autonomy and his desire to be involved I do not consider this to be a situation which demands separate representation. This is not case where there is a powerful argument by an articulate and mature teenager who has searched out a lawyer in order to ensure their case is heard.

26. Nor does the case fit within any of the FPR PD 16A7.2 categories. In welfare terms the chronic parental conflict means that Q is caught between two parents both of whom he probably loves and he should not be forced to take sides where the evidence suggests that he is unable to express himself freely in his current situation. His being drawn into the court arena is likely to be more harmful for him in welfare terms than empowering in autonomy terms. Joining would also result in delay and I'm not even sure that if I joined him he would particularly wish to instruct a solicitor and become involved. For all those reasons I do not consider it to be in his best interests to be joined.
27. Overall my conclusion is that it is not in Q's best interests to be made a party to these proceedings.

### Chronology

28. As will have been noted from above I frequently find myself using expressions such as 'appears' when dealing with factual matters in this case. Inevitably in summary applications under the 1980 Hague Convention the ability of the parties to put clear evidence before the court, in particular documentary evidence is limited by timeframes, access to funds and access to documentation. However even having regard to those to be expected limits it has been a challenge to get a clear picture of the historical background in this case. Whilst in respect of respondents who are not entitled to non-means and non-merits public funding and who might instruct non-specialist solicitors the same cannot be said of applicants who received non-means non-merits public funding and whose solicitors will always be on the ICACU panel of specialist abduction solicitors. Whilst the father made oblique reference to legal proceedings in Poland since April 2018, it was only when I specifically asked about the position that a letter dated 21 January 2019 emanating from the father's Polish

lawyers and setting out a summary of legal proceedings in Poland was produced. Ms Papazian informed me that she had asked that the letter be included in the bundle but that it had not made its way in. In paragraph 15 of the father's statement he refers to the children being seen by the court in Poland - possibly in 2017 or 2018. The mother also refers to this in paragraph 20 of her statement. However no documents have been provided which confirm what occurred at court. Both the mother and the father make reference to issues relating to the care of the children being raised with police, possibly social services, the school but there is almost no contemporary documentation; the last formal piece of documentation from the court appearing to be the judgment of the appeal court dating back to 27 August 2014. The mother produced a series of exhibits to her statement many of which were in Polish and which had not been translated; although informal translations were referred to by Ms Omideyi in submissions.

29. Thus the chronology which follows is far from complete albeit I'm satisfied that a sufficiently clear picture emerges of the history that this family has lived through

<b>Date</b>	<b>Event</b>
28.03.1973	Applicant Father born
16.03.1977	Respondent Mother born
2000	Parties begin a relationship
2002	Child, Q born
2006	Child, V born
September 2010	<p>Parties separate; children remain in Father's care What happened thereafter is the subject of some dispute.</p> <p>According to the order of the Warsaw provincial Court of 27 August 2014, on 2 November 2010 the mother applied to the district court for a residential order in respect of the children. On 26 May 2011 the father applied for a residential order and for contact. I note that this contradicts the mother's assertion that the father never applied for contact. The judgment says that both parents were active in bringing the children up until September 2010 with him looking after them single-handedly at times. In May 2010 the police attended an incident and the mother was placed in a mental institution. She returned to the family home in July and in September moved out to live with the father's brother. In October 2010 she rented a property and without informing the father took V from her nursery to live there and a few days later took Q. This appears to have been the commencement of a pattern of the mother taking unilateral action. There were problems over contact with police involvement as a result of the mother obstructing the father's contact; on one occasion she demanded money to buy a new kitchen in exchange for permitting contact.</p>
16.10.2013	<p>District Court X makes an order providing that the children live with their Mother; Father to have time with every Friday after school - Saturday at 18:00. Provision made for time with F over Christmas and Easter.</p> <ul style="list-style-type: none"><li>- The court concluded that the mother was emotionally labile, unpredictable and impetuous</li><li>- The respondent lacked insight, sought to avoid issues and was</li></ul>

	<p>uncooperative</p> <ul style="list-style-type: none"><li>- Both children were at school in Warsaw, were neat and clean and good students both parents were involved with the school.</li><li>- The children viewed their father as more stable calm and interested in their problems.</li><li>- The ‘expert’ who was instructed concluded the children had emotional relationships with both parents but the mother’s unpredictability and emotional lability meant she was unable to provide the children with stability and safety but the father could guarantee the children’s welfare. The expert was of the opinion that the mother was manipulating her surroundings.</li><li>- The district court did not consider that the report and the good relationship the children had with the father justified changing residency where the mother’s approach parental capacity was not challenged and was meeting the needs of the children</li><li>- Residency was set with the mother.</li></ul>
27.08.2014	<p>Appeal. Order 16.10.2013 overturned and Court orders that Q and V live with their Father.</p> <ul style="list-style-type: none"><li>- The appeal court found that the district court’s order was against obvious facts stating that the father can offer a better warranty of providing safety to the children and meeting their needs and that it disregarded the children’s opinion that they do prefer the father as a parent who was more stable, calm and interested in their matters.</li><li>- The court considered that the provincial court had ignored the report of the court probation officer.</li><li>- The court considered that the mother’s removal of the children from the father’s care was significant as it disturbed their settlement and environment and that she had usurped the right to decide whether or not the children would see their father. This was the view of the probation officer who was working with the family. The court considered that the mother’s actions in removing the children from the father and taking them away was an abuse of power and harmful to the children</li><li>- The court concluded that the father was calmer, composed, and knowing the needs of the children and whom the children saw as such.</li><li>- The court also concluded that the mother’s commencement of a relationship with the father’s brother was emotionally harmful to the children.</li></ul> <p>Given the paucity of other documentary evidence from Poland relating to the court process or the involvement of the children with authorities this judgment seems to me to be a key document. It gives a clear insight into</p>

	the views both of the professionals who worked with the mother and father at the time and of the Polish courts. Against the backdrop of that judgment some of the later events can be viewed with a clearer focus.
August - October 2014	Mother refused to comply with the order. It seems to be agreed that she moved away for a period of time and that she refused to comply with the order. She clearly considered that there had been an injustice; she says as much. In fact in respect of much of the involvement of external agencies in the lives of the children where they have not agreed with the mother she has complained either of incompetence, bias, or other malfeasance.
October 2014	V moves to live with her Father.
26.11.2014	District Court X orders Mother to hand Q to Father
24.02.2015	Q moves to live with his Father following successful enforcement of the order 27.08.2018. Mother makes referral to ECHR – not clear if application inadmissible or not pursued.
24.11.2015	M allegedly assists in abduction of child. It is not clear what the current position is in respect of criminal proceedings brought by District Prosecutor's Office. Given she remained in Poland for nearly 3 years after the indictment I wonder whether this in fact has been pursued. All one can say is that it is a piece of a jigsaw that is consistent with other examples of the mother taking unilateral action in respect of her own children
2014	M makes false allegation that F abused children; investigated but matter concluded without charge in 2015.
April 2016	Polish court order that Q should attend school in X not Y as sought by the mother.
October 2014 - 2017	M has contact with child/ren in FMH on alternate Sundays
2017	M permitted to have alternate weekend contact
2017 - 2018	M makes 2 (unsuccessful) applications to change residence of children
2018	M makes allegation that F abused/neglected the children. Public Prosecutor discontinues the case without charge in August 2018. Both the mother and father make reference to complaints that the mother has made down the years about the father's care of the children. Whether that relates to his failure to address bullying at school, or his alleged failure to take V's medical condition seriously or to attend to Q's medical condition, leaving them alone, failing to feed them, failing to clothe them the authorities have been involved. The school investigated the bullying complaint. V seems to have been doing very well indeed at school and appears to have had friends. This does not suggest that either school or V or the father regarded any issue as a serious one; unlike the mother. It is clear that V was seen by doctors in relation to her alleged arrhythmia. The mother herself agrees that she was seen at the hospital and the mother herself agrees with the father that the doctor concluded there was no serious problem. However the mother infers that the doctor was either coerced or pressured by the father into saying there was no problem. This seems highly improbable. The mother's complaint is consistent with her other complaint that the father had secured medical notes in respect of the children by wrongdoing in relation to another doctor. Again this seems improbable and seems to me a pattern emerges of the mother making allegations in respect of those who do not agree with her perspective. The



	<p>children were seen by a curator (who I assume is something equivalent to a court social worker) when the mother made a complaint. The curator appears to have reported that the children made no complaints about the father although apparently may have said that they wanted to live with the mother. The court did not act on their wishes. The mother complained that the curator did not do their job properly. What seems to emerge from all of the various strands of the mother's evidence and the father's is that these children have come to the attention of various agencies with a welfare interest down the years but none of them appear to have upheld the mother's complaints. However the mother has not been deterred and has continued to make complaints all presumably in pursuance of her desire to resume the care of the children. As Ms Demery observed this has led to chronic parental conflict although it would seem that the primary source of the conflict has been the mother's unremitting refusal to accept the Polish court orders or the father's ability to care for the children or the children's appreciation of their father's care.</p>
03.04.2018	<p>V taken to hospital by her Mother on pretext of emergency and from there removed to an unknown address. F says this was the last time he sees V.</p> <p>Although the mother says that the father has had contact with the children since even she accepts that in respect of V he has had no direct staying contact of the sort that she was having when the children were living with the father. Taking her position at its highest there may have been some telephone or text exchanges with the father perhaps seeing V once at school. This appears to be in stark contrast to the relationship that the father allowed the children to have with the mother when they were living with him. Notwithstanding his belief that the mother was seeking to undermine his care which appears to have been borne out to some extent by the enquiries carried out and of course is consistent with the mother's criticism of the father's care he did not end contact.</p>
12.04.2018	<p>Q removed from school by his Mother. I'm not clear of the circumstances in which Q came to move to live with the mother and V. It may be through the mother's pressure, it may be through unhappiness with the father's care, it may be because he wished to remain with V. Given the reports on the father's capacity as a parent and the children's relationship with him dating back to 2013 together with the involvement of various agencies dealing with the mother's complaints and the lack of substantiation of those it seems unlikely that there was any real problem with the father's care or any real problem with the children's relationship with the father. It seems likely that the children were exposed to the mother's unhappiness both with the situation generally and her view that the father was incapable of caring for them properly. Thus the most probable scenario for Q leaving is a combination of wishing to remain with V and the mother's pressure. It is clear that Q has a greater ability to connect with his father now than V does. The father describes V being upset during the one telephone call they had and perhaps she is less able to cope with the inevitable tension that exists when she is with her mother who so plainly critical of the father's capability as a father. Whether Q has seen his father at school or after school since then is perhaps neither here nor there. What is clear is that when he is with his mother a</p>

	relationship with his father becomes very difficult to maintain.
August/September 2018	The Applicant Father believes that the Respondent Mother has removed the children from Poland to England.
31.08.2018	Polish prosecutor drops investigation into mother's allegation in 2018 of father abusing the children and neglecting their medical needs
04.10.2018	Polish court orders mother to pay child support.
05.11.2018	F makes application to Polish Central Authority
21.11.2018	ICACU instruct Makin Dixon Solicitors Ltd.
29.11.2018	Application to the Royal Courts of Justice is issued for the summary return of the child. <b>Mr Justice Newton</b> made a number of disclosure orders and made a Location Order.
13.12.2018	Details of the Respondent Mother's whereabouts are sent to Tipstaff to execute the Location Order.
18.12.2018	Russell J provides for applications for both children to proceed, directs statements and for Cafcass to file and serve a report. Provision made for Skype contact with both children.
21.01.2019	Cafcass report.
24.01.2019	Final Hearing listed to take place at The Royal Courts of Justice, time estimate – 1 day. Vacated due to lack of Judge.
30.01.2019	Adjourned final hearing.
31.01.2019	hearing in Poland it is not clear what this hearing is for although from the document provided by the father's lawyer it seems clear there are ongoing cases. There is an old case III Nsm494/14 relating to the mother's applications for contact and changes of residence. A more recent case III Nsm228/18 relates to the father's application arising out of the mother's removal of the children from his care. Another case III 278/18 relates to financial penalties for removing the children from the father's care.

### **The Children's Views**

30. Ms Demery was delegated the task of preparing a report for the purposes of ascertaining their respective maturity, their position on a return to Poland and whether either of them objected to returning. Prior to reporting she had read the papers in the case although had not seen translated copies of some of the exhibits to the parties' statements or I think the exhibits to the father's second statement. She carried out police checks in respect of the mother and father and the mother's partner. The checks came back negative in respect of the mother or father, and the response in respect of the mother's partner was awaited. She also made contact with V's school and saw Q and V on 17 January 2019. An interpreter was present but was only required for clarification at certain points. They also wrote letters to me. Ms Demery also gave oral evidence in which she expanded upon or clarified aspects of her report. She satisfied herself that both understood the purpose of the meeting.

### **Q (45 mins)**

31. The following seem to me to be the salient points that Ms Demery made in respect of Q:

- a. Ms Demery described Q as charming. He is interested in art and IT and told her he spends a great deal of time on his computer. He told her he was in contact with all his friends on social media in Poland and said he only sees his college friends at college (I understand he commenced college in January 2019).
- b. He speaks to his father every two days and they discussed music and stuff. He said they did not have a close relationship and that he would not choose to Skype his father but the judge made the decision and he is honouring that. He also said that he is speaking to their father to save V from having to do so. He said he is protective of V.
- c. He described it as bad living with his father and he much prefers living with his mother. He said she takes care of everything. He said when he was with his mother he did well at school but not when he was with his father. He also said she had arranged for him to have an operation and that he no longer need to take medication. He said that although both of them were living with his father that was a result of a court decision but both he and V wanted to live with their mother. He said the whole of the time he was living with their father he wanted to be with his mother.
- d. He said he thought the grandparents on both sides would be missing them the most. He is in contact with his maternal grandparents. He said that when things had stabilised here he would go on holiday to Poland to visit his grandparents. When asked if there was anything about Poland that he missed he said he misses walking along the street and hearing everyone communicate in Polish.
- e. He told Ms Demery that it was necessary for them to come to the UK as his mother could not get work. He said when he knew of the proposed move he was confused and had mixed feelings but he now very much wants to live in the UK. He likes the mother's partner.
- f. He said whatever happens he wants to be with V and he did not think a judge would decide to divide them.
- g. In his letter Q says he is 17 and has a little brother and sister. He said I don't really want to be [divided?] from them and he wants to stay with his mum. He asks me to think on my decision twice. He thanks me for reading the letter and prays that I won't separate them or send them back to Poland.

**V (1 hour)**

32. The following seem to me to be the salient points that Ms Demery made in respect of V.

- a. She impresses as intelligent and articulate which is borne out by the school report from Poland. Her maturity is commensurate with her chronological age.

- b. She recalled how she had lived with her father for four years and that it had been shocking (in the sense of it being a shock) when she initially went to live with him as it happened suddenly. She recalled not seeing her mother and having to see her mother at school, and that initially Q had remained with their mother for six months. She found it hard being separated from her mother and missed Q too.
- c. She described lots of family in Poland including maternal and paternal grandparents and said she missed all of her grandparents. She said she speaks to her maternal grandparents on the phone and commented on her paternal grandparents on her father's side. She said she missed her schoolfriends the most and is in contact with them on social media. Ms Demery thought it significant that during the interview she appeared positive about her Polish school but in the letter that she wrote after the interview and whilst with her mother she said '*I also want to say that I was very unhappy in Poland. Every day in school my classmates were bullying me and saying bad things that were upsetting me so much*' Ms Demery wondered to what extent this was influenced by her mother; this being one of the mother's issues identified at paragraph 18 of her statement.
- d. She has made friends at school and finds schoolwork easier than in Poland.
- e. She said that she does not speak on Skype with her father. She said her father was very emotional when she was having contact with him by phone in Poland. She said she does not want to speak to him and she is unsure about whether she wants to see him. She said she does not miss him at all although she thought he might be missing her.
- f. She told Ms Demery that the father ignored her when she talked to him about her arrhythmia and that he had not sent the results of her ECG examination to the UK. Ms Demery wondered whether this indicated she had been inappropriately drawn into the dispute by the mother. She told Ms Demery the father had told her not to tell her mother about her first arrhythmia attack and that he had essentially told her to ignore it.
- g. She said that he would leave her alone at home when she lived with him for 10 hours and that there would be no food to eat and she recall this happening on several occasions. She also complained that he did not turn on the heating when she asked him to. She said his attitude to her mother was very upsetting as he would say that her mother was trying to turn her against him.
- h. She said she gets on well with Q and that Q and her father argued a great deal. She said on one occasion it turned physical but she did not see it.
- i. Ms Demery was unable to elicit anything positive from her about her father. She described him as tall and wearing grey clothes. She said she didn't want to return to Poland because of her father.
- j. She described her mother is very lovely who cares a great deal about her and her brothers. She said she got on okay with her mother's partner
- k. In her letter she said she decided to write it because she believed it could help her to stay in England. She said she knew that her mum wants the best for her and for her brothers. She said she felt really bad in Poland and it if she asked

her father to help it felt really bad and he just ignored her. She says she hopes I understand their problem and will let her live a nice life in England.

33. In the report from V's school they note that V's punctuality and attendance is good, she is well presented, is confident, polite and articulate but quiet. She is above average academically, completes her homework and is an excellent team player. The school note that the mother's partner has demonstrated behaviour at times which is concerning; being very impatient, confrontational and verbally aggressive towards staff. The school expressed a concern that the mother's partner likes to be in control of the conversation at all times and that V struggled to get her voice heard; the mother's partner apparently speaking on her behalf. They were aware of her medical problem
34. Ms Demery took the opportunity to clarify with the mother whether she would return to Poland in the event that the court ordered a return and the mother clarified that she could not as they have no money or prospects in Poland and she does not trust the Polish authorities or the legal system.

#### Ms Demery's analysis

35. Ms Demery identified the difficulty in assessing maturity over the course of one meeting and when not communicating in Q or V's first language. Ms Demery had information from the Polish and English schools. She thought their composure and ability to express themselves suggested their cognitive maturity is on a par with their age.
36. A central theme that emerged from both Ms Demery's report and her oral evidence was the extent to which the children had been exposed to chronic parental conflict and events which were adverse for their development. She observed that the circumstances are not likely to promote resilience to cope with further difficulties and the need for stability in their living arrangements and family relationships.
37. In her evidence Ms Demery said that she did not feel she had been able to ascertain the children's authentic views. She thought they had been exposed to chronic parental conflict which made it difficult to get a sense of the children's lives in Poland and any positives of life with their father. She thought their true wishes and feelings were obscured by the parents' conflict. It was difficult for them to understand the impact that the parental conflict had had upon them. She thought they were aware that their parents don't get on and thus it is extremely difficult for them to enjoy relationships with both. Ms Demery thought that the fact that they were unable to have a relationship with the paternal grandparents now was symptomatic of this. She also was surprised at V's inability to say anything positive about the father as the evidence suggests in the past she has been positive about him. The same is true of Q and given their ages one might expect a more nuanced approach. The 'Impact of parental conflict' tool supported her own evaluation of parental influence emanating from the mother.
38. She said she was reserved throughout the interview and it was difficult to get a sense of what is happening for her; she described her as being flat throughout. When describing the father's lack of care she was not indignant as might be expected if she

felt aggrieved. When she described her father being emotional on the phone she was flat. She did not display the emotions that might be expected of talking about a difficult subject. She was more animated (her face lit up) when talking about her mother and her little brother. With V she thought there was an appearance of being slightly rehearsed and guarded and she was concerned about the extent to which V had been able to express her true views. She noted that V's views appeared to be aligned with the mother's in terms of her complaints and in particular the difference between what V told her during interview about how positive she was about her school friendships was in direct contradiction of what she later said in her letter; which was written after she had returned to her mother. She also was concerned that what the school had observed in terms of V being allowed to express her own views. She noted that there were aspects of what V said that appeared to be her own views; for instance her recollection of the shock at moving from her mother's to have father's care. Others she thought reflected a degree of influence.

39. Ms Demery made clear that she did not mean necessarily direct or deliberate influencing but rather a product of exposure over the years to chronic unabated parental conflict where the children's real views have become buried in the conflict. She thought it was unusual that they had clearly over the years spoken with others about their views but they were unable to recall it in any detail.
40. She thought Q was more open than V but he actually had less to say. What he said about the father's care is broadly in line also with what the mother complained of; their needs not being met. She identified that at 17 years of age, with the increasing responsibility and independence which comes with young adulthood and maturity his views might be considered as determinative and that orders would only be made against those views in exceptional circumstances.
41. At 12 years of age, she thought the court needed to be particularly mindful of V's wishes and feelings both wishing to stay in the UK with her mother and brother and showing no signs of wishing to re-establish her relationship with her father. At her age the connection with a same-sex parent was arguably more important than ever.
42. However in respect of both Q and V, she identified a genuine concern as to how much weight could be given to their views given the years of chronic parental conflict and the issues arising from that which impacted upon the children's expressed views.
43. Despite the age difference between Q and V she concluded that they had a close relationship and that it was important for them to remain together, they generally having been constants in each other's lives. She thought Q was close to and protective of V and that he would return to Poland with her if the court ordered her return. The mother made clear that she would not return with Q and V. She wondered whether a return order might actually be a relief for Q and he might voluntarily take a decision to return were the court to order V's return. She did not think he was an angry young man and he has an ongoing relationship with his father. She concluded that he was missing Poland more than V was and would have mixed feelings about going back.
44. She thought any return should be managed and that staying with the paternal grandparents might be a reasonable way of dealing with that.
45. Ms Demery thought the views expressed by V and Q and the way in which they gave their opinions did not indicate a level of emotional impact that indicated there would

be a real difficulty in them adapting back to life with the father. She thought V would find it very difficult to return alone as although there have been times when they have been separated Q has largely been a constant and the two of them have suffered a lot over the years.

## The Relevant Law

### Article 13(b)

46. Article 13(b) of the *1980 Hague Convention* provides as follows:

*“... the requested state is not bound to order the return of the child if the person, institution or other body which opposes its return established that – (a) ...; or (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...or*

*The judicial 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.*

### Grave risk of harm and intolerability

47. The leading authorities in relation to the application of the Article 13(b) defense are:

- a. Re D (Abduction: Rights of Custody) [2006] UKHL51
- b. Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27, [2011] 2 FLR 758
- c. Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10, [2012] 2 FLR 442

48. The following principles can be drawn from those judgments

- i) There is no need for Article 13(b) 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.
- ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.
- iii) The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two. A relatively low risk of death may be grave.
- iv) The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation'. 'Intolerable' is a strong word, but when applied to a child

must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'.

- v) Article 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return may depend on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.
- vi) The source of the risk is irrelevant. I do not agree with Ms Papazian's assertion that a self-created risk (i.e. a mother refusing to return with the children or conflict created by the mother) cannot form the foundation of an Article 13(b) defence. The 'coach and four' doctrine deriving from C v C (Abduction: Rights of Custody) [1989] 1 WLR 654 has been substantially ameliorated following the judgment of Hale LJ in TB-v-JB (Abduction: Grave Risk of Harm) [2001] 2 FLR 515 TB-v-JB (supra) and Potter P in S-v-B (Abduction: Human Rights) [2005] 2 FLR 878 and the Supreme Court decisions in Re E and Re S. Of course the court will evaluate carefully any assertion that a primary carer cannot return or any other alleged risk to the children arising out of some matter control over which is in the hands of the Respondent but ultimately the court must consider whether the grave risk of harm exists or not, whatever its source.
- vii) Separation of siblings created by the return of one and not the other might create an intolerable situation. Re E (above); Re F (abduction: Article 13(b): psychiatric assessment) [2014] EWCA Civ 275, [2014] 2 FLR 1115; Re S (Child Abduction: Joinder of Sibling: Child's Objections) [2016] EWHC 1227 (Fam), [2017] 2 FLR 384.
- viii) Allegations that the courts or authorities of another EU member state are either incompetent or biased and that they do not properly fulfil their functions will not found an article 13(b) defence unless there is the '*most persuasive compelling evidence*' to support the contention: F-v-M [2008] 2 FLR 1263
- ix) Where allegations of domestic abuse are made the court should ask whether if they are true there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If they would then the court must ask how the child can be protected from such risk. If the protective measures could not ameliorate the risk the court must have to do its best to resolve disputed issues of fact. It will be rare to hear oral evidence.
- x) Article 11(4) precludes a non-return where it is established that adequate protective measures are available. The Practice Guide makes clear this is intended to address the situation where authorities have made or are prepared to make such arrangements. The Court of Appeal has said that protective measures includes all steps that can be taken – including housing, benefits etc as well as orders or undertakings. C (Children) (Abduction: Article 13 (B)) [2018] EWCA Civ 2834 (20 December 2018)



49. In respect of the grave risk of the child being placed in an intolerable situation the House of Lords and Supreme Court have said
- a. “‘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””
  - b. As with risk of harm, the threshold is high as all children must expect a certain amount of ‘rough and tumble’.

### Child’s objections

50. The law on the 'child's objection' defence under Article 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] 2 FLR 1074 (and endorsed by the Court of Appeal in Re F (Child's Objections) [2015] EWCA Civ 1022). In summary, the position is as follows:

- i) The gateway stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.
- ii) Whether a child objects is a question of fact. The child's views have to amount to an objection before Article 13 will be satisfied. An objection in this context is to be contrasted with a preference or wish.
- iii) The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child's views are one factor to take into account at the discretion stage.
- iv) There is a relatively low threshold requirement in relation to the objections defence, the obligation on the court is to 'take account' of the child's views, nothing more.
- v) At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times bear in mind that the Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.
- vi) Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are authentically the child's own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which are relevant to the child's welfare, as well as the general Convention considerations (Re M [2007] 1 AC 619).

51. I also note that in some cases an objection to a return to one parent may be indistinguishable from a return to a country.

### **Exercise of Discretion**

52. If a defence is established the court must then consider how to exercise its discretion on ordering a return or not.
53. The extent and of the discretion and the relevant factors for its exercise were discussed by Baroness Hale in In Re M [2007] UKHL 55 She made clear that there is no requirement to show exceptionality to justify exercising the discretion (see para 40) and that the discretion is at large. Policy considerations (including swift return of abducted children, comity with other countries judicial processes, deterring abduction,) which in hot pursuit cases will be of great weight must be balanced against factors relating to any defence established and welfare considerations which might support either a return or a non-return. Baroness Hale said:

*46. In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account 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.*

### **Summary Return under the Inherent Jurisdiction**

54. The child's best interests are the Court's paramount consideration when considering an application for return in the exercise of the inherent jurisdiction [Re J (Child Returned Abroad: Convention Rights) [2005] 2 FLR 802 [25]]  
*[25]. Hence, in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration*
55. As Re J further makes clear there is a choice before the Court [28]:  
*It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child*

56. Whether or not a return order is to be made depends on the facts of the case; however there is a starting point in favour of a return against which a case has to be made. Rejecting a submission by the applicant that courts should apply an approach that was broadly analogous to the 1980 Hague Convention approach Baroness Hale said:

*32. The most one can say, in my view, is that the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever.*

57. The House of Lords made clear both in *Re J*, but also in *re M* (above) that the welfare assessment in these sorts of cases may, if the court considers it appropriate, take a summary form. On the other hand, it may require a more detailed and comprehensive welfare evaluation.

### **Discussion and Conclusions**

58. My discussion in the following paragraphs is of relevance to the application for V's return pursuant to the 1980 Hague Convention where the Article 13(b) and child's objections exception are deployed. However it is also of course relevant to the welfare of Q which is the paramount consideration in relation to the application for his return pursuant to the inherent jurisdiction. The interplay between the evidence, issues arising and conclusions does not facilitate clear dividing lines.

59. The chronology, the party's accounts, the documents produced and the children's own interviews combined disclose a troubling history of parental conflict. Whilst there are no doubt many components which have given rise to this the most significant aspect, particularly in recent years, would appear to be the mother's inability to come to terms with the decision of the Polish courts in August 2014 which settled the children's residence with their father. The judgment of the Polish court makes clear that at that point in time the children expressed clear views about how they experienced their mother and their father. Although it appears that both the mother and father were able to meet their physical needs, it seems from what can be gleaned from the Polish appellate court judgment that the view of the psychologist and the court was that the father was better able to meet the children's emotional needs. At that time it was clearly the case that the children preferred the father as a parent finding him more stable calm and interested in their matters. Regrettably the mother's response to that decision was to refuse to comply with that order thus exposing Q and V to further conflict including enforcement processes and sudden changes of care. That approach has plainly left its mark on V in particular and is an inverse repetition of the mother's removal of the children from the father's care that the Polish appellate court identified as harmful in their judgment.

60. Thereafter it appears that the children remained in contact with their mother albeit restrictions were placed on contact, I think, as a result of the mother's failure to comply with the residence order. That contact progressed and it appears that the

children enjoyed relationships with their father, their mother and their extended family on both sides.

61. It appears that the mother's dissatisfaction with the Polish appellate court's order did not abate and she continued to find fault with the parenting that the father provided to Q and V. The mother's own account combined with that of the father makes tolerably clear that the authorities in Poland were notified of the mother's concerns. Enquiries appear to have been undertaken by V's school, by the police, by medical services and by the court. None of the complaints seem to have been made out. The mother's response to the involvement of those authorities is to reject the conclusions and to assert that those involved were either not competent or were pressured by the father into refusing to uphold the concerns. In respect of the children's medical conditions and in particular V's the evidence from the clinicians who have been involved does not provide a clear picture of her having been diagnosed with a heart problem. Both the mother and father seem to be agreed that when she was seen in the Polish hospital in April 2018 the clinicians did not consider she had a physiological problem but rather had been emotionally distressed. The letter produced by the father says both children are healthy and neither require specialist treatment. The letter produced by the mother dated 15 December 2018 appears to be a referral based largely on an account given by the mother, or possibly by V and says that the palpitations are not typical of TSV which is what the mother appears to suggest she suffers from. In respect of Q it seems from all of the evidence that the father had sought treatment for his sinus issues but had opted not to go down the surgical route which the mother preferred.
62. Although both Q and V make complaints about the father's care of them to Ms Demery in January 2019 it does not appear (according to both the mother and the father) that they made complaints about his care when seen by the court in February 2018 (or thereabouts). Although the mother says (see paragraph 20 of her statement) that they were not asked about contentious issues I find it hard to believe that these articulate and intelligent children speaking in their own language would not have felt able to express serious concerns had they held them at that point in time. I am conscious that they were of course living with their father then but they were having regular weekend contact with their mother and it seems clear that this was at a time when the mother was making complaints about the care given to the children by the father. In assessing the children's own accounts of the care given by their father I take account of the views I have reached below in respect of the weight that can be given to their accounts and their views when I deal with child's objections or a return pursuant to the inherent jurisdiction.
63. The picture which emerges from the evidence enables me to reach a clear view on the Article 13(b) defence that the mother puts forward in respect of the father's care of the children and the response of the Polish authorities. I do not consider this to be a case where I need to take the allegations at their highest as the evidence, not least that of the mother herself, allows me to reach a summary conclusion on these matters. The totality of the evidence does not support the mother's contention that the care given to the children by the father was seriously deficient so as to present a grave risk of harm to them were they to return to his care. The most serious of the mother's complaints is that the father ignores V's heart condition and that she might be at serious risk if left alone at home by the father. The medical evidence and the accounts of the parents simply does not support the level of risk that the mother contends for and in any event

the totality of the evidence tends more to support the father's case that he does provide appropriate care. The mother's assertions as to the inadequacies of the Polish authorities are very far short of the most persuasive compelling evidence required. The mother has therefore not established on the balance of probabilities that there is a grave risk of physical or psychological harm arising out of the father's care of the children or the authorities' response to it.

64. What of the application of Article 13(b) to the separation of V from her mother. The decision of the Polish courts in 2013 which settled V's residence with her father was a welfare based decision. She appears to have held positive views about her father at the time and to have settled into her father's care notwithstanding what she herself says about it being a shock. Indeed it must have been. The picture which emerges of her whilst in the care of her father is one where she was able to have relationships with her parents and extended family on both sides and where she was doing well at school. This does not suggest that the separation from her mother then or residing in the care of her father was harmful. Although she now expresses the clear view that she wishes to remain in her mother's care and does not wish to return to her father's care again I must take account of the weight which one can sensibly give to her expressed wishes given Ms Demery's observations and the wider evidential picture. The Polish court was engaged in these children's lives in spring 2018 and apparently saw nothing which justified a change in care. I have not had the benefit of copies of documents from the Polish court or any social worker involved at the time but self-evidently the change in the care arrangements was as a result of the mother's actions rather than court action. It is the mothers case that she cannot return to Poland and Q told Miss Demery that they had to move to the UK for financial reasons. Whilst the mother may now find it harder to return to Poland given her flat appears to have been subject to some process of seizure and sale in Poland and whilst she and her partner may find the economic prospects in England better I'm not satisfied that she cannot return. It is a choice she has made and continues to make. I am not at all clear as to why she and her partner moved to the UK and whether it was motivated by economic prospects or whether it was to get away from Poland and the system that she is so critical of and the possibility of the children being returned to the father again against her will. Having regard to the conclusion I have reached that V's views must be discounted heavily to reflect the situation she is in and the exposure to chronic parental conflict the mother has not satisfied me that on the balance of probabilities the separation of V from her mother will expose her to a grave risk of physical or psychological harm arising from the separation itself or that such separation would be intolerable for V.
65. What of separation from Q – would that give rise to a grave risk of psychological harm or an intolerable situation for V? On balance I consider that Q will return with V to Poland if I make that order and thus the risk of separation will not arise. Their history, in particular in April 2018 and Q's protective actions over recent months point to the likelihood on balance that he will return to Poland if V does so. However even if he did not return, I have reached the conclusion that the separation of Q and V would not create a grave risk of psychological harm to V or be otherwise intolerable for her. I have very much in mind what Ms Demery says at paragraph 38 and 48 of her report, Q and V's desire to be together and indeed, both of the parents express the opinion that they should not be separated. The father's position is somewhat more nuanced in that he invites the court to order V's return even if it does not order Q's return but that does not detract from his overarching view that they should if possible remain together. It is clear that the two are close and they must be a support for each

other in the atmosphere of conflict that at times surrounds them and to which they have been exposed for so long. Separating them will undoubtedly have an effect on them, particularly having regard to their reduced resilience as identified by Ms Demery. However they have lived apart for periods of time in particular at the instigation of or as a result of the actions of the mother. They lived separately for several months in 2014-15 when the mother refused to comply with the Polish court order, and they were further separated when the mother removed V from the father's care in April 2018. It is notable that Q chose to follow his sister at that point.

66. Therefore whilst I accept that there will be an impact on V of her returning without Q, I do not consider that the mother has established on the balance of probabilities that the impact of such separation creates a grave risk of psychological harm or are other intolerable situation for V.
67. As it happens in my view this is a theoretical issue in any event as I consider that Q will return with V.
68. What of the expressed views of Q and V? For the purposes of the 1980 Hague Convention I'm satisfied on a robust and straightforward assessment that V's views amount to an objection within the ordinary meaning of that term, as explained by Lady Justice Black in *Re M* (above). Taking into account the positive views she has expressed in respect of her mother, the negative views she has expressed in relation to her father and her expressed desire to remain living in the UK with her mother, stepfather, little brother, and older brother satisfy me that these are more than a preference but are an objection to returning to the care of her father in Poland. Likewise Q's expressed views constitute a clear wish to remain living in the UK in this family unit.
69. Both Q and V are of an age and degree of maturity (they both being considered to be of a maturity commensurate with their chronological age) where it is appropriate to take account of her views (V) or to have regard to his age and understanding (Q). The evidence from Ms Demery, from their letters from their parents and from the school and court process in Poland satisfy me that their views should be taken into account and given weight.
70. Thus in respect of V, the gateway to the child's objection defence is established. In respect of Q, the *Re J* starting point might well be displaced by his views as a mature 17-year-old. Thus the discretion under article 13 of the 1980 Hague Convention or the discretion engaged by the inherent jurisdiction is clearly engaged.
71. However the critical question in this case is what weight should properly be given to their views in that discretionary exercise because they are not determinative either in respect of V or Q.
72. In respect of the child's objections exception the House of Lords has specifically identified a number of factors that ought to fall for consideration when determining child's objections.
73. It is clear from what both Q and V say that the nature of their objection is a general, albeit not very serious, criticism of the level of care afforded to them by their father together with a general, albeit not very reasoned, preference to their mother's care. Thus the objection is not of a more fundamental or profound nature that might arise in cases of physical or emotional abuse. In terms of the strength of the objection it is not

especially strong, but nor is it particularly weak. Neither V or Q express themselves in particularly strong terms, which evidences very strong feelings about remaining or returning. Ms Demery did not detect the indignance or strength of feeling that is frequently encountered in children and young people the subject of this sort of application. Q in particular expressed views that he was anxious about coming to the UK and he is clearly still wistful about aspects of life in Poland. I suspect that having lived all his life in Poland, having been school in Poland and having a group of friends in Poland as well as an extended family who he had relationships with in Poland that he feels rather more positive about Poland and rather less positive about the UK than he has actually said. The same is likely to be true of V who also was doing well in school, had good friends and appears to have had good relationships with her extended family on both sides whilst in Poland. Q asks me to think twice before ordering a return and I will do so

74. But having regard to their expressed views, to what extent are those expressed views authentically their own or the product of influence of the abducting parent? Ms Demery is a very experienced Cafcass officer with considerable exposure to this sort of case. It was clear from her evidence that she had considerable reservations about her ability to determine what the children's authentic views were. She was clear that they were overlaid or obscured by their exposure to chronic parental conflict. She identified particular features which pointed at influence from the mother or her household; whether direct or environmental. V's apparently positive memories in relation to schoolfriends was converted into a complaint about bullying after she returned to her mother in the waiting room and wrote her letter. The history of the children in Poland however in any event makes abundantly clear that they have been caught up in a situation where their mother refuses to acknowledge or accept the Polish court's decision that the children should live with their father. That decision was based in large measure on the children's then apparently expressed preference for their father over their mother. The concerns expressed by the school about V being able to express herself freely in the presence of the mother's partner are a further concern. The fact that the children were able to have a full relationship with their mother and their extended families in Poland but have had an attenuated almost non-existent relationship with their paternal family since August or September 2018 suggest that they may feel obliged to align themselves with their mother when in her care but are more able to express themselves freely when in the father's care.
75. This latter point also bears upon the extent to which their views coincide or at odds with other considerations relevant to their welfare. These children were born and grew up in Poland being fully integrated into a family and school community there. Being re-integrated into that community, being able to re-establish their friendships, attend their schools, reengage with their extended families are all beneficial to their welfare and thus their views are at odds with a more objective appraisal of their welfare.
76. Objectively speaking their complaints about their father's care and thus their reasons for wishing to remain with their mother and not return to their father do not seem to be consistent with the evidence that the mother and father give about what has occurred in Poland. Thus one has to question the objectivity of their views. One also has to question the perspective of the children. Although Q's ongoing relationship with his father and the nature of his description of that suggests something positive he describes it in negative terms. V is wholly rejecting of her father. Neither of those positions appear objectively justifiable or demonstrate any sense of perspective. The

evidence of their views ascertained by the court and the psychologist in 2013 is inconsistent with their position now. Of course it may all have changed but the evidence does not suggest that is so. I conclude that their views are likely to be different when they are in Poland and away from the atmosphere of hostility to the father which they currently exist in. Thus their views will be ameliorated upon a return to some degree or another.

77. I agree with Ms Demery that what all of this indicates is two young people who have been exposed to conflict as their mother has kicked back against the Polish court's decision, refusing to accept it in 2014 and since. The mother's unhappiness with that decision and her resistance to its enforcement and her subsequent ongoing campaign to undermine the father's care of the children and to persuade the Polish authorities that the children should live with her must have exposed the children quite extensively to that conflict. In 2013 the psychologist report identified the mother as being seen by the children as unpredictable, unstable and loud. Although it was only a small illustration I observed at times in the hearing that the mother was unable to contain herself either becoming distressed or agitatedly making points to her legal team. The evidence suggests that she would be unable to shield the children from her views and indeed the track record of the absence of contact with the father and the estrangement from the paternal family since April 2018 all support this.
78. Thus the objection which V expresses in my view carries very considerably less weight than at first glance. Indeed in reality it may not be an objection any more. Likewise Q's expressed wishes.
79. In respect of the child's objections defence and the discretion I must also take account of the general welfare considerations and the policy considerations supporting the Convention.
80. In welfare terms clearly a further change to the children's arrangements will have negative consequences. They have now been with their mother for some 10 months and in this country for some five months. I note Ms Demery's observations on their reduced resilience in respect of change. Going against their expressed wishes may also have some welfare consequences. However on the other side of the equation the children will be reinserted into an environment with which they are wholly familiar as I have identified above. Resuming familiar schools, reacquainting themselves with friends, re-engaging with their extended family not least their father and resuming life with a language and culture in which they have been raised. All of those have clear welfare advantages.
81. The policy considerations in this case are also weighty. The mother has a track record of non-compliance with court orders or otherwise taking unilateral action otherwise. That occurred in 2010, 2013 – 2014 and again in 2018 in April and August/September. The policy consideration of deterring such action is a strong one. This is a hot issue pursuit case. The Polish courts have been involved with these children for some nine years and there are current applications outstanding before the Polish court. I'm told that on 31 January 2019 the Polish court adjourned the case there to await the outcome of this hearing. The benefits for the children of the Polish court resuming their consideration of the case and acting in comity with the Polish court orders and process are weighty factors in favour of a return.
82. Taking all of those matters into consideration and weighing them all in the balance, the remnants of the objection and welfare matters in support of V remaining here and



the welfare and policy considerations pointing the other way I conclude in respect of V that in the exercise of my discretion arising out of her objection that the balance falls clearly in favour of her return to Poland.

83. I have thought very long and hard about whether an order for return is in Q's best interests. I have concluded that it is in his best interest's overall to return but that still begs the question of whether an order is appropriate or not given his age. I have thought more than twice about what the right outcome and order should be in respect of Q. I have considered whether given his age I should decline the application for the order for return but rather to operate on the belief that he will return with V in any event as I believe that he wishes to remain with her and a large part of him wishes to return to Poland anyway. If I leave the choice to him I feel reasonably sure that he will come under significant pressure from his mother and her partner to remain and I do not consider that to be in his best interest. I conclude that there may be some merit in Miss Papazian's point that although he describes his contact with his father as being undertaken in order to comply with the court order that may in fact be a mask for an underlying and genuine desire to have a relationship with his father. I have also obviously considered whether in making an order for return it will set up struggle between the court system seeking to enforce the return and Q resisting. From all I have read and heard about Q I do not conclude that this is a likely outcome. I conclude that it is more likely that Q will cooperate in the process of return. In respect of Q I'm also satisfied that an order for his return should be made pursuant to the inherent jurisdiction. Notwithstanding he is 17 and has expressed a desire to remain in the UK and not to return to Poland, I'm satisfied on a summary assessment of his welfare that a return is in his best interests notwithstanding his age and his expressed views. The summary welfare assessment comprises many elements and save in respect of his expressed views they point to his welfare being promoted by a return to Poland and the resumption of a full life there. I am fully alive to the unusual nature of making a return order in respect of a 17-year-old who says he does not wish to return. However I am particularly alive to the issue of the impact that the chronic parental conflict is having on the ability of Q and V to truly understand their own positions and to be able to express views which are not tainted by the backdrop to their lives that the conflict has given. I consider that making an order in respect of Q may in fact free him from responsibility which would otherwise be placed on him to seek to remain in England in support of the mother's ongoing campaign to remedy what occurred in Poland in 2014

### **Conclusion**

84. I therefore conclude that the mother has failed to establish either an Article 13(b) or a child's objections exception to the father's application pursuant to the 1980 Hague Convention. I will therefore order V's summary return to Poland.
85. I also conclude that it is in Q's welfare interests to be returned to Poland pursuant to the inherent jurisdiction of the High Court with respect to children.
86. The applicant father has offered an undertaking that the children should initially move to stay with his parents in order to ease their transition back to Poland. I do not consider that any time limit should be placed on this if the children wish to return to their father's home. It may be that once the children returned to Poland they will wish to return to live with their father; if they do they should be able to. If they do not they can remain with their grandparents until the court has conducted a further enquiry and

made further welfare-based decisions in accordance with the substantive jurisdiction that they have over these children.

87. That is my judgment.