



Neutral Citation Number: [2023] EWHC 2696 (Fam)

Case No: FD23P00443

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 October 2023

**Before :**

**Miss Nageena Khalique KC (sitting as a Deputy Judge of the High Court)**

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**Between :**

**P**  
**- and -**  
**G**

**Applicant**

**Respondent**

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**Re Z (A Child) (1980 Hague Convention)**  
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**Mr Edward Bennett** (instructed by **Thomas Dunton Solicitors LLP**) for the **Applicant**  
**Mother**

**Mr Mani Basi** (instructed by **Brethertons LLP**) for the **Respondent Father**

Hearing dates: 24 and 26 October 2023  
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**Approved Judgment**

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**MISS NAGEENA KHALIQUE KC**

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.

**Miss Nageena Khalique KC :**

1. This is the final hearing of the mother's application under the Child Abduction and Custody Act 1985, incorporating the 1980 Hague Convention on the Civil Aspects of International Child Abduction, for the summary return of her daughter, referred to as child Z, to the Czech Republic. Although I refer to Z as 'a child', I am very conscious of the fact that Z is entering her teenage years and adolescence.
2. The application arises out of the retention of Z following an agreed summer holiday in the UK by the father in July 2023. Prior to that date, Z had lived in the Czech Republic since 2017. As Z was habitually resident in the Czech Republic prior to July 2023, and as the father accepts she was wrongfully removed in breach of the mother's rights of custody, the 1980 Hague Convention is engaged in respect of Z.
3. The father seeks to defend these proceedings placing reliance upon Article 13(b) (grave risk/intolerability and the child's objections). In his witness statement and position statement, he had also raised the defence of Article 13(a) (acquiescence) but at the commencement of the hearing, I was told that he no longer pursues this and I was not addressed on the issue. I shall therefore disregard it.
4. I was also asked to consider, as a preliminary issue, whether to adjourn this hearing, to join Z as a party, and for her to be separately represented.
5. The mother attended remotely from the Czech Republic by CVP. She was represented in court by Mr Edward Bennett, counsel. The father attended court in person, and was represented by counsel, Mr Mani Basi. I have also read the court bundle which includes a chronology, case summary, the parties witness statements, including the initial statement filed on mother's behalf by Ms Maria-Luz James (solicitor), Czech school reports and documents from both parties. In addition, I have read the Cafcass report of Ms Sarah Gwynne dated 18 October 2023, and heard her oral evidence in court. I am grateful to both counsel for their detailed and helpful written submissions.

**Background**

6. The mother in these proceedings is a 41-year-old Czech national who came to the UK in 2004. The father is a 43-year-old British national. The parties met in England and were in a brief relationship between 2009 and December 2010, during which Child Z was born. Z is now 13 years and 4 months of age and has both English and Czech nationality.
7. There is a long history of acrimony and litigation between the parties dating back to July 2011 when the father issued private law proceedings in the family court. During that year, both parties met new partners to whom they are now married (mother in 2011, and father in 2022). Various applications ensued in the family court leading to a final Child Arrangements Order made in 2012 for Z to live with the mother and spend time with the father every other weekend and for holiday contact.
8. During further proceedings in 2016, the mother's husband (Z's step-father), was offered a job in the Czech Republic, as a result of which mother applied to the court to formally relocate with Z to Czech Republic. At a final hearing on 15 August 2017, the

court ultimately granted the mother permission to relocate with Z to the Czech Republic. Although the father initially lodged an appeal against that order, and permission was granted, he withdrew the appeal on 4 October 2017. Since 2017, Z has lived in the Czech Republic with her mother, her two half-siblings (a sister 'A' aged 10 and a brother 'B' aged 8) and her step-father.

9. Although I do not have a complete picture of the Czech court's involvement, I note there is a court document recognising in Czech law, the mother's rights of custody. It is clear that the parents have continued to be in conflict over the contact arrangements for Z, and in February 2019 there were further proceedings in the Czech Republic around contact with the father, handover arrangements and child maintenance. Notably, in those proceedings, Z's voice was heard and her wishes and feelings were considered. In March 2020, the Covid pandemic significantly impacted travel and contact as between Z and her father. Despite the restrictions, the father accepts that indirect contact was facilitated by the mother thus enabling the relationship between Z and her father to be maintained. Those proceedings concluded with a Czech Order dated 21 July 2021 providing that Z should spend time with the father. It is not in dispute that this order has been complied with by the mother. Subsequently, direct contact between Z and the father resumed, once restrictions were lifted.
10. Z has moved schools several times whilst in the Czech Republic. The most recent move was from a state school, where it is said that Z was being bullied, to a private school, where she is still enrolled.
11. In 2023, the parties arranged for Z to spend time on a caravan holiday with the father and his wife in the UK between 10 until 20 July. The mother and her husband were also on holiday in England with their two children, A and B. The handover on 10 July 2023 was cordial, with the mother expecting to return back to the Czech Republic with Z on the 21 July 2023.
12. However, on 15 July 2023, the father contacted the mother stating that he would not be returning Z as she had stated that she wished to remain living with him and wanted to attend school in England. The father indicated that he would make arrangements for her to start school locally in September 2023. He subsequently issued proceedings in the family court on 17 July 2023 in Wolverhampton seeking permission for Z to live with him in the UK. On 20 July 2023, the mother contacted the Czech Central Authority regarding her concerns about Z and that she may be wrongfully retained in the UK. The father also contacted the police in respect of Z's disclosure that her step-father had hit her and her half-siblings.
13. On the night of 20 July 2023, police officers attended the accommodation where the mother, husband and A and B were residing in the UK to undertake a welfare check. No concerns were raised, and no further action was taken by the British police or agencies.
14. On 21 July 2023, the mother returned to the Czech Republic in order to resume work, accompanied by A, B and her husband.

## **The proceedings**

15. The mother issued 1980 'Hague' proceedings on 23 August 2023, which were served on the father on 4 September 2023. Both parties have filed statements and evidence. The first hearing in this matter took place on 8 September 2023 before Ms Fottrell KC, sitting as a Deputy High Court Judge, at which time, the court made a number of directions:
- a) prohibiting father from enrolling Z at an English school, noting that Z was still enrolled at a private school with her fees paid up-to-date and that the school was willing to continue providing her with course work online;
  - b) permitting indirect contact between mother and Z, via Z's Czech mobile phone;
  - c) stayed the welfare proceedings in England; and
  - d) For the preparation of a Cafcass report to assist in the understanding of Z's wishes and feelings, separate representation and a child impact assessment.
16. It is important to note that in the recital of that order, the father accepted that the mother would have direct overnight unsupervised contact with Z in the event that mother came to the UK. I am also told that the father accepted that there could also be direct contact between Z and her step-father's parents in England, (who Z refers to as 'Grandma' and 'Grandpa'), although this is not recorded on the face of the order; but the father subsequently reneged on this indicating that if A and B were to visit the UK, Z could only spend one night with them. Eventually, an agreement was reached whereby A, B and the mother visited England, with Z staying overnight with them for two nights between 28-30 September 2023. However, there is some suggestion that the father did not agree to this arrangement until only 12 hours before they were due to fly.

### **Issue for determination**

17. As a preliminary issue, Mr Basi invited me to adjourn the case to enable Z to be separately represented and to be joined as a party. As I refused that application, the parties invited me to determine the mother's application.
18. Given that no issue was taken with the habitual residence of Z prior to July 2023, and nor was it suggested that the retention of the Z was anything other than wrongful, 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 Z forthwith to the Czech Republic unless an exception under Article 13 is established.

### **The position of the Parties**

19. I briefly summarise the position of the parties at the outset and their respective submissions in support.

*The Mother*

*Separate representation*

20. On behalf of the mother, Mr Bennett firmly opposes any application to adjourn and submits that separate representation is neither desirable nor in Z's best interests. He highlights that the Cafcass report explores joinder but does not positively recommend it. Further, he argues that joinder would add nothing but delay which would leave Z in an educational limbo in a 'pivotal Czech academic year' and separated from her younger siblings who are suffering without her and who are currently waiting to receive therapeutic psychological support in this regard.

*Grave risk/intolerability*

21. Mr Bennett argues this is a 'paradigm case' for summary return, that the defence of grave risk/intolerability is 'hopeless' and that whilst Z *may* object in a 1980 Hague Convention sense to a return, there are 'powerful reasons' why the court should exercise its discretion to order a summary return in any event.
22. It is submitted that the context for Z's retention in the UK is potentially a 'difficult home life' (not abuse) and 'a difficult set of school exam results', and that the 'trigger' for the objection to returning back to the Czech Republic is similarly identified as being related to these factors within the Cafcass report. Mr Bennett points out that no such disclosures about abuse (physical chastisement or emotional abuse by Z's step-father) have ever been raised previously by Z or her siblings to Czech professionals who have interviewed them sensitively, away from their parents.
23. The mother also submits that if Z were to be returned, the father does not say he would accompany Z or seek for her to live with him in the Czech Republic on an interim basis, pending further Czech court determinations or social service investigations. In the event of a return, the mother contends that the protective measures she and the Cafcass officer suggest would mitigate any perceived risk of harm in any event.
24. Mr Bennett invites the court to exercise caution and note the concerns of the mother and Cafcass officer in respect of possible undue influence, which casts the mother in a negative light. Reliance is placed on the observations of the Cafcass officer that the father was potentially exerting influence over Z in a nuanced way.

*Objections*

25. In respect of Z's objections, it is submitted by Mr Bennett that Z's views amount to no more than a preference to remain and this is not a genuine objection as Z's views have been 'heavily curtailed'; Z was unable to celebrate the mother's birthday with her siblings because of father's refusal to let Z attend, that the father had refused to let the mother know Z's English mobile phone number, (whilst her Czech number was

largely switched off), and where the father had refused to let Z visit her step-grandparents, even though lived a relatively short drive away from him.

*Discretion*

26. In the event that the court accepts there is a genuine objection, the mother submits that there are powerful reasons why the court should exercise its discretion to order Z's return:
- a) Firstly, the potential for the father's influence: examples in the Cafcass report include the father being present when Z makes calls to the mother and his reference to the maternal grandmother's fear she might not see Z again if she lives in the UK as 'emotional abuse'. Mr Bennett argues that this raises a wider welfare issue around the extent to which Z's relationship with her Czech family will be impaired, especially where the father has never sought to visit Z in the past 7 years, even though permitted to do so under the 2021 Czech order;
  - b) Secondly, there is likely to be an adverse impact on the relationship between Z and her siblings where it is clear that A, B and Z miss each other terribly, and A and B are to receive psychological support in light of this;
  - c) Thirdly, there is concern that Z's relationship with her wider family may be impaired, not least because the father prevented Z spending time in the UK with her step-grandparents whom she refers to as 'Grandpa' and 'Grandma';
  - d) Fourthly, it is submitted that contrary to Z's own perception that she is 'struggling' in terms of her Czech education, she is in fact fully immersed in it, receiving support and continuing with online work from her Czech school, maintaining contact with her Czech school friends, and has even been elected in absentia to the school council, such is her popularity;
  - e) Fifthly, Mr Bennett contends that Z's wishes and feelings, in part, have to be viewed in the context of a 'bubble of respite' from her day to day life, as observed by the Head Teacher "*From my subjective point of view, I see the escape to England as an escape from duty, from consistency, from regularity, from aspects that put pressure on her*";
  - f) Sixthly, it is submitted that there would be no difficulty in terms of re-integration back into Czech life. Z's school would support her, she would be reunited with her siblings and the mother is committed to providing whatever support is necessary, including family therapy and if Z wishes, her own psychological support;
  - g) Seventhly, there are strong policy reasons underpinning the Convention which should carry significant weight, especially where the father did not engage in a conversation with Z about a return but instead took immediate steps to issue proceedings in England and enrol her in an English school;

h) Eighthly, significant weight should be attached to comity where there is an extant Czech Order, enforceable in England by virtue of the 1996 Hague Convention, following proceedings in which the father had an opportunity to participate and Z's voice was heard.

27. Mr Bennett submits that having regard to all the above factors, I should exercise my discretion in favour of a summary return order so that Z returns to the Czech Republic by 27 October 2023, so that she would be able to return to school on 30 October after settling in at the weekend.

The Father

*Separate representation*

28. Mr Basi, on behalf of the father, invites me to adjourn these proceedings to enable separate representation of Z. Reference is made to the conclusions of the Cafcass officer that Z objects to a return and that joinder of Z to the proceedings *may* assist on the basis that a Guardian could be appointed to '*explore how the siblings' relationship could be preserved in either situation, if a return order is made or refused*'. Mr Basi contends that Z's relationship with her siblings is an argument that justifies an order for separate representation, notwithstanding the inevitable delay this will bring. He does not identify any difference between the issues being articulated on behalf of the father, and the views of Z. In other words, the father's and Z's views regarding a return to the Czech Republic appear to be broadly aligned.

29. Mr Basi submits there is a long line of authorities which establish the importance of listening to the voice of the child and reminds me of Practice Direction 16A FPR 2010. He submits that where the court is considering exercising its discretion in light of a child's objection, it is particularly important for the child to be separately represented and submits that the complexity of the sibling relationship in this case means that there is an issue of significant difficulty justifying joinder of Z and the appointment of a Guardian.

*Grave risk/intolerability*

30. In relation to the substantive issues, the father relies on the defences pursuant to Article 13(b) grave risk of harm/intolerability and the Child's Objection.

31. Despite the conclusion of the Cafcass officer that the Article 13(b) defence is not made out, Mr Basi submits that Z would be at risk of grave psychological and physical harm if she returns to the Czech Republic and there are no appropriate protective measures, particularly in circumstances where Z would be returning back to the family home where the step-father continues to live. Z's disclosures to her father and the Cafcass officer refer to physical chastisement of Z and her siblings by her step-father, including bruising and marks on her arms, the last such physical punishment having been inflicted some 3 week prior to the July 2023 holiday. To be clear, these allegations are denied and I have no evidence before me to corroborate them.

32. In addition, it is submitted that Z is unhappy with life in the Czech Republic and struggles with the language and educational system and would suffer emotional harm were she to remain there, with her stating she would 'run away' if returned.

### *Objections*

33. Mr Basi contends that Z has carefully considered the question of living in England versus a return to the Czech Republic, weighing up the pros and cons in a measured way and began rationalising all the factors some two weeks before she arrived in England, including her feelings about her siblings, her belief that she has been treated differently within the family unit, arguments with her mother, feeling 'British', being unhappy in the Czech Republic, and struggling with a Czech education and exams. It is further submitted that in her discussions with the father, Z was said to be 'very serious', calm and firm in her views, and he contends that this amounts to a clear objection, a view supported by Ms Gwynne.
34. It is denied that there has been any undue influence by the father, and it is argued that the observations made by the Cafcass officer regarding 'potential' nuanced influence does not negate the authenticity or strength of Z's own views, such that they are to be given less weight.

### *Discretion*

35. In the event that the court finds Z does object, it is submitted that I should not exercise my discretion to order a summary return for a number of reasons including:
- a) The mother has acknowledged that Z has not done as well in school as hoped;
  - b) The strength of Z's wishes and feelings is important: Z made it clear to father (without prompting) and the Cafcass officer that she does not wish to return to the Czech Republic, giving reasons alluded to above and has expressed her wishes and feelings in a balanced manner;
  - c) Z has also made it clear to the mother that she does not wish to return to the Czech Republic in July 2023 that she wanted to stay in England and would 'scream down the plane' if she was made to return;
  - d) The father's home environment is beyond criticism and Z is integrating well and quickly (for example, in a local *Scouts* group);
  - e) In contrast, it is said there are conflicts within the family home and Z is struggling with the Czech school system and Czech language ;
  - f) The father will promote schooling and respects Z's cultural ties;
  - g) Z has English friends and misses them when in the Czech Republic;



- h) The sibling relationship is an important factor but Z has maturely and thoughtfully acknowledged that she although she misses her siblings, she nonetheless feels that England is where she wishes to live and attend school;
- i) On the issue of comity and the extant Czech Order, Mr Basi submits that there is uncertainty around what will happen in the Czech courts, (that he is unlikely to be eligible for legal aid which would make it difficult for him to participate in the Czech welfare proceedings), uncertainty around the effectiveness of the protective measures proposed, and uncertainty around future contact between Z and him if Z returned to the Czech Republic.

## **The Evidence**

### *The Mother*

- 36. There have been two statements filed and served on behalf of the mother. The first statement was prepared on her behalf by her solicitor Ms James, in which the mother denied the first respondent's allegations of physical harm or emotional abuse of Z and refers to the police welfare check in July 2023 after which no concerns were raised and no further action was taken. The statement details the mother's belief that her calls with Z were being recorded with the father being present and Z being 'unable to speak freely'.
- 37. In subsequent phone calls with Z, the mother reports that Z said that she (the mother) had 'abducted her to the Czech Republic in 2017' (notwithstanding the Court Order from the UK Family Court), and that the father had 'never agreed' to Z living in the Czech Republic. The mother suggests that the '*father is manipulating Z...causing her to think negatively towards mother and her life in the Czech Republic*' and her belief is that the father is likely to be influencing her when Z says that she is more British than Czech.
- 38. The mother also believes Z is at a vulnerable age, and is naturally 'enamoured' with living with her father, who has been allowing Z to wear clothes, make-up and hairstyles of her choice (contrary to mother's parenting choice), with no bedtime routine, freedom to open social media accounts (which the mother had not agreed to), and where the father has gifted an Apple watch, allowed Z to open a bank account with a debit card and refurbished her bedroom. This has been described by the mother's counsel as a 'bubble of respite' while Z is living separately from mother and two younger siblings, with whom she has lived all her life.
- 39. In her second statement, the mother refers to Z enjoying her life in the Czech Republic and acknowledges a number of changes in school due to relocation and then in the previous school due to bullying. An immediate improvement was noted in Z once mother had found a private school, which has been very supportive. In March 2022, the mother spoke to the father and the school and a decision to refer Z to counselling was made.
- 40. In June 2022, the mother states that Z was upset when she was informed by the father that he had married his partner, but Z had not been invited to the wedding and the mother had not been contacted prior to it to see if Z could go.

41. In her second statement, the mother states that Czech is Z's first language (she was the primary carer in the UK but always spoke in Czech), noting that Z has dual nationality. The mother feels that father uses '*every opportunity to dilute the Czech aspect and distance her from her Czech roots*'.
42. In summary, mother says that Z has been settled and mostly happy in the Czech Republic, with ups and downs and occasions where she misses her English friends. She dances, plays golf and tennis, and has enjoyed many school trips and summer camps.
43. The mother acknowledges that Z's school grades dropped in 2022/2023 but Z remains an average student (the parties agreed that a school report for that year shows that her grades were between 1-3 (1 being the highest and 3 being average) but were lower (grade 4) in only two subjects (Physics and German). The mother suggests this is more related to Z not applying herself than lack of ability.
44. The mother also describes Z's wider family network and the frequent family gatherings which Z previously enjoyed and how devastating it has been for Z's maternal grandparents not to see Z. In addition, the mother disputes the allegations made against stepfather and exhibited photographs of family holidays which she says show the loving relationship Z has with her stepfather.
45. The mother emphatically denies allegations of abuse or violence from anyone and states there have been no bruises or marks of any kind on Z, A or B. She confirms again that the welfare check did not find any evidence of abuse and father has '*not followed up with the police or produced any police evidence to support his claims*'. She also exhibits messages between Z and stepfather which demonstrate that he is supportive and caring.
46. Insofar as being treated differently is concerned, mother says that this is in Z's favour. She is at a fee-paying private school whereas Z and B attend a local state school. Z has new clothes whereas A receives hand-me-downs and fewer new things. Z has many school trips that A and B do not. Mother also asserts that Z is the oldest child and the expectation is that she should be a positive example to her siblings, with responsibilities commensurate with her age and maturity (for example keeping her bedroom tidy and helping with chores), none of which amounts to abuse. Nor do restrictions on social media use, make-up and insisting on effort into school work amount to abuse.
47. Mother contends that Z is not raising an objection but expressing a preference when she says she wishes to live in England. She stresses that Z is at a vulnerable age and rebelling against her stricter parenting style versus father's '*more free and easy style*'. She also states that the father has never raised a child before (having no contact with his first son (now in his twenties) due to his admitted drug use. This is the longest time Z has spent with father and she considers this to be a '*honeymoon period*'.
48. In the event that the court finds there is a grave risk of harm and discretion is engaged, the mother offers a number of protective measures including those proposed by father:
  - a) Engagement with the Czech social services and co-operation with any investigation as to domestic abuse;

- b) Z's voice to be heard. Mother supports the Czech equivalent of Cafcass interviewing Z to ascertain her wishes and feelings;
- c) Re-opening of Czech court proceedings to examine the current child arrangements to include whether Z should re-locate to England. In this respect mother emphasises the importance of father's engagement with the process;
- d) No criminal/civil actions will be taken in respect of the wrongful retention by father or enforcement proceedings in respect of the 2021 Czech Order for non-compliance;
- e) Assistance to the father to facilitate visits to Z when in the Czech Republic, to help with travel, flights, airport transfers, and accommodation;
- f) In terms of practicalities with a return, mother will accompany Z back to the Czech Republic (possibly with her siblings);
- g) Arrangements for support from the Family Crisis Centre, who will offer family therapy and support to Z to help her settle back into life at home and school, and be a 'listening ear' and to ensure she is fully supported, and not criticised for the events since July 2023.

### *The Father*

49. In his first witness statement prepared at a time when he was not legally represented, the father asserted that after collecting Z for her planned holiday with him on 10 July 2023, she made a 'very blunt and bold request: "*dad, I don't want to go back, I want to stay with you*"' and expressed a wish to attend school in England. He further stated that he was shocked and surprised to hear Z say this, unprompted; following further discussion he reports that Z told him that she was unhappy with her life at home in the Czech Republic. Further disclosures from Z to father are set out in the statement including:
- a) Stepfather is 'always angry', shouts all the time and Z feels she is treated differently to her siblings;
  - b) Mother puts Z down a lot, and makes comments on her appearance, including that she was overweight;
  - c) Stepfather has said that Z looks like a 'prostitute' when she has worn make-up;
  - d) Stepfather cannot speak Czech and puts Z under pressure to translate for him;
  - e) Z struggles at school with the Czech language and writing and gets little help from her mother (and none from her stepfather);
  - f) Z's mother was very angry with Z's school grades and report, making comparisons with another pupil;
  - g) Z is expected to clean the house and cook.
50. The father states that as a concerned father he went on to ask if there was anything else happening at home, including '*if anyone touched her inappropriately or anything she wants to talk about*' to which she replied that her stepfather has hit her and her siblings '*several times and has left bruises and marks on her arms*', that the mother knows about this and has '*watched it happen*' (for clarity, these allegations are denied by mother).
51. The father highlights a text message from the stepfather (since deleted) where he acknowledges that there are some '*fallings out*' between them and that "*if I'm any*

*harder on you than I am on the others, it's because you're the oldest and I expect more from you"* which the father suggests is 'proof' that Z is treated differently.

52. The father reports that Z has many friends in the UK, she has joined *Scouts*, is growing in confidence and is in a loving, comfortable home. He asserts that if Z returns to the Czech Republic, she will be at grave risk and sent to an intolerable situation but if she remains in the UK, he would not prevent contact between Z and the mother. On the basis of Z's disclosures to him alleged physical abuse, the father contacted the police and brought proceedings in the English courts to secure Z's residency with him.
53. In his second statement, prepared with the benefit of legal representation, the father also highlights that Z has moved schools four times in six years and that schooling '*must be very difficult for a child for whom Czech is not the first language*'. He also refers to text messages from the stepfather to Z in which he says "*you need to send your friend home now. Need to sort house and I need to beat you*". The father considers that Z would be at risk of physical chastisement if returned to the Czech family home.
54. The father states that Z had '*thoughts of running away and that if she goes back to the Czech republic she will run away*'. He says he only became aware of 'mental abuse' by the mother and stepfather around 16 July 2023 (and not on 10 July as suggested in his first statement). Whilst accepting that this is a difficult time for Z, he gave a detailed account of how Z has settled whilst living with him, made new friends, joined a dance group and the *Scouts*, (a letter from the latter describes Z as being polite and integrating well).
55. As regards contact with the mother and step-grandparents, the father says this has been difficult in large part due to the arguments between Z and her mother whilst speaking on the phone. The father says it was Z's choice not to visit step-grandparents, and despite his attempts to promote contact with Z's siblings, he provides examples of mother 'taking the phone off' A or B and arguing with Z, putting pressure on her, telling her she should return to the Czech Republic, and that father has 'kidnapped' her. The father also stated that he would be happy for Z to have overnight contact between 28-30 September with the mother but wanted her to be able to attend the paternal grandfather's birthday on 1 October as this was what Z wished to do.
56. The father describes Z's daily routine including completing course work from her Czech school (she is not attending a school in England). Her daily activities include making herself a sandwich in the morning, doing her hair and make-up, shopping with her stepmother, face-timing friends, going for a walk, visiting family, attending *Scouts* or Youth Club, watching TV.
57. The father also acknowledges that Z '*not wanting to return to the Czech republic is in part linked to her not wanting to return to the volatile household that exists between mother and stepfather and the family, but this should not detract from her objections*'.
58. Finally, the father proposes protective measures in the event that Z is returned to the Czech republic including the following:

- a) The Czech equivalent to social services to consider whether Z has been the victim of domestic abuse, especially from stepfather and if so, what safeguards can be put in place;
- b) That Z's voice will be heard within any Czech domestic proceedings in light of her disclosures and that these pleadings are put before the Czech court;
- c) No criminal/civil sanction is made against father.

*Ms Sarah Gwynne, CAFCASS*

59. In preparing her report dated 18 October 2023, Ms Gwynne met and spent 70 minutes with Z on 9 October 2023. She also obtained a report from the Head Teacher of Z's Czech school, considered the mother's first statement and the father's two statements, and made UK police and social services checks.
60. Ms Gwynne notes the conflicting accounts of the parents and the long history of litigation. On the specific issues she was asked to consider, she concludes as follows:
  - a) On separate representation, whilst it is likely that a solicitor would consider Z to be competent, Ms Gwynne is '*satisfied that Z's wishes and feelings have been captured in this report and will be shared with the court*';
  - b) The court *may* consider joinder due to Z's separation from her siblings in the Czech Republic but the court would have to balance the benefits of joining against prolonging the conclusion of this application to enable a Guardian to explore how the siblings' relationship could be preserved in either situation of a return Order is made or refused.
  - c) The protective measures proposed within the report would meet any concerns about Z's safety if a return Order was granted;
  - d) In respect of objections, Ms Gwynne considers that Z is of an age and maturity where her wishes and feelings should be taken into account. The reasons that Z does not want to go back to the Czech Republic are noted to be that she struggles to learn in the Czech language in school, a difficult home life with mother and stepfather, feeling 'British' and wanting to live in England;
  - e) Crucially, Ms Gwynne concludes both in written and oral evidence that Z is expressing an objection rather than a 'preference' because the assertions she makes remain consistent, even after she spent two nights with her mother and siblings at the end of September 2023. Ms Gwynne says that "*it is more difficult for a child to continue with this rhetoric after having spent time with the left-behind parent unless there is sincerity and depth to their wishes*".
  - f) Ms Gwynne suggests the court may consider the 'gateway' stage is met and reflects on matters which fall to be considered in the exercise of discretion as to whether to make a return order.
61. In her professional judgment, Z is a sensitive young person with a relatively low sense of self-esteem. She has been exposed to high inter-parental conflict with multiple

court proceedings, acrimony and cross allegations. Ms Gwynne says this makes it difficult to ‘*conclusively assess what pressure, if any, has been placed upon Z to say that she wishes to stay in the UK*’.

62. Ms Gwynne observes that Z's full relationship with her siblings continues to weigh heavily on her. Whilst she is sufficiently mature to identify the loss that she feels being separated from her siblings, she remains concerned that Z is not yet able to appreciate the longer-term impact that separation may have on this relationship into adulthood.
63. Notably, Ms Gwynne gave evidence that the first reports of physical chastisement have emerged for the first time within these proceedings ‘*and follow on from a difficult set of school exam results*’. Ms Gwynne states that in her view a return will not place Z at risk of harm or an intolerable situation, but that in any event, taken at their most serious until further investigations can be undertaken, the protective measures proposed would be sufficient. Furthermore, Ms Gwynne notes that Z spent time with the maternal family unit in late September without incident and it appears that if a return order was made “*father does not perceive Z to be at such a risk that he would accompany her to the Czech Republic, suggesting that he does not consider it essential to her welfare that she remains in his care at all costs*”.
64. When questioned about the authenticity of Z's objections, Ms Gwynne considered that there may be nuanced undue influence by the father which ‘*could not be ruled out*’. In respect of Z's comments that she would ‘*run away*’ or ‘*scream the plane down*’, Ms Gwynne recognised that Z is a teenager who might say this but may not act that way. Ultimately, she indicated a willingness to talk with Z if a return order was directed and stressed the importance of mother and father and step-parents all working collaboratively, presenting a united front to prioritise Z's safe return to minimise emotional harm and not undermine the court's order if made.
65. In addition to the above, Ms Gwynne supports the proposals for protective measures made by both parents and highlights the need for mother to recognise that Z may hold her accountable for the disappointment and perception that she has been forced to move against her wishes which Z is likely to feel if a return Order is made.

### **The Law**

66. Both counsel have provided clear and helpful written and oral submissions as to the relevant legal framework and are in agreement as to the principles which must be applied by the court. I shall summarise the relevant law below.

### ***Separate representation/joinder***

67. In *Re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619, Lady Hale stated at [59] that “*children should be heard far more frequently in... Convention cases than has been the practice hitherto*”. Lady Hale proceeded, at [60], to suggest that the obligation to hear children of an appropriate age would in most cases be satisfied by a report by a Cafcass officer of an interview with them; would sometimes require the judge in person to talk to them; and only in a few cases would require them to be made parties and thus to be legally represented. Lady Hale added:

*“But whenever it seems likely that the child’s views and interests may not be properly presented to the court, and in particular where there are legal arguments which the adult parties are not putting forward, then the child should be separately represented.”*

68. The threshold criterion for granting party status to a child in proceedings under the Convention is whether it was in the child’s best interests to do so. In *Re P (Abduction: Child’s Objections)* [2020] EWCA Civ 260, Moylan LJ linked the observations above with the President’s Guidance on Case Management and Mediation of International Child Abduction Proceedings, 13<sup>th</sup> March 2018 (since replaced in 2023) and concluded:

*“48. It is clear from the above authorities that it will only rarely be in a child’s best interests to be joined as a party to proceedings under the 1980 Convention. When the relevant issue is a child’s objections, this is because the child’s views and interests will, typically, “be properly presented to the court” through evidence from a Cafcass officer and through the legal arguments being advanced on behalf of the parents and addressed by the court.”*

69. In addition, Practice Direction 16A FPR 2010 sets out the circumstances in which it is appropriate to grant party status to a child in family proceedings. Although it is not focussed on Convention proceedings, much of it is directly apposite to them. Thus paragraph 7.1 of the Practice Direction makes clear that a grant to a child of party status will be made only in cases which involve an issue of significant difficulty and thus only in a minority of cases. Consideration, so it suggests, should first be given to whether an alternative course might be preferable.
70. Paragraph 7.3 of the Practice Direction stresses that a grant to a child of party status may result in delay adverse to her welfare and of which account should therefore be taken. This factor has a particular relevance to Convention proceedings. The need for expedition is written into Article 11.3 the Convention.
71. More recently, in *Re D (A Child) Abduction: Child’s Objections: representation of Child Party* [2023] EWCA Civ 1047 at [57] the Court of Appeal referred to [para 3.6 of] the Practice Guidance on Case Management and Mediation of International Child Abduction Proceedings, Sir Andrew McFarlane P on 1 March 2023, which states that *“In only a very few cases will party status [for a child] be necessary. The child’s voice is heard sufficiently through a report from a Cafcass Officer (unless there is an ‘issue of significant difficulty’)”* [67].

### ***The Hague Convention 1980: Purpose***

72. The objective of the Hague Convention is set out in the preamble:

*“24. Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State*

*of their habitual residence, as well as to secure protection for rights of access"*

73. Article 12 of the Hague Convention provides:

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

74. The HCCH 1980 Child Abduction Convention Guide to Good Practice in relation to Article 13(b) 2020 ("the Good Practice Guide") makes clear the wider purpose of the Convention and the need for any court considering these issues to have firmly in mind the principles of international comity between jurisdictions which underpins it. In particular, I note paragraphs 14, 15 and 16 of the Good Practice Guide:

*"The second underlying concept is that the wrongful removal or retention of a child is prejudicial to the child's welfare and that, save for the limited exceptions provided for in the Convention, it will be in the best interests of the child to return to the State of habitual residence."*

*The third underlying concept is that, as a rule, the courts of the child's State of habitual residence are best placed to determine the merits of a custody dispute (which typically involves a comprehensive "best interests" assessment) as, inter alia, they generally will have fuller and easier access to the information and evidence relevant to the making of such determinations. Therefore, the return of the wrongfully removed or retained child to his or her State of habitual residence not only restores the status quo ante, but it allows for the resolution of any issues related to the custody of, or access to, the child, including the possible relocation of the child to another State, by the court that is best placed to assess effectively the child's best interests. This third underlying concept is founded on international comity, which requires that the Contracting Parties:*

*"[...] be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them – those of the child's habitual residence – are in principle best placed to decide upon questions of custody and access"*

75. The above-mentioned purpose of the Convention and underlying concepts define the narrow scope of the Convention, which deals exclusively with the prompt return of wrongfully removed or retained children to their State of habitual residence, subject only to the limited exceptions provided for by the Convention. In doing so, rights of



custody existing in the State of habitual residence are respected in the other Contracting Parties. In dealing with the prompt return of children, the Convention does not deal with the merits of custody and access, which are reserved for the authorities of the State of habitual residence.

### ***The Exceptions***

76. Article 13 provides:

*“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –”*

*a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; 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.*

*In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.”*

### ***Grave Risk of Harm/Intolerability***

77. The leading case in respect of the defence of grave risk of harm or intolerability pursuant to Article 13(b) is *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27; [2012] 1 AC 144. The Court of Appeal in *Re IG (Child Abduction: Habitual Residence: Article 13(b))* [2021] EWCA Civ 1123, referring to *Re E*, summarised the key principles § 46-48 *per* Baker LJ:

*“46. The leading authorities remain the decisions of the Supreme Court in Re E (Children) (Abduction: Custody*

*Appeal) [2011] UKSC 27, [2012] 1 AC 144 and Re S (A Child) (Abduction: Rights of Custody) [2012] UKSC 10, [2012] 2 AC 257. The principles set out in those decisions have been considered by this Court in a number of authorities, notably Re P (A Child) (Abduction: Consideration of Evidence) [2017] EWCA 1677, [2018] 4 WLR 16 and Re C (Children) (Abduction: Article 13(b)) [2018] EWCA Civ 2834, [2019] 1 FLR 1045. Since the hearing of the present appeal, this Court has handed down judgments in another appeal involving Article 13(b), Re A (A Child) (Article 13(b)) [2021] EWCA Civ 939 in which Moylan LJ carried out a further analysis of the case law. I do not intend to add to the extensive jurisprudence on this topic in this judgment, but merely seek to identify the principles derived from the case law which are relevant to the present appeal.*

*47. The relevant principles are, in summary, as follows:*

- (1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".*
- (2) The focus is on the child. The issue is the risk to the child in the event of his or her return.*
- (3) The separation of the child from the abducting parent can establish the required grave risk.*
- (4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then establish how the child can be protected from the risk.*
- (5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.*
- (6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail*

*and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.*

- (7) *If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.*
- (8) *In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.*
- (9) *In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance.*
- (10) *As has been made clear by the Practice Guidance on "Case Management and Mediation of International Child Abduction Proceedings" issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks.*

48. *MacDonald J in E v D (Return Order) [2022] EWHC 1216 (Fam) highlighted at paragraph 29(v) as follows:*

*“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. ....”*

78. In his judgment in *Re A*, Moylan LJ (at paragraph 97) gave this warning about the approach to a defence under Article 13(b):

*"if the court does not follow the approach referred to above, it would create the inevitable prospect of the court's evaluation falling between two stools. The court's "process of reasoning", to adopt the expression used by Lord Wilson in Re S, at [22], would not include either (a) considering the risks to the child or children if the allegations were true; nor (b) confidently discounting the possibility that the allegations gave rise to an Article 13(b) risk. The court would, rather, by adopting something of a middle course, be likely to be distracted from considering the second element of the Re E approach, namely "how the child can be protected against the risk" which the allegations, if true, would potentially establish."*

79. Whilst establishing the Article 13(b) defence theoretically gives rise to a discretion at large, Baroness Hale in Re D (A Child) (Abduction: Custody Rights) [2007] 1 AC 619 § 55 stated:

*"it is inconceivable that a court which reached the conclusion that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place him in an intolerable situation would nevertheless return him to face that fate"*

80. In terms of protective measures, in Re GP (A Child) (Abduction): Consideration of Evidence [2017] EWCA Civ 1677, [2018] 1 FLR 892, where a return order to Italy was overturned, the mother's appeal allowed, Henderson LJ stated:

*"it was ... necessary .... to examine in concrete terms the situation that would actually face GP on her return to Italy. What would happen when she and her mother stepped off the plane? Would her mother be arrested? Where would they go, and what would they live on? [para 6]"*

### **Child's Objections**

81. In Re Q & V (1980 Hague Convention and Inherent Jurisdiction Summary Return) [2019] [EWHC 490 \(Fam\)](#) at paragraph 50, Williams J summarised the relevant principles on the child's objections: Re M & others (Children) (Abduction: Child's Objections) [2015] [EWCA Civ 26](#), Re F (Child's Objections) [2015] [EWCA Civ 1022](#) and Re M (Children) (Abduction: Rights of Custody) [2007] UKHL 55 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.*

82. So far as the exercise of discretion is concerned, in *Re M (Children) (Abduction: Rights of Custody)* Baroness Hale added at paragraph 46:

*“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..... 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”*

## Discussion and analysis

### *Separate representation*

83. I have considered the competing arguments in respect of separate representation and the observations of Ms Gwynne. I do not find that this is a case where there is an issue of significant difficulty which means I should depart from the general proposition that it is rare for a child to be granted party status. Moreover, Z's voice in these proceedings has been heard sufficiently through the Cafcass officer *per Re D* [2023] *supra*. Ms Gwynne expressly states that she is '*satisfied that Z's wishes and feelings have been captured in this report*' and Z's own note to the Judge is included verbatim in the report.
84. The case of *Re P (Abduction: Child's Objections)* [2020] *supra*, directs me to consider whether it is in Z's best interests to grant party status and separate representation for Z. Having regard to the observations of Ms Gwynne that Z is vulnerable and caught up in inter-parental conflict, in a case where her views are properly presented and the legal arguments relevant to Z are being advanced by the parents, I do not consider it to be in her best interests to be granted party status. Additionally, the delay which would be caused by granting the father's application would be inimical to Z's best interests in circumstances where I am fully satisfied Z's voice has been properly heard. I therefore dismiss the father's application.

### *Grave risk/intolerability*

85. The burden of proof lies with the father in respect of this defence and must be to the requisite standard, i.e. the balance of probabilities. As this is a summary process, it is not necessary for me to hear oral evidence, and no party seeks to provide any.
86. The questions I am required to ask are set out in *Re E supra*. In short, if the allegations, taken at their highest are true, is there a grave risk that Z would be exposed to harm, or an otherwise intolerable situation on return? Secondly, how can the child be protected from those risks? Are there sufficient protective measures?
87. I summarise the evidence above and do not intend to repeat it but I have considered it in its entirety even though it may not be specifically highlighted below. I accept that in theory, without having made any findings of fact, physical /emotional abuse could cause lasting emotional harm if the allegations are true. However, the evidence which has been advanced by father to substantiate the exception is thin and there is clearly a dispute between the parties on the facts around the alleged physical and emotional abuse.
88. The courts have recognised that there is a tension between the inability of the court to resolve factual disputes between the parties and the risks that a child will face if the allegations are true. Unless combined with other risk factors, the level of risk to the child arising from such exposure to violence will probably need to be very high for a court to be satisfied that a return cannot be ordered with protective measures in place.

89. It is however, important to evaluate the evidence and its context. Ms Gwynne recognises that Z's wish to stay in England followed on from what she perceived to be poor school grades and a difficult family dynamic rather than abuse. Objectively, (and this is not in dispute) Z's grades were 'average'. No concerns have been raised about mother or stepfather by the Czech equivalent of Cafcass or the Czech school in relation to their parenting capacity. Despite the allegations which he has made, father accepted the principle of unsupervised overnight contact at the first hearing, and no concerns arose out of the unsupervised overnight time that Z spent with her mother and her siblings in England mid-proceedings. Father does not suggest that, in the event of a return, that he would accompany Z or seek for her to live with him in the Czech Republic on an interim basis pending further Czech court determinations, or social services investigations.
90. Z also asserts that she was treated differently but mother provides reasons why, as the oldest child, any difference in respect of Z simply falls within the ambit of normal parenting, and in any event there are protective measures including family and individual therapy for Z that could be put in place to ameliorate any risk.
91. As stated by MacDonald J in *E v D* above, the court's focus is on the future risk of harm. I note the protective measures listed in both parent's witness statements and in Ms Gwynne's report and am satisfied that protective measures exist within the Czech administrative and judicial system to protect Z from any harm. The allegations which have now come to light in these proceedings are capable of being provided to the Czech authorities. I am satisfied that I can infer the Czech authorities would consider these allegations to reduce any grave risk of harm going forward to protect Z.
92. The relevant authorities could be informed and the details supplied in short order, if a return were ordered. I have checked this conclusion against *Re A*, where the Court of Appeal emphasised the importance of a proper and thorough evaluation of the potential risks, and of whether or not there will be adequate protective measures upon a return. Looking at all the evidence I have been provided with and assuming a competent level of state protection in the Czech Republic, as I am entitled to, having regard to *Re GP (A Child) supra* I am on balance satisfied that protective measures are in place to prevent any grave risk of harm.

### *Z's Objections*

93. Father submits that Z objects to a return pursuant to Article 13. This is also considered within the Cafcass report. The parties agree that there are two limbs to an objection defence. In my view father has demonstrated the gateway namely that (i) Z objects and (ii) has reached an age and degree of maturity at which the court should take account of her views is met. As such it is open to me to exercise my discretion regarding whether to order return or not.
94. I agree with Ms Gwynne that Z has expressed an objection rather than a preference to returning to the Czech Republic. In questions from Mr Bennett, Ms Gwynne highlighted Z had already begun thinking about wanting to live in England two weeks prior to her planned holiday and that Z consistently held that view, even after spending two nights with mother (a time when often a child might in fact not continue objecting if not authentic). Furthermore, Z was of an age and maturity commensurate

with a 13-year-old young person and had weighed up the pros and cons in a balanced way. Ms Gwynne concluded, rightly in my view, that this was an objection.

95. However, the context in which Z's views are expressed is relevant and I recognise that they may have been formed in a 'bubble of respite' (a similar observation was made by the Head Teacher in relation to Z's desire to 'escape' in response to her perceived difficulty with Czech schooling and language).
96. On a straightforward and robust examination of the evidence, I have concluded that the simple terms of the Convention are satisfied in that Z objects to being returned and has an age and degree of maturity at which it is appropriate to take account.
97. I now come to the discretion stage, which is 'at large' and must examine the nature and strength of the objection, as to whether it is authentic, or a product of undue influence. Although Ms Gwynne was asked to reflect on whether the objection was authentic in light of her own observations that father might have been influencing Z, Ms Gwynne could only go as far as saying she could not rule out the possibility of undue influence. It is not possible for me to rule out the potential, but I cannot put it higher than that.
98. As noted above, Z has to object to returning to the country of habitual residence, rather than the particular circumstances in that country although the two may be difficult to separate. Z has raised issues about the family dynamic and relationships, intertwined with difficulties at school, in turn linked to language difficulties. It is in my view difficult to separate the two. Based on the evidence, it appears that there is at least some objection to returning to the Czech Republic.
99. In addition, there are wider considerations that fall to be considered *per* Williams J in *Q v V* at paragraph 50 (see above). However, Mr Basi states that a 'key factor' on the father's case is Z's strongly expressed objection and cites the case law referred to above on the importance of 'hearing the child's voice' (*Re F (Child's Objections)* [2015] EWCA Civ 1022). I have had due regard to Z's wishes and feelings and objections in exercising my discretion but they are not necessarily determinative. I do not devalue the views expressed by Z and have had specific regard to her letter set out in the Cafcass report which says this:

*"Dear Judge*

*I would really like to stay here with my dad and [stepmother]. I am not doing good at school in Czech because of the language. I would want to go to school here. I don't like listening to the arguments my mum and [stepfather] have. I would definitely want to see my brother and sister during the holidays."*

100. The letter makes no reference at all to domestic violence and talks about schools in England, essentially in the abstract, since Z is still enrolled at a Czech school and has been continuing her education with it online. Whilst I do attach weight and significance to Z's objection, I also recognise the context in which it has been made as



outlined above. Discretion is at large and I must therefore also look at a wider canvas and consider other relevant welfare factors alongside Z's wishes and feelings.

101. In favour of staying in the UK, Mr Basi submits other welfare factors may be relevant to the exercise of my discretion. These include Z's overall well-being noting that Z has friends and family in this jurisdiction. However, I must also take into account that she has had a largely happy, established home environment for the past seven years in the Czech Republic, where her overall well-being has been said to be good, with what might be described as the expected 'rough and tumble' of life. Mr Bennett contends this is a positive factor for return to which I attach greater weight.
102. I also acknowledge that the sibling relationship is an important factor. Z has lived with mother all her life and with her siblings for their entire life and "*Neither of them can imagine that Z will not come back, their only hope is for her to get back home*". I have considered this to be an additional welfare factor, where there is a real and significant risk of damage to a 'full sibling relationship', if Z does not return, which is likely to be significantly detrimental.
103. There is also the concern that future contact may be difficult for mother or father. I accept that there is the potential for father's influence, as identified by the Cafcass Officer, and have considered recent events (father's refusal to give mother Z's English mobile phone number (given in the end to mother by Z herself) and visits to step grand-parents), although for clarity I should say these allegations are disputed. But the observations of Ms Gwynne are helpful insofar as she considers them to be nuanced potential influences, which in my view, could significantly interfere with future contact and impact on Z's welfare and well-being. In contrast I find there is evidence that on the balance of probabilities, mother would seek to promote a relationship between Z and her father.
104. A further welfare issue is the extent Z's relationship with her Czech family will be impaired if she does not return. I observe that Z himself has never sought to visit her there, despite the Czech order making this permissible, and I take this into consideration and the probability that this will remain the case (noting that father would not travel with Z to the Czech Republic if a return order was made).
105. In terms of Z's education, I do not accept that Z has any basis for assuming school in England is a realistic and/or better alternative for her, notwithstanding her struggles and concerns about Czech school work. Objectively, she is an average student and remains fully immersed in the Czech educational system. I consider her ongoing relationship with the Czech school that is committed to helping and supporting her to re-adjust back into life there to be an important relevant factor in favour of return.
106. Finally, I have had due regard to the policy behind the Convention, namely to secure the swift return of abducted children, and attach significant weight to this consideration in this case. Equally, comity is a factor which bears similar weight. There is an extant Czech order, made following proceedings within which father has had every opportunity to participate, and in which Z's voice was heard. This is an enforceable order in England by virtue of this jurisdiction and the Czech Republic being Contracting States to the 1996 Hague Convention.

## **Conclusion**

107. In light of the above, I grant a summary return order. The practicalities of this should now be drafted and I will hear submissions as regards date of return (mother suggests by 27 October 2023 whereas father referred to the standard timeframe to be 2-3 weeks). However, as I have not heard full submissions on this issue, I invite the parties to address me on that limited issue at the resumed hearing.
108. I realise that Z will find this judgment difficult in light of her views as set out in her ‘note to the Judge’. Ms Gwynne has helpfully agreed to discuss the terms of the return order with Z, observing that this will be a difficult time for all concerned with Z. I would urge the parties and all those who care for Z to pro-actively work together to ensure Z's safe return to the Czech Republic.
109. That is my judgment.

### **Post script**

110. Having heard further submissions from the parties, and after checking with the High Court Team at Cafcass, it was agreed that the date for return to the Czech Republic would be Wednesday morning, 1 November 2023, if suitable flights could be found; but in any event, I direct that the return should be effected by no later than 23:59 on Thursday 2 November 2023 to ensure that Ms Gwynne has the opportunity to speak to Z, as she suggested, prior to the return to the Czech Republic. Both the mother and the father agreed with this timetable, which also affords Z an opportunity to attend some planned Halloween events and see her friends in the UK prior to her departure.