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Case No: FD21P00086

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/05/2021
(Final Version: 27/05/2021)

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

C	**Applicant**
- and -	
B	**Respondent**

- -
- -

Clare Renton (instructed by **Charles Strachan, Solicitors**) for the Applicant Father
Paul Hepher (instructed by **Oliver Fisher, Solicitors**) for the Respondent Mother

Hearing dates: 18 May 2021

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Approved Judgment

I direct that 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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THE HONOURABLE MR JUSTICE COBB

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

THE HONOURABLE MR JUSTICE COBB:

Introduction

1. By application dated 9 February 2021, Mr C (hereafter "the father") seeks an order for the return of his two sons to Spain, specifically Lanzarote, pursuant to the *1980 Hague Convention on the Civil Aspects of the International Child Abduction*. The application is opposed by Ms B (hereafter "the mother"). The subject children are O, who is 3 (rising 4) years old, and D who is 18 months old.

2. The application has been presented at this final hearing on the basis of the written evidence and submissions only. Both parents have filed detailed statements supported as appropriate with documentary evidence, and in the mother's case, video evidence.

3. I note that prior to this hearing the parties have attempted to settle these proceedings through mediation with Reunite; this was not successful. I also note that the mother has made an open offer to settle the litigation on the basis that she remains in this country, while facilitating a relationship for the boys with their father, but her offer was declined.

4. The hearing was conducted on MS Teams on 18 May; at the conclusion of submissions, I caused further factual enquiries to be made, and received the answers later that day. This judgment now sets out my decision and explains my reasons.

Background

5. The father is Italian, but has lived in Lanzarote, Spain, since he was seven years old. He is now aged 36. The mother is British; she is 28 years old, and has lived in Lanzarote for most of the period since 2012. The relationship of the parties began in or about 2012. They separated for a period, and at that time, the father moved briefly to live in England with a new partner who was expecting their child. The mother too returned briefly to England. In May 2015, the mother returned to Lanzarote, reconnected with the father (who by then had also returned), and they resumed their relationship. They lived together for about five years until January 2021. The father in fact has *two* children living in England with whom he has no current contact, and who he does not (it is agreed, but for different reasons) support financially.

6. The parties have very different perspectives on the quality of their relationship. The mother describes it as one in which she felt controlled and coerced, and in which she suffered more vivid forms of domestic abuse, including physical violence. She avers that the family lived in relative penury given the low paid work which mother and the father both had locally; the father is/was a disc jockey, and the mother did bar work initially in the same entertainment complex.

7. The parents were never married. Both boys were born in Lanzarote. There is a dispute on the face of the papers as to who was the primary carer of the boys throughout their lives; it is obvious (as indicated above) that both parents worked, and doubtless there was some sharing of parenting tasks. It seems to me on the evidence that the mother assumed the greater responsibility for child care, but it is neither necessary, nor appropriate, for me to make any further comment, let alone finding, on this issue.

8. In the autumn of 2020, the mother, on her account struggling emotionally to cope with the difficult relationship with the father, consulted her Spanish GP, who in turn referred her to a psychiatrist who prescribed her anti-anxiety medication. The mother was also referred to a social worker for support.

9. On 8 January 2021 the mother informed the father that she had arranged flights to leave Lanzarote with the children on the following day in order to return to England. The father informed the mother that he did not agree to this, and that if she wanted to leave there needed to be some form of formal or legal arrangement in place concerning the children. The police were called, but no action was taken.

10. On 14 January 2021, the mother removed O from school, and then took both boys to the airport and fled Spain; she did this by stealth, without notice to the father. She flew with the boys to England, where they are now all staying with the maternal grandfather. The father immediately lodged a complaint with the police in Lanzarote, alleging abduction.

11. On 19 January 2021 the mother issued proceedings in Spain for sole custody and 'Guardianship' of the two children, and financial maintenance. Within the proceedings the mother seeks leave to relocate the children to England, offering contact with the father. Her lawyers in Spain have filed detailed pleadings and statements supporting the mother's case. There is to be a hearing on 7 July 2021 in the court in Spain; I am told (but this has not been verified) that this is to be a remotely conducted hearing on video-platform. The mother asserts that she has been advised by her Spanish lawyer that she will succeed in her claim for sole custody, and permission to relocate to England. It is said (by the mother) that in those proceedings, the father has agreed that the children will remain living primarily with their mother.

12. The father continues to live in Lanzarote. His wider family live there, or elsewhere in the Canary Islands. He has been out of work for a significant period of time given the impact of Covid-19 on the tourism industry in Spain as elsewhere. He currently receives €300 income per month in state benefits and some additional cash in hand for working in a Vape shop. The rent has not been paid on the parties' apartment for the last year, and the arrears are now said to be approximately €6,500. The mother has no employment in Spain or England, and she maintains that she has no means of supporting herself should she and the children return to Spain. Historically, the family struggled to make ends meet, and the situation now and for the foreseeable future – according to the mother – is likely to be worse than it was.

The law

13. The father's application must be determined by reference to the provisions of *Article 3* of the *1980 Hague Convention* which specifies that:

> "The removal or the retention of a child is to be considered wrongful where –
> (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

> (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
>
> The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State".

14. On the evidence before this court there is no doubt (indeed it is accepted) that there has been a wrongful removal of the two boys from Lanzarote to England. In the circumstances I am obliged to "order the return of the child forthwith" (*Article 12*) unless one of the exceptions in *Article 13* applies.

15. *Article 13* provides as follows:

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
>
> (a) … 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.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views." (emphasis by underlining added).

16. If such exception exists, I am vested with discretion whether to order that the relevant children should return.

17. Counsel broadly agree on the relevant caselaw, though each highlight different aspects of it. The threshold for proving an exception under *Article 13(b)* remains high notwithstanding the removal of judicial gloss on the words of the exception by the Supreme Court in their judgments in *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27, [2011] 2 FLR 758 and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10, [2012] 2 FLR 442.

18. It is to be noted that (per *Re E* at [33]):

> "Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm"

It is also the case (*Re E* at [35]) that I must consider:

> "… the situation as it would be if the child were to be returned forthwith to her home country. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home" (emphasis by underlining added).

19. The burden is on the mother to demonstrate that this exception of "restricted application"[1] applies, and to produce evidence to substantiate the same. Here she seeks to demonstrate on the balance of probabilities that "there is a grave risk" that the return of the boys to Lanzarote would them to "physical or psychological harm or otherwise place [them] in an intolerable situation".

20. 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"[2] – it should be "a situation which this particular child in these particular circumstances should not be expected to tolerate." If this is established, then I may consider whether, in the exercise of my discretion, I should order their return.

21. Lord Donaldson MR in *C v C (Abduction: Rights of Custody)* [1989][3] (cited in *AT v SS*: see below) adds this further aid to interpretation/application of this exception:

> "… in a situation in which it is necessary to consider operating the machinery of the Convention, some psychological harm to the child is inherent, whether the child is or is not returned. This is, I think, recognised by the words 'or otherwise place the child in an intolerable situation' which cast considerable light on the severe degree of psychological harm which the Convention has in mind. It will be the concern of the court of the State to which the child is to be returned to minimise or eliminate this harm and, in the absence of compelling evidence to the contrary or evidence that it is beyond the powers of those

[1] *Re E (Children)(Abduction: Custody Appeal*) [2012] 1 AC 144 at [31]
[2] *Re D (Abduction: Rights of Custody)* [2007] 1 Ac 619 at [52] Baroness Hale.
[3] For citation, see [49] above.

> courts in the circumstances of the case, the courts of this country should assume that this will be done. Save in an exceptional case, our concern, i.e., the concern of these courts, should be limited to giving the child the maximum possible protection until the courts of the other country… can resume their normal role in relation to the child." (Emphasis by underlining added).

22. To illustrate this point I have had regard to the decision of *AT v SS (Abduction: Art 13(b): Separation from carer)* [2016] 2 FLR 1102 in which MacDonald J observed ([33]), and I agree, that even the separation of a child from his or her primary carer may satisfy the imperatives of *Article 13(b)*, but whether it actually does will depend on the particular facts in each case; it is notable that in that case, even the prospect that the child would probably be placed temporarily in foster care in the requesting country was not sufficient to justify the exception. I cite here MacDonald J's summary to illustrate and highlight that point:

> "As regards a return to a placement in care in the requesting State, where the requesting State has adequate procedures for protecting the child, and accepting that each case must turn on its own facts, it is unlikely that a parent will be able to successfully oppose a return on the basis that the child is being returned into temporary public care pending the courts making a substantive welfare determination (see *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and *Re S (Abduction: Return to Care)* [1999] 1 FLR 843). Once again however, each case will turn on its own facts." (at [34])

23. Mr Hepher focuses on a different judgment of Mr Justice Macdonald, namely *MB v TB* [2019] EWHC 1019 (Fam) wherein from paragraph 31 he states (emphasis added):

> "[31] The law in respect of the defence of harm or intolerability under *Art 13(b)* was examined and clarified by the Supreme Court in *Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144. The applicable principles may be summarised as follows:
>
> i. There is no need for *Art 13(b)* to be narrowly construed. By its very terms it is of restricted application. The words of *Art 13* are quite plain and need no further elaboration or gloss.
> ii. The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the

limitations involved in the summary nature of the Convention process.

iii. The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two.

iv. The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation'. 'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'.

v. *Art 13(b)* looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.

vi. Where the defence under *Art 13(b)* is said to be based on the anxieties of a respondent mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable the court will look very critically at such an assertion and will, among other things, ask if it can be dispelled. However, in principle, such anxieties can found the defence under Art 13(b).

[32] The Supreme Court made clear that the approach to be adopted in respect of the harm defence is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as ground the defence under *Art 13(b)*. Rather, the court should assume the risk of harm at its highest on the evidence available to the court and then, if that risk meets the test in *Art 13(b)*, go on to consider whether protective measures sufficient to mitigate harm are identified. It follows that if, having considered the risk of harm at its highest on the

> available evidence, the court considers that it does not meet the imperatives of *Art 13(b)*, the court is not obliged to go on to consider the question of protective measures.
> As I have noted above, the burden of proof rests upon the mother to make out her case and establish the particulars of that part of the *Art 13* exception she relies upon". (Emphasis by underlining added).

24. He went on to refer to the recent decision of *G v G* [2021] UKSC 9 at §61-64:

> **"**[61] The focus of *art 13(b)* is on the risk to the child: if there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, then the source of the risk and how it arises are irrelevant (*In re E* at para 34; and *In re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10; [2012] 2 AC 257 ("*In re S 2012*"), para 34 per Lord Wilson, giving the judgment of the court).
>
> **[62]** Although the focus is on the child, it is well established that the child's situation may be directly or indirectly affected by the taking parent's situation with the result that the latter can be highly relevant to whether the grave risk referred in art 13(b) has been established. Thus, Hale LJ said in *TB v JB (Abduction: Grave Risk of Harm)* [2000] EWCA Civ 337; [2001] 2 FLR 515, para 44:
>
> > 'It is important to remember that the risks in question are those faced by the children, not by the parent. But those risks may be quite different depending upon whether they are returning to the home country where the primary carer is the 'left-behind' parent or whether they are returning to a home country where their primary carer will herself face severe difficulties in providing properly for their needs. Primary carers who have fled from abuse and maltreatment should not be expected to go back to it, if this will have a seriously detrimental effect upon the children. We are now more conscious of the effects of such treatment, not only on the immediate victims but also on the children who witness it.'
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> **[63]** A similar point was made by Wall LJ in *In re W (Abduction: Domestic Violence)* [2004] EWCA Civ 1366; [2005] 1 FLR 727, para 49; and in *In re S 2012*, Lord Wilson said (at para 34):

> 'In the light of these passages we must make clear the effect of what this court said in [In re E]. The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned.'
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> **[64]** A recent example of this was *B (A Child) (Abduction: art 13(b))* [2020] EWCA Civ 1057. I would also refer to the *Guide to Good Practice* on *art 13(1)(b)* published by the Permanent Bureau of the Hague Conference in March 2020 which, at para 33, notes that this "exception does not require, for example, that the child be the direct or primary victim of physical harm if there is sufficient evidence that, because of a risk of harm directed to a taking parent, there is a grave risk to the child".

I have these authorities very much in mind when making my decision.

Intolerable situation: grave risk of psychological or physical harm: the mother's case

25. It is the mother's case is that the grave risk of psychological or physical harm and/or intolerability to the children is made out by a combination of the following:

    a. exposure to the father's continuing domestic abuse and controlling/coercive behaviour;

    b. a lack of meaningful financial support from the father;

    c. vulnerable accommodation on a return to Lanzarote, given the arrears of rent on the family apartment, and no real prospect of being able to fund accommodation for herself and the children;

    d. the risk that she will be arrested and separated from the children; as I mentioned above, the father has made a police complaint which (the mother asserts) he was swift to make, and he has not apparently yet withdrawn; these are young and vulnerable children, and the mother is their primary carer; she maintains that it would be intolerable to them to be separated from her.

26. I take these points in turn.

27. *(a) Domestic abuse*: The mother maintains that the relationship with the father was abusive more or less from its outset; early on in their relationship, she says that she became pregnant but felt that the father "gave her no choice" but to have a termination in respect of which he was wholly unsupportive. The mother's case is that the father became progressively more controlling, rarely allowing her to leave the apartment on her own or

with her friends, and "never without an argument". Her statement contains this telling passage:

> "It is almost impossible for me to substantiate his coercive behaviour as it does not manifest itself in bruises or scars; it is covert, progressive and invasive and is used in an almost narcissistic manner to control all around him including his family and friends to fulfil his bidding…".

I am mindful, when reading this passage of the comments of the Court of Appeal in the decision of *Re H-N & others* [2021] EWCA Civ 448, and in particular at §31:

> "… a pattern of coercive and/or controlling behaviour can be as abusive as or more abusive than any particular factual incident that might be written down and included in a schedule in court proceedings … It follows that the harm to a child in an abusive household is not limited to cases of actual violence to the child or to the parent. A pattern of abusive behaviour is as relevant to the child as to the adult victim."

28. She asserts that her actions in seeking medical help in the autumn of 2020, the referral to social services, the police callout in January 2021, her application to the Spanish court, and ultimately her flight to the UK, all corroborate her case that her life, and the life of her children, had become "intolerable" in Spain. She contends that she had tried to address the problems on the ground *in situ*, and had not succeeded.

29. The mother's case is that the children were exposed to the father's controlling behaviour, and his aggression. As time went on, the mother says that their life became one of two separate people cohabiting in an apartment and trapped by the financial commitments which they had made together, which were magnified by their unemployment following the outbreak of the Covid-19 pandemic.

30. In response to this, the father points up that had the mother been truly fearful of domestic abuse she would not have offered him unsupervised contact in the Spanish Court proceedings; she responds by saying that she had given these instructions to her Spanish lawyers in December 2020 in advance of the situation having escalated, and is now able to assess the situation objectively as she has been able to find some space between herself and the events.

31. In her witness statement, the mother says that she was advised by her Spanish lawyer to leave Spain and return to England "to safeguard the children and myself", adding, interestingly, that the lawyer had further advised that she "may need to return if the case was contested by (the father)".

32. The mother is concerned that she has no assurance of sanctity of the home even on the basis of the protective measures proposed. She points to the fact that the father declines

to undertake not to come to the house, or go to the nursery; he refuses to hand over the keys to the property. Mr Hepher argues that "This father has no insight or understanding of the domestic abuse… the mother can have no confidence that the father will not be turning up".

33. *(b)/(c): Finance/Accommodation*: It is the mother's case that the father is financially feckless, showing no commitment financially to support his older children, and has little regard to supporting the mother or the subject children. She describes him as a "hapless teenager" (in this as in many respects of his life) who indulges what little money he has on himself. The mother contends that the father has seemed purposely to earn only enough to stay below the 'radar', and would often accept cash in hand work. The parties have plainly generated not insignificant debt in Lanzarote by their failure to pay their rent, and/or honour a car lease agreement. (I note in passing that the father has arranged for his family to take over the loan on the car but does not seem to think that his family can help him financially to support the mother and children; the mother questions whether the paternal family have accepted the car debt, and I question their priorities if the father's account is true).

34. The mother maintains, with justification it seems to me, that the father's offer of €100 per month will not go far to support her or the children. The father, she points out, has prevaricated over whether he can pay this sum up front, and appears now to have reneged on his offer to pay for the return flight for the mother and children.

35. That said the mother appears to be able privately to fund her litigation in Spain; the father is in receipt of the equivalent of legal aid. Moreover, she has recently received £880 as a payment of Universal Credit, and can apparently expect a monthly sum of around £440 hereafter. She has some savings in a Spanish bank account which represents a tax rebate. Thus, although she is not financially comfortable – far from it – she does at least have access to some funds currently, and is being (and has been for some months) supported financially by her family.

36. In Spain, the mother would not be immediately eligible for benefits as she has been away for 90 days; moreover, the boys have never been registered as resident in Spain, and this may affect their entitlement to child benefits.

37. *(d) Arrest*: The mother is concerned that she will be arrested on her return to Spain.

38. *Fallback position:* Mr Hepher asks me to examine in concrete terms the situation that would actually face the mother on her return to Spain: what would happen to her as she stepped off the plane? In this regard, he cites the Court of Appeal decision of *Re GP (a child: abduction)* [2017] EWCA Civ 1677. I can confirm that the approach advocated by the Court of Appeal is that which I have taken in this case. That said, the mother's fallback position is that, if return order is made it should be deferred until after 7 July 2021. She says this:

> "This would allow (the father) or myself the time to raise the funds,… And to meet the evolving and slowly releasing requirements of lockdown during the pandemic in both the UK and Spain.… I would also ask the court to provide for 'urgent travel' for my

> father to travel with me at his own expense in order to provide support for me and the children."

Intolerable situation: grave risk of psychological or physical harm: the father's case

39. The father disputes the mother's claims of domestic abuse, and of controlling or coercive behaviour. He denies assaulting her, even after the mother (on her own admission) had thrown a drink over him in an incident in 2015. He points to the fact that in the Spanish Court proceedings the mother had offered him unsupervised and staying contact, which is inconsistent with her case before this court (I have referred to the mother's case on this at §30 above). He points (with somewhat greater merit) to the fact that even in her most recent witness statement, she says that she would offer him contact "during school holidays at Easter and summer and one of the half terms on dates to be agreed", but makes no mention of supervision or other safeguard, which again he observes, through Ms Renton, is inconsistent with her claims of abuse.

40. He further points to the fact that in her witness statement in support of her *Article 13(b)* case, she had said that she would "be happy and content to move locally or indeed for him to move to another address", and asserts now that this could be – indeed should be – the solution for this couple on her return at least for the short term.

41. Insofar as the mother requires protection (which he disputes) he relies upon a response received from the Spanish Central Authority, pursuant to a request made within these proceedings, to the effect that protective measures are available in Spain for the mother and children upon return; "Spanish social services are able to work with families on a global basis, seeking to avoid any kind of child neglect." The response from the Central Authority goes on to describe regulations in place

> "… to prevent violence against women, which allows victims of gender violence to ask specialised Courts, which were created in order to deal with these cases, to adopt early protective measures, as restraint orders. These regulations provide harsh penalties and this kind of crimes (sic.). It is a zero tolerance policy…. In case the Court decides to order return of the child, this Central Authority is available in order to notify the relevant social services of this fact, so they are aware of the situation."

42. In relation to the mother's case on financial privation / economic disadvantage, Ms Renton relies on the extract from the recently published handbook to the Hague Convention at §60:

> "Where assertions of grave risk based on economic or developmental disadvantages upon the return of the child are made, the analysis should focus on whether the basic needs of the child can be met in the State of habitual residence. The court is not to embark on a comparison between the living conditions that each parent (or each State) may offer. This may be relevant

> in a subsequent custody case but has no relevance to an *Article 13(1)(b)* analysis. More modest living conditions and / or more limited developmental support in the State of habitual residence are therefore not sufficient to establish the grave risk exception. If the taking parent claims to be unable to return with the child to the State of habitual residence because of their difficult or untenable economic situation, e.g., because his / her living standard would be lower, he / she is unable to find employment in that State, or is otherwise in dire circumstances, this will usually not be sufficient to issue a non-return order. In particular, dependency on State benefits or other institutional support does not in itself amount to a grave risk. Only very exceptional circumstances might lead to a grave risk to the child. Where circumstances have been established that would amount to a grave risk, courts may consider whether protective measures can protect the child from such risk, such as the provision of some urgent financial assistance for the short-term period until the court of competent jurisdiction in the State of habitual residence can make any necessary orders."

43. The father has offered a range of protective measures in order to address the mother's case on *Article 13(b)*. I do not propose to rehearse the full suite of measures, but they include the following (in summary) undertakings:

    a. to withdraw the criminal complaint, and not instigate or support any civil or criminal proceedings against the mother;

    b. not to use or threaten violence, intimidate, or harass or pester the mother;

    c. not to separate O and D from the mother save for contact as agreed or ordered by the court;

    d. to pay for Covid 19 testing for the mother and boys to enable them to travel;

    e. to move out of the family home, in order to allow the mother and children to move in; thereafter he will not enter the property and will attend only for the purposes of collecting or delivering the children for contact;

    f. to ensure that the kitchen is stocked before their return and the Wi-Fi connected;

    g. to pay €100 per month for two months

    h. not to attend at the airport upon their return.

44. I note that at one time he had offered to pay the mother's return flight "if this is absolutely necessary" (see §24 of his first statement). I consider that it is so necessary and will accept this original offer in this regard.

45. The mother is said to be unpersuaded by the father's offer of protective measures; Mr Hepher argues that, through his inadequate offer, the father does not show sufficient understanding or regard for the very real concerns which the mother has raised.

Conclusion

46. Having reviewed the evidence carefully, I have reached the conclusion that the mother has, on balance, failed in her efforts to demonstrate that her case falls within the limited exception afforded by *Article 13(b)* of the *1980 Hague Convention*. In the circumstances, I am obliged to make a return order in respect of the children.

47. I wish to make clear that, on the information that I have received from the parties through their written statements, I regard the proposed arrangements for the mother and children in the event of their return to Lanzarote as unsatisfactory. I strongly suspect that this view will be shared by the Judge of the Spanish Court who will be considering the arrangements for the children from a pure *welfare* basis.

48. To expand, for my part, I find the proposed arrangements 'unsatisfactory' for the following reasons, specifically:

    a. The mother would enjoy little security in the accommodation / family home in Lanzarote. There are significant arrears of rent outstanding, and this has been so for many months. While the landlord is said (by the father) to be very understanding and has not indicated (so far as I know) any intention to take possession of the apartment in the near future, or at all, it remains a largely unsustainable option for the mother in anything but the short term. That said, it is at least currently available for the mother and children should she return, and the father has willingly agreed to vacate to give her and the children their own space;

    b. While the mother has a good track record of work in Lanzarote, she has no ready source of income in Spain, and no immediate employment to return to; she is at least known to employers in the area, and it is to be hoped that she has a sufficiently good track record as to be able to stimulate a job offer;

    c. While the mother is plainly entitled to (and is receiving) benefits in England, and in Spain, she is likely to fall into a temporary benefits void if/when she returns given her absence from Spain for more than 90 days; she will not be entitled to receive benefits from England while in Spain;

    d. She is unable to rely to any great extent on financial support from the father, who appears unattractively insouciant to her potential financial plight. As I have earlier mentioned, the mother has at least been able to rely upon the generosity of her own family in recent months, and I am sure that they would not financially abandon her now.

49. While the situation is, as I say, 'unsatisfactory' I cannot say that it would be "intolerable" for the mother and/or children, and I cannot conclude that the children would be exposed to a "grave" risk (and I emphasise, that I have considered with care the meaning and connotation of the operative words 'intolerable' and 'grave') of physical or psychological harm in this regard. I do note that the Handbook entry on which Ms Renton relies (see §42 above) contemplates that even if the parent who has removed the children would be placed in "dire financial circumstances" it is suggested that this would not warrant a finding of "grave risk" / "intolerability".

50. The mother's claims of domestic abuse at the hands of the father are powerfully made, in my judgement, but can be adequately met in the short term by a combination of (a) the father's voluntary undertakings offered to this court which I accept, (b) the assistance and support of social services in Spain in her return (referred to by ICACU), and (c) any orders from the Spanish Court. The Spanish Court will doubtless be alive to the fact, as I am myself, that coercive and controlling behaviour can take many forms – including financial abuse – and its insidious and pervasive nature can be difficult to contain or manage through the giving of formal undertakings as to molestation. As the case moves forward, I trust that the Spanish Court will impose whatever strictures are considered appropriate and necessary to manage the parents' relationship and their behaviour towards each other going forward if the mother is even in the short-term living in Spain. All that said, I note that notwithstanding the complaints of abuse, the mother had contemplated – through her very recent statement filed in these proceedings – a situation in which she and the father would be living separately in Spain, and that the father would be having visiting and staying contact with the boys.

51. Although, as indicated earlier, I propose to make a return order, I am satisfied that it would be wrong to require the mother and children to return to Lanzarote until *after* the hearing within the domestic custody proceedings in the Court in Spain which is scheduled for 7 July 2021. While I, of course, bear in mind the summary nature of this process, and the expectation of swift implementation of orders, I am particularly influenced in giving this direction by the following factors in combination:

    a. while I am constrained to consider this application for summary return on the strict application of the *1980 Hague Convention*, and the "restricted" nature of the exception under *Article 13(b)*, the Spanish Court by contrast may undertake a much more focused (even if attenuated) *welfare* review and reach a *welfare* decision on 7 July 2021, on an interim basis, by reference to the children's *best interests*; it seems to me that it would be wrong to require the mother and children to return to Lanzarote within the next 14 days (as proposed by Ms Renton) only for this Spanish Court to rule a few weeks' thereafter that it would be in the boys' best interests for them to return forthwith to England where they could spend the period prior to any final determination of the mother's Spanish Court application;

    b. if the Spanish Court takes the view that the children should be in Lanzarote in the interim period, it can make all appropriate orders to regulate that arrangement (which may of course include both non-molestation orders, exclusion orders, and financial provision for her and the boys) which will be effective and enforceable there;

c. between now and 7 July, the mother will have the ability to build up a small additional fund from her entitlement to Universal Credit to enable her to live in Spain until she can obtain work; she has been able to pay c.£880 into her account this week. Although I heard no evidence on this, her family have helped her to make ends meet in this country over the last few months, and it is reasonable to assume that they would do so in Lanzarote at least in the short term. I accept that all indications are that she would be ill-served to rely upon the father to any great extent in this regard;

d. a delay of this period will enable the father to take all appropriate steps to withdraw or formally discontinue the complaint which he has made to the police, and thereby remove any risk that the mother would be arrested on her return to Spain and separated from the children which, I am satisfied, would be wholly against their best interests. I regard written confirmation that this complaint has been withdrawn as a condition precedent to the implementation of my return order;

e. Lanzarote remains on the 'amber' list of countries for UK travellers at present; while this does not contra-indicate an immediate return of the boys, it does seem likely that given a little time, the health risks of returning to Spain may abate somewhat.

52. I will restore this case for further *inter partes* hearing on or about 9 July (by MS Teams) for further consideration of this return order.

53. That is my judgment.