Neutral Citation Number: [2024] EWHC 1887 (Fam)

Case No: FD24P00691

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 July 2024

Before :

MR JUSTICE PEEL

- -

Between :

F	**Applicant**
- and -	
M	**Respondent**

- -
- -

Jonathan Rustin (instructed by **Covent Garden Family Law**) for the **Applicant**
Simon Rowbotham (instructed by **London Family Solicitor**) for the **Respondent**

Hearing date: 3 July 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. I express my gratitude to both counsel for their high quality, focussed, written and oral advocacy.

Introduction

2. The father ("F") of a boy ("X") aged 10 years 2 months applies under the 1980 Hague convention for X's mother ("M") to return him to New Zealand. M opposes the application on three grounds:

   i) Habitual residence;

   ii) Child's objections;

   iii) Article 13(b).

The Background

3. F is a New Zealand citizen; although he was born in the UK, he lived in New Zealand from 1988 (when he was 8 years old) to 2000 (when he was 20). M is a dual British and Israeli citizen. She was born in Israel and move to the UK in 1994 when she was 12 or 13 years old. They are both in their early forties. Both are Jewish. They met in 2001 in England, and married in 2004. In 2008, their oldest child, Z, was born; she is nearly 16 years old and is not a subject of these proceedings. In 2014, X was born.

4. In February 2023 the family decided to emigrate to New Zealand after 19 years in England, in part because of their deteriorating financial situation. On M's case, she was reluctant to move and leave behind a vibrant Jewish life in England and the children's excellent schools, as well as her beloved mother. It also seems that X was not keen on leaving England. Z, by contrast, was very enthusiastic. They put their home in England on the market for sale. F received a registration from the Medical Science Council to allow him to practise as an anaesthetic technician in New Zealand. Schools in New Zealand were contacted. They looked at job opportunities (in M's case as a music teacher). They gave notice on the children's English schools. They looked online at properties in New Zealand. F (accompanied by Z) undertook an exploratory trip to New Zealand in August 2023. In October 2023 they shipped their belongings and furniture to New Zealand. They carried out, so it seems to me, all the usual preparatory work for people intending to relocate permanently. As F aptly puts it, they "packed up" their lives in the UK.

5. On 2 November 2023, the whole family arrived in New Zealand on one-way tickets, save that M had a return ticket as it was a requirement of her visa arrangements. M entered on a 6-month visitor's visa, on the basis that she would then apply for a work or residency visa.

6. On arrival, they lived with F's father and his wife, the intention being that it would be on a temporary basis until they secured their own housing. The children started at (non-Jewish) New Zealand schools. The family attended the local Chabad centre.

7. Tensions seem to have swiftly built up between M and F's father. On 17 November 2023 (only two weeks after their arrival), there was an argument which led to the police

being called after what M alleges was a physical assault by F's father. Relations between M and F had also quickly become strained, so much so that F says they effectively separated that day (M suggests it was a couple of days later). M left the property for a short time, and went to stay with a Rabbi for two days, then with F's mother for five days, although she continued to see the children most days. On 24 November 2023, by agreement M returned to F's father's home to join F and the children, on the strict condition (incorporated in writing) that she would have to leave by 8 December 2023.

8. On 7 December 2023, M left the house without the children, to stay in a short term let. The next day F obtained his own rented property and moved in with the children. M continued to see the children from time to time.

9. On 17 December 2023, M attended F's property and removed X's passport. According to M, F was aggressive and intimidating towards her. When she left, X wanted to go with her, which F let him do.

10. On 18 December 2023, F applied for an emergency ex parte order preventing M from removing X from the country. M received an email notifying her that F had made an application, but as I understand it the judge refused to make the order sought and relisted the application on 22 December 2023.

11. On 19 December 2023, M and X flew from New Zealand to England. They have bene here ever since. There is little doubt that this was done without F's knowledge or consent.

12. On 22 December 2023, court orders were made in New Zealand:

    i) An interim parenting order (equivalent to a "lives with" order) in favour of F;

    ii) M to have supervised contact with the children.

13. Amidst all these convulsions, it is common ground that Z was and remains happy in New Zealand. She did not, and does not, want to return to England.

14. On 25 January 2024, the Hague Convention application was made by F to the Central Authority in New Zealand. It was transmitted to this country in the usual way.

15. Orders were made in this jurisdiction, including giving permission for expert evidence as to; (i) M's New Zealand immigration status, and (ii) the M's mental health and its relevance to these proceedings. A direction was also made for a Cafcass report as to X's wishes and feelings.

The evidence

16. I had before me a full bundle. I received written and oral submissions from counsel instructed on behalf of each party. I heard oral evidence form the expert psychologist and the Cafcass officer.

17. For the avoidance of doubt, I have considered all the evidence in the round, and in respect of all three defences. Although I go on to consider each defence separately, the evidence to which I refer when considering one defence has been firmly in my mind

when considering the other defences. To take an example, the evidence of the Cafcass Officer was directed mainly towards the child objections defence, but I have taken it into account when considering habitual residence and Article 13(b).

The Law

Habitual residence

18. I adopt the summary given by Hayden J at para 17 of ***Re B (A Child)(Custody Rights: Habitual Residence)*** **[2016] EWHC 2174 (Fam), [2016] 4 W.L.R. 156**, save for sub para (viii) which Moylan LJ suggested in ***Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)*** **2020 EWCA Civ 1105** should be omitted. Moylan LJ went on to say:

> "61. In conclusion on this issue, while Lord Wilson's see-saw analogy can assist the court when deciding the question of habitual residence, it does not replace the core guidance given in *A v A* and other cases to the approach which should be taken to the determination of the habitual residence. This requires an analysis of the child's situation in and connections with the state or states in which he or she is said to be habitually resident for the purpose of determining in which state he or she has the requisite degree of integration to mean that their residence there is habitual."

19. How quickly and easily habitual residence may be lost and/or gained will be a question of fact and degree. Per Baroness Hale in ***Re LC (Children International Abduction: Child's Objections to return)*** **[2014] UKSC 1** at para 63:

> "63. The quality of a child's stay in a new environment, in which he has only recently arrived, cannot be assessed without reference to the past. Some habitual residences may be harder to lose than others and others may be harder to gain. If a person leaves his home country with the intention of emigrating and having made all the necessary plans to do so, he may lose one habitual residence immediately and acquire a new one very quickly. If a person leaves his home country for a temporary purpose or in ambiguous circumstances, he may not lose his habitual residence there for some time, if at all, and correspondingly he will not acquire a new habitual residence until then or even later. Of course, there are many permutations in between, where a person may lose one habitual residence without gaining another."

20. Habitual residence requires, per Lord Wilson in ***Re B*** **[2016] AC 606**:

> "not the child's full integration in the environment of the new state but only a degree of it".

21. Parental intention is a relevant factor, but not wholly determinative: ***Re H*** **[2014] EWCA Civ 1101.**

22. I also bear in mind the recent dicta of Moylan LJ in ***Re A*** **[2023] EWCA Civ 639** at paras 41 to 48, and in particular paras 47 and 48:

> "47. In *Re G-E*, I also quoted the "expectations" set out by Lord Wilson in *Re B 2016*, at [46], which bear repeating, namely:
>
> > "(a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;
> >
> > (b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and
> >
> > (c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it."
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> 48. I have already dealt with the legal approach to habitual residence at some length in this judgment but, finally, I would refer to *In re B (A Child) (International Centre for Family Law, Policy and Practice intervening)* [2020] 4 WLR 149 when, at [83]-[89], in addition to *Re B 2016*, I referred to the CJEU's decision of *Proceedings brought by HR (with the participation of KO) (Case C-512/17)* [2018] Fam 385 and to Black LJ's (as she then was) judgment in *In re J (A Child) (Finland) (Habitual Residence)* [2017] 2 FCR 542 ("*Re J*"). Black LJ, at [57], referred to "the relevance of the circumstances of a child's life in the country he has left as well as the circumstances of his life in his new country" and, at [62], she said:
>
> "What is important is that the judge demonstrates sufficiently that he or she has had in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child's habitual residence."

23. Essentially it is a child focused question of fact, to be evaluated in the light of all the circumstances.

Child objections

24. Black LJ in ***Re M (Republic of Ireland) (Child's Objections)(Joinder of Children as Parties to Appeal)*** **[2016] Fam 1** said this at para 69:

> "In the light of all of this, the position should now be, in my view, that the gateway stage is confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views. Sub-tests and technicality of all sorts should be avoided. In particular, the Re T approach to the gateway stage should be abandoned."

25. In ***B v P (Hague Convention: Children's Objections)*** **[2017] EWHC 3577 (Fam)**, MacDonald J at para 60(ii) said that an objection is to be contrasted with a preference or wish.

Article 13(b)

26. For a general distillation of the applicable principles, I have in mind the dicta of the Court of Appeal in ***Re IG*** **[2021] EWCA Civ 1123**:

> "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."

27. To the above, I would add a particular aspect of Article 13(b) as expressed by Lord Wilson in ***Re S*** **(supra)** at para 34:

> "If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a

> situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother's anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court's assessment of the mother's mental state if the child is returned".

28. In ***Re M*** **(supra)** Black LJ (as she was) said at para 11:

> "The longer that time elapses following a wrongful removal or retention, the more difficult it becomes to return the child".

29. An analysis of the approach to protective measures is carefully set out by Cobb J in (***Re T (Abduction: Protective Measures: Agreement to Return)*** **[2023] EWCA Civ 1415**.

Conclusions

30. F (upon whom the burden lies on this aspect) has satisfied me that at the time of his removal from New Zealand, that is on 19 December 2023, X was habitually resident in New Zealand, and not in this jurisdiction. This limb of M's defence fails. I acknowledge that X's strong roots were in England; he had lived there all his life with his family, had attended school there, had little knowledge of New Zealand and was fully integrated in England until he arrived in New Zealand on 2 November 2023. But it is inescapable that the whole family emigrated to New Zealand. This was a permanent, not a temporary move. X's habitual residence was, at that time, bound up with the family unit. They left behind their life in England including jobs, their home, the children's schools, and their social networks. They started a new life in New Zealand. F secured employment and M looked at music teaching jobs. F obtained a long-term rental on 8 December 2023. They attended the local Jewish Centre. Both children attended school. F's extended family were nearby. Even though X was only in New Zealand for about 6 weeks, I am not persuaded by the suggestion that X retained habitual residence in England. M's counsel relies on what he says was X's wish not to move to New Zealand. I am not convinced that this is clearly made out on the evidence, and there is no real indication of the strength of his opposition. Further, I treat any such views with a degree of caution in the light of the Cafcass officer's evidence referred to below. In any event, this is one factor among many, and I am satisfied that X's habitual residence transferred almost immediately from England to New Zealand.

31. As for the objections of X, I heard from the Cafcass officer. She told me that:

i) X is less emotionally mature than many boys his age; she thought perhaps 2 or 3 years younger. He perceives his mother as all good, and his father as all bad with no nuance and some of his reasons for appearing to dislike his father seemed a bit flimsy. He does not have the capacity to make decisions in his best interests.

ii) X misses some aspects of New Zealand, including his sister Z, his cousins, and friends he made. He does not express any desire to see F.

iii) He prefers his school and his life back in England. He had wanted to leave New Zealand with M. He has a "strong wish to remain in the UK" and does not want to go to New Zealand (a view also expressed in a short letter to the court).

iv) He is very close to M. He is more dependent on M than the Cafcass officer would expect. M has shared adult information with him which is likely to have had an impact on his expressed wishes and feelings. As a result, he "is likely to express views that will meet his emotional needs to remain close to his primary care giver".

v) The overall impression is that his views about being in England or New Zealand are primarily to do with living with M. He cannot countenance being separated from her. Anything which threatens her causes him concern.

vi) She felt that one cannot say with certainty that his expressed views about a return to New Zealand are his genuine wishes or echoes of M's views.

vii) If X were to return to New Zealand without M, or be separated from her there, that would be very traumatic for him.

32. I conclude that the defence of child objections is not made out by M (upon whom the burden of proof lies). X is less emotionally mature than might be expected, and is unable to express autonomous, well-informed views which are not influenced by M. X is clearly aligned with M and expressing views that are in part (consciously or not) echoes of her views. He does have some good memories of New Zealand. His bad memories appear to be associated with the parental conflict there and the effect on M. What he wants is to be with M in a secure, stable and conflict free existence. His views and opinions are shaped more by his relationship with his mother than an objection to New Zealand per se. In my judgment, he is expressing a preference for England rather than an objection to New Zealand within the jurisprudential meaning, and that preference is driven by a dominant wish to remain with M. I doubt very much whether he understand the nuances of a return order, protective measures, and the purpose of the Hague Convention which is essentially to decide where welfare disputes should be litigated. I am not satisfied that these somewhat complex concepts are clear to him. I therefore reject this second limb advanced by M.

33. I turn to what seems to me to be by some distance M's strongest suit, Article 13(b).

34. M has particular physical issues which are relevant in that (i) they are exacerbated by stress and anxiety and (ii) she needs regular medical treatment including medication. She has chronic psoriatic spondyloarthropathy and uveitis, a pairing of eye inflammation with inflammation in the spine and joints. She has been prescribed a variety of (often expensive) medications; currently she is taking Rinvoq.

35. Separately, she has long-standing mental health issues, originating from a horrific childhood experience when she was the subject of physical and sexual abuse perpetrated by her stepbrother from age 5 onwards. She was diagnosed with PTSD in 2012. She has long grappled with flashbacks and nightmares, especially in the event of a trigger event such as the tragic loss of a child in 2006. She has had regular psychotherapy and counselling.

36. The expert psychologist told me (in her report and orally) as follows:

i) She diagnoses M with PTSD as a result of sexual abuse and subsequent recurring and distressing memories. M also presents with neurodiversity traits. She is fragile and vulnerable.

ii) One of her traits is that she finds it very difficult to adjust to change.

iii) Her symptoms are both chronic and severe. The expert recommends 6-8 sessions of Eye Movement Desensitisation Reprocessing and at least 25 sessions of schema therapy.

iv) She risks becoming overwhelmed if she experiences trauma related symptoms. When stressed, this is a trigger for flashbacks to sexual abuse, and feelings of helplessness and fright.

v) M can provide for X's care, but her extensive mental health problems and poor coping mechanisms generate a risk of long-term deprivation and enmeshment.

vi) The brief relocation to New Zealand, and the disturbing familial events there, "have had a major impact on M's mental health". Trauma related symptoms include nightmares, intrusive memories, flashbacks to previous abuse and erratic behaviour. She felt unsafe and worthless, had bouts of depression, and experienced active suicidal ideation. She contacted a mental health crisis helpline. She felt trapped. F's behaviour (as she experienced it) made her feel unsafe. Her behaviour became erratic.

vii) If; (a) she wants to return to New Zealand, (b) she has a good relationship with F and his family; (c) she dan obtain a job, housing, financial independence, a support network and access to mental health services, she might be able to adjust to life in New Zealand within 6 months. She described that timescale as optimistic.

viii) If, however, she the conditions at (vii) cannot be achieved, it could take much longer for her to adjust to life there, measurable in years. Lack of these conditions would be potential stressors and triggers. A further stressor would be the worry that X might be is removed from her care in New Zealand litigation. In such circumstances, it is likely that, as before, there would be a severe decline in her mental health. It is probable she would feel overwhelmed and traumatised, and re-experience her symptoms. It is probable that she would make poor decisions and behave erratically.

ix) If her mental health were to deteriorate in New Zealand, that would affect her ability to care for X. This would particularly manifest itself in emotional unavailability.

x) M feels a lot happier in England, supported and more settled. Her mental health is stable. There are fewer risk factors, or potential triggers.

37. I do not need to make findings about the conduct of F and his father which M complains of, both in respect of specific incidents and allegations of long-standing domestic abuse,

or even to assume M's case at its highest on these matters. What is far more significant, in my judgment, is M's own perceptions, recollections and personal experiences, which are acutely negative. What counts is what M internally felt and experienced. It does not matter greatly for these purposes whether it was caused directly by F or whether it was, as I consider likely, an accumulation of factors, including family conflict and isolation which contributed to, and exacerbated, her mental health issues. As a result, her coping mechanisms were placed under enormous strain, and she reacted erratically. It is quite likely that F did not appreciate the impact on M of the time in New Zealand, but I am satisfied, looking at the evidence in the round, that it had a seriously detrimental effect on her. She was vulnerable when she went, and in a very short space of time was experiencing a very high degree of trauma triggered by the circumstances of the move to New Zealand. It is probable that X was aware, consciously or subconsciously, of these events, and, being so close to M, he too was affected.

38. A significant issue for M, and in my judgment a likely contributor to her anxiety and nervousness, was her immigration status as a visitor only in New Zealand, whereas F and the children enjoyed the full range of rights and entitlements. Thus, she could not, as a non-resident of New Zealand, access social security, welfare services or medical health cover. She did not receive the treatment for her physical condition which had been available to her in England. She could not open a bank account and was entirely dependent on F financially. This is likely to repeat itself if she were to return on a Visitor Visa. Although the expert refers to the possibility of a good support network in New Zealand mitigating the impact on her mental health, I am not satisfied that such a network currently exists there, and it would take some time to build up. By contrast, she is well supported in England.

39. Her tenuous status exacerbated a general sense of being trapped and isolated. She was isolated from her mother and Jewish community in England. Back in the United Kingdom, by contrast, she is regaining financial independence, has reconnected with her support network and describes herself as recovering from her ordeal.

40. Almost as soon as M arrived in New Zealand, her life around her started to disintegrate. She had no family support, poor relations with F's father, and her marriage broke down in a few short weeks. She had nobody to turn to. She moved to different accommodation, leaving the children behind, with minimal resources of her own. She was clearly very unhappy, and her psychological health was acutely affected.

41. M says her health would decline again if she were to return to NZ, and I agree that is likely. It does not matter whether M's fears about a return (bound up with memories of the relationship and isolation) are reasonable or not (***Re S* supra)**. If, as I find, they are genuine, I am entitled to consider them in the context of all the circumstances as part of the Article 13(b) analysis.

42. Returning would prompt a high level of anxiety and fear. It would likely be a trigger event, exactly as took place in November/December 2023. Even with the proposed protective measures she would return to a very uncertain situation. She would have modest resources. F offers 6 months of financial support but that would not mitigate her sense of dependency which in itself would be a stressor. She does not drive, which reduces her independence. Her access to medical care is dependent on residence (entitling her to private healthcare) or independent finances (enabling her to access private healthcare); both seems to me to be questionable. Her job prospects are

uncertain. The stresses and tension of litigation about X in New Zealand would follow. True, she would not return to live with F, but the anxiety and nervousness of a return to New Zealand would be inevitable. She would, in my view, be highly vulnerable and, in my judgment, her mental health would worsen appreciably. In part, this is all evidenced by what occurred when she was in New Zealand before. As the expert told me, if M returns to New Zealand against her wishes and in the absence of the necessary stabilising factors, "it could go very wrong".

43. According to the immigration expert, M currently has no immigration status in New Zealand. It is common ground that at present the only practical way for her to re-enter New Zealand would be under a General Visitor visa, but because of her previous time in New Zealand that cannot take place until 19 September 2024 at the earliest. Thereafter she could apply for a residency visa based on employment but; (i) she would have to secure a job and it is not clear whether she would be able to obtain a job in one of the categories prescribed for a residency visa, and (ii) there is some doubt as to whether she would pass the minimum health requirements. All of this is replete with delay and uncertainty. Without the more permanent residency visa, she would not be entitled to the usual ability to access welfare services, healthcare, housing, banking facilities and the like. In my judgment, this uncertainty and delay would act as an obvious stressor and potential trigger for her mental health. That in turn would likely reduce her ability to care for X. In a sense, the evidence for this likes in the events of the 6 weeks at the end of 2023 when beyond doubt trigger factors caused by being in New Zealand led to (i) serious deterioration on her mental health, (ii) erratic behaviour by M and other profound symptoms and (iii) a consequential reduced ability to care for the children, particularly at an emotional level. True, that period was at a time of family breakdown, but the family conflict has not ended and a return to New Zealand would, in my judgment, be likely to occasion similar episodes.

44. She would be returning against her will, in circumstances where X also does not wish to return. She would be stranded thousands of miles from her family, in a country of which she has traumatic memories. F does not agree to discharge the interim parenting order. He accepts it should be stayed until the first court hearing in New Zealand, but he expressly says that he wants X to live with him. One of his grounds for seeking transfer of X to his care in New Zealand is explicitly his concerns about M's mental health. It is hard to imagine the impact on M of being required to return to New Zealand to embark on litigation where orders have already been made against her, F seeks removal of X from her care to his, and F relies expressly on her erratic behaviour and poor mental health.

45. What of X? He has been in M's primary care in this country for the past seven months. He is settled here, and in this case the longer the passage of time since removal the more difficult it is to order a return as the impact on him would be all the greater. By 19 September 2024 (the earliest date for return on F's case) he will have been here for ten months. True, he is separated from Z, but a far more important relationship for him is with M and Z, being nearly 16, is rather older and more independent than him. He does not want to see his father. He wants to remain living with M. I am satisfied that the impact on M of a return would be severely detrimental such as to affect her ability continue the level of stability and emotional security which he currently enjoys. The words of Lord Wilson in ***Re S*** **(supra)** resonate. He would be returned to a maelstrom of family conflict, in the knowledge that F would be asking the court in New Zealand

to order him to leave the care of M and move to the care of F. Any risk of being removed from M would have a profoundly destabilising effect on X.

46. I consider all of this would be, both directly on him and indirectly via the impact on M, intolerable. I bear in mind also that X had lived all his life in England, with M by his side. It is not difficult to understand why they would both feel a great sense of unease, even injustice, to be required to return to New Zealand where they spent only six disastrous and unhappy weeks.

47. I am not satisfied that the proposed protective measures can adequately ameliorate all these matters to which I have referred. In conventional form, financial support is offered (for 6 months), as well as non-molestation provisions, and payment of return flights. None of this to my mind is sufficient to ameliorate the likely impact on M's mental health, and consequential impact on X, which I have outlined. F adds that he and his family can offer support, but in the light of the breakdown of the marriage and the fractious relationship between M and his father, that seems to me to be of no real use to M. The concrete situation on the ground for X would be, in my judgement, intolerable should a return order be made.

48. M (on whom the burden lies) has satisfied me that the Article 13(b) defence is made out. Following ***Re E*** **[2011] UKSC 27**, I will not exercise my discretion to order a return as to do so would be to place X in the way of the very harm which I have identified.

49. The application for a return order is dismissed.