



Neutral Citation Number: [2024] EWHC 3230 (Fam)

Case no: FD24P00459

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 December 2024

Before:

Mr Jonathan Glasson KC sitting as a Deputy Judge of the High Court

Between:

M

Applicant

- and -

A

Respondent

Mr Edward Bennett (instructed by **RWK Goodman Solicitors**) for the Applicant
Miss Jacqueline Renton (instructed by **McAlister Family Law Solicitors**) for the Respondent

Hearing date: 26 November 2024
Draft judgment circulated to the parties: 5 December 2024

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Jonathan Glasson KC sitting as a Deputy Judge of the High Court:

Introduction

1. The application before the court, dated 26 September 2024, is brought under the Child Abduction and Custody Act 1985 (incorporating, by Schedule 1, the 1980 Hague Convention on the Civil Aspects of International Child Abduction: the “1980 Hague Convention”). The application seeks the summary return to Poland of two children: T (aged 9) and H (aged 5 years and 6 months). The Applicant is the children’s father (“the Father”) and the Respondent is their mother (“the Mother”).
2. In advance of the hearing I was provided with an agreed bundle as well as a small bundle of authorities. Both parties also submitted helpful skeleton arguments.
3. The parties attended the final hearing in person. The Respondent was screened throughout.
4. At the hearing Ms Veitch, the Cafcass officer who had reported on T’s wishes and feelings, attended. In the event, neither party wished to question her about her report and she was released. I then heard evidence by phone link from Dr Lucy Pickering, a psychologist who had been instructed as a single joint expert. At the conclusion of the evidence, both parties made oral submissions expanding on their skeleton arguments.

The issues

5. T was born in England but moved to Poland when she was three months old. H was born in Poland. It is common ground that the children effectively lived all their lives in Poland and were habitually resident there prior to their travelling to England on 19 July 2024 for a one-month holiday. It is also common ground that they have been wrongfully retained here. The Father has rights of custody for the children pursuant to section 2 of the Family and Guardianship Code. The Mother defends these proceedings relying upon Article 13(b) and Article 13 of the 1980 Hague Convention.
6. The issues between the parties which I have to decide are:
 - (a) Whether a return order would expose the children to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation contrary to Article 13(b) of the 1980 Hague Convention. On this issue I was asked to consider a range of possible protective measures, and (if appropriate) consider what discretionary factors would be relevant; and
 - (b) Whether T objects to a return to Poland, whether she has attained an age and degree of maturity at which it is appropriate to take into account her views and, if those gateway conditions are satisfied, whether I should exercise my discretion not to return (Article 13, 1980 Hague Convention).

The factual background

7. The Mother was born in England and is a British citizen, holding a British passport. The Mother met the Father in 2013 in Cambodia where the Mother was travelling and

the Father was working (the Father is a diving instructor). The Father is a Polish citizen and holds a Polish passport. The parties started a relationship and came to the UK together, living initially with the Mother's family.

8. When the Mother was pregnant with T, they decided it would be better to move to Poland once T was born. T was born in Stockport on 1 December 2015. A couple of months later the parties moved with T to Poland where the Father's family own a block of flats. The parties lived in one of the flats in that block.
9. In July 2017 the parties travelled back to England to be married and then returned back to Poland. On 9 May 2019, the parties' son, H, was born in Poland. Both children have British and Polish passports. The Mother can understand some basic spoken Polish and the Father is fluent in both English and Polish.
10. The Father has the equivalent of parental responsibility for the children in Poland and holds parental responsibility within the jurisdiction of this Court, by virtue of being on the children's birth certificates.
11. The Mother says that during the course of the parties' relationship, the Father subjected her to domestic abuse, including controlling and coercive behaviour, emotional abuse, financial abuse, verbal abuse and on occasion physical abuse, often in the presence of the children. The Mother says that the Father was emotionally and verbally abusive to the children, (in particular, T, who he appears to 'pick on'). The Mother also says that the Father has on occasion "pushed and shoved" T.
12. The Father denies these allegations. In his statement dated 13 November 2024 he said, "*I appreciate our relationship became strained at times; however I do not accept that I was abusive to the Respondent in any way, and I have certainly never been abusive to the children*". He says that the Respondent has painted an "*unbalanced picture*".
13. The Mother says that the Father's behaviour towards her changed after H was born in 2019. She exhibits to her witness statement extracts from a diary which she kept which records incidents of abusive behaviour. The extracts from the Mother's diaries between 2021 and 2024 contain a number of instances of abusive behaviour. I note in particular:
 - a) November 2022: "*Pulled the bathroom rug from under my feet. Because I forgot to turn the shower heat back to the bath setting and he got water on the floor.*"
 - b) January 2023: "*Telling me off for ages about spilling water on the kitchen surface and accusing me of doing in (sic) on purpose to annoy him. Calling me asshole and cold. Says he can't live like this*"
 - c) First two weeks in August 2023: "*Constant arguing and complaining about everything and other people. Pushed me twice in front of the children.*"
 - d) January 2024: "*Being rough with me in the bathroom, and then blocking me in the kitchen complaining at me and when I asked to leave the room he wouldn't let me leave. He wouldn't let me leave for ages until I hugged him*".

- e) January 2024: *“Throwing a plastic water bottle in my direction. I can’t remember why he was annoyed at that moment.”*
- f) January 2024: *“saying he will smash something and then pinched me through my coat because I didn’t agree with him.”*
14. The Father says that the diary contains allegations which are exaggerated, and he says they reflect *“simply different parenting styles”*, referring to *“many vague entries”* such as *“mean to [T]”*, *“a bit rude in the morning”*, and *“being rude”*. He says that at times the Mother was *“abusive towards me and in front of the children. The Respondent frequently made disparaging and demeaning comments, such as suggesting I should ‘end my life’”*. He says that the Respondent *“has simply taken issue with my parent style and I feel this is nitpicking”*.
15. In 2021 the Mother attended the Centrum Praw Kobiet (CPK) Women’s Centre in Poland which is an organisation that supports women’s rights and the prevention of violence against women. A lawyer there prepared a letter based on the Mother’s instructions. The letter says that at the beginning they were a *“harmonious couple, when then began to form a happy family”*. She said that *“for some time however, [the Father] has begun to show towards me and towards our children (especially towards our daughter, [T] undesirable, violence-marked behaviours.”* The Father’s *“violence”* is *“in large part emotional and financial, however there been a few instances of physical violence used”*. He can show *“unrestrained anger – he is unable to control his emotions, he is aggressive, he often swears and directs many abusive words at me”*. This behaviour often took place in front of the children.
16. In the letter the Mother says that the Father repeatedly says that *“I am not smart, that I do not have a brain’.”* She said the Father *“is unable to explain the causes for his sudden outbursts of anger and why in specific situations he feels such extremely negative emotions. He also does not have the inclination to apologise for his behaviour.”* She said that the Father *“forbade me from sending any money whatsoever from our shared bank account..... The individual controlling is based for the most part on a strict supervision of my free time and the contents of my phone (specifically of my messages). [The Father] cannot imagine me going to the cinema or theatre by myself. On these occasions, I cannot buy any snacks, as according to him they are too expensive... have caused me to stop freely carrying out any everyday tasks. I am scared to drive the car... doing the shopping... going out with my female friends in the evening...”* The Mother said that *“the most distressing effect of [the Father’s] behaviour is the current emotional state of [T]. Our daughter openly admits that she feels better when [the Father] is not present. She has begun to be nervous and withdrawn. When watching films, she openly comments that unlike me and [the Father], other parents can be happy.”*
17. The Mother ends the letter by saying *“Unfortunately, a number of situations have developed in which [the Father] has used, in relation to me and [T], physical violence. At this point I want to make clear that this violence was not excessive. It consisted of pushing away our daughter or shoving me. I am afraid, however, that [the Father’s] lack of control over his emotions could in the end lead to more serious acts. I would like to protect my children from this, as well as myself, and [the Father]*

himself. I hold my husband in great affection, and I want to find a way of resolving the situation.”

18. The Mother believed that the Centre would send the letter to social services in Poland and expected a visit from social services but in the event no visit was made. The Mother contacted social services in the UK when the family visited the UK. They then contacted social services in Poland. A social worker named Ursula Nowak visited around May 2022 and suggested to the Father that they engage in therapy but that did not happen. The Father says that he *“I regret not enrolling in therapy and apologise to the Respondent for not prioritising therapy to help us and our family”*.
19. In January 2023, the Mother attended an appointment with Piotr Stangrodzki, a psychiatrist from Mind Health Krakow. She was prescribed anti-depressants and was advised to seek “talking therapy” as medication alone would not solve the problem. The psychiatrist also recommended that the Father attend an appointment. The Father did attend and was prescribed antidepressants but did not complete the course and did not attend any further appointments. The Mother says that she did not attend *“Talking therapy because I lacked any support that I needed.”*
20. In March 2024 the Mother sought help from Diana Antolini of the Mind Works Centre for Cognitive-Behavioural Therapy and Schema therapy. She attended two therapy sessions, but the Mother says that Ms Antolini suggested that she *“should come back to her once my relationship with [the Father] had ended as it would be better for me to receive this type of therapy at that stage. She also recommended I seek help from the crisis centre with regards to [the Father’s] behaviour towards me and the children.”*
21. Between 23 April 2024 and 16 July 2024, the Mother received psychotherapy from Idalia Leszczynska from Synapsa Krakow. This therapy was funded entirely by the Father’s mother. The Mother says that this therapist also recommended that she report the Father’s behaviour to social services. The Father says that his mother enrolled the Mother into the therapy *“out of concern for her behaviour”*.
22. The Mother attended at a social services centre on 22 May 2024 with the her father-in-law who was also concerned about the family. Consequently, social services carried out a home visit on 11 June 2024.
23. The Mother says that shortly before their planned trip to England in July 2024, the Father found her diary and the letter from the CPK Women’s Centre from 2021. She says that she was afraid of what he would do and locked herself in the bathroom.
24. The parties travelled to England for a holiday on 19 July 2024. It was planned that the Mother and the children would stay in England for a month and that the Father would return to Poland after 10 days. In her statement the Mother says during the holiday *“I broke down to my family and disclosed everything that had been happening with [the Father] and the behaviour he was subjecting both me and the children to. I have made my family aware of [the Father’s] behaviour in the past but not to the extent of what was happening.”* The Mother explains that *“the very thought of returning to Poland filled me with complete dread and fear, and with the support of my family and friends, I made the decision to remain in England with the children and did not return to Poland as planned on 19th August 2024. I sent [the*

Father] a text message on this date, informing him that I would not be returning to Poland with the children due to his behaviour.”

25. On 8 August 2024 the Mother contacted Stockport Children’s Social Care to report that she was considering ending her relationship and remaining in Stockport with the children. The referral progressed for a Child and Family Assessment. The assessment did not identify any concerns about the Mother’s ability to meet the children’s needs and acknowledged the need for her to seek legal advice regarding her choice not to return the children to Poland. No further action was taken by Children’s Social Care and statutory involvement with T and H ended on 3 October 2024.
26. On 26 September 2024, the Applicant filed a C1A and C67 with a statement in support pursuant to Article 12 of the 1980 Hague Convention.
27. On 15 October 2024 there was a directions hearing before Ms Barbara Mills KC sitting as a Deputy Judge of the High Court. The case was listed for a final hearing and directions were given for a Cafcass report on T’s wishes and feelings. The Deputy Judge determined that H was too young for his view to be ascertained by a Cafcass officer. Directions were also given for a further hearing to consider a Part 25 application for the instruction of an expert.
28. On 1 November 2024, Trowell J granted the Mother’s Part 25 application and Dr Pickering was instructed as a Single Joint Expert.

The Cafcass evidence

29. In her report dated 19 November 2024 Ms Veitch, the Cafcass officer, explored the views, wishes and feelings of T about a return to Poland and provided an assessment of her maturity. Ms Veitch explained that because T has aphasia (a language disorder) she can find it hard to read and to write.
30. Ms Veitch’s opinion was that T had only been to express her wishes and feelings “*to some extent. However, often her yes/no answers were obtained through suggestion and prompts which means that these cannot be considered independent or free from influence in seeking to understand how she feels I had to use closed questions which can have the impact of leading a child to an answer*”. Ms Veitch considered that T’s entries in a workbook they completed together did reflect T’s views although there were times when T looked to her Mother to decide how to respond.
31. Ms Veitch commented on the final section of the workbook:

“The final section, ‘what would you like to happen next’, T did not initially give an answer to. I asked her ‘what about going back to Poland?’ and [T] shook her head very vigorously and screwed her face up in distaste. I suggested it looked like she really did not want to go back to Poland, and she nodded that I was correct. I asked if this was because of the shouting she had written about, and she nodded. I put this into a sentence for her and asked how she would feel if she had to go back. [T] managed to say which ‘sad’, which again I formed into a sentence which I which I checked with her.”
32. T needed considerable help to write a letter to the Judge but, in the end, she wrote:

“Dear Judge

What would you like to stay the same?

Mum looking after me and living in England.

What needs to change?

Daddy to stop shouting at Mummy, me and [H].

What would you like to happen next?

I really don't want to go back to Poland because of Daddy shouting. I would feel sad if I had to go back to Poland.

Is there anything else you would like to say?

No.”

33. Ms Veitch said that she had “*been unable to capture [T’s] own voice to any real extent.*” Ms Veitch went on to say that T “*did confirm that I had correctly ascertained that she would like to stay in England, in the care of her mother. She does not like it when her father shouts at her or her family, and this is why she does not want to return to Poland. However, I was unable to explore this or her feelings about summary return in more detail, due to the difficulties [T] had with speaking to me.*”
34. In Ms Veitch’s opinion her assessment of T’s maturity “*had significant limitations*” because T did not speak to her very much. Ms Veitch noted that aphasia does not affect intellect and cognitive ability and that T understood the questions which had been discussed. The difficulty was in communicating rather than understanding. Ms Veitch was unable to rule out a degree of influence from the Mother when T made the drawings that are reproduced in the Cafcass report.
35. Ms Veitch commented that “*[a]t 8 years old, [T] does not yet have the capacity to make decisions about what is in her holistic and long-term best interests. She is therefore likely to express views which meet her immediate emotional need to remain close to the person who is currently caring for her mother, with whom she feels safe.*” Ms Veitch “*tentatively*” consider that T presents with the appropriate maturity for her age and stage of development (i.e. at 8 years old (as T was at the date of the report)).
36. In the conclusion to her report, Ms Veitch says “*that T wrote about her father shouting at her and her family, which she does not like. This appeared to be the primary reason her desire to remain living in England and her preference not to return to Poland. It will be for the court to determine whether [T’s] preference to remain living in England amounts to an objection in the meaning of the Convention.*”
37. Ms Veitch goes on to say that if the reports by the Mother of domestic abuse of T by are true then “*[T] and [H] have lived with the verbal and psychological abuse and coercive control of their mother, by their father. It is currently unknown whether [the Father] accepts what has been reported or not. If what is reported is true, I would be*

concerned about the risk of emotional and physical harm to the children, should they return to the same circumstances they were living in in Poland.”

38. Ms Veitch noted that the Mother had rejected the Father’s proposed protective measures as being insufficiently protective. Ms Veitch commented that:

“The court may wish to give regard to her concerns that the family home is within a building which [the Father]’s family owns and to which he would have access even if no longer resident. I would recommend that [the Father] is asked to provide funding to [the Mother] to source alternative accommodation for herself and the children in the event of a return.

I further recommend that the children remain in the care of their mother and that there are no spending time arrangements between the children and their father until a risk assessment is undertaken by the Polish authorities, to determine whether this is safe. I would invite the father to provide the court with an undertaking that he will not pressure [the Mother] to agree informal arrangements prior to a court decision.”

39. Ms Veitch issued a supplementary report on 25 November 2024 in which she provided the school’s responses to her requests for welfare information. T’s school had written that

“T has been diagnosed with aphasia; despite this speech and language barrier she has settled in well with her peers and the year 4 teaching team. She is becoming more confident in communicating in this setting. She will only speak to adults in the year 4 team and has not spoken to any other adults in school. She becomes very nervous around male members of staff and will retreat back into the classroom if she sees male colleagues in the corridor. [T] struggles to connect with adults she does not know.”

40. The School noted that H was popular and well liked and had settled in very well. There were no safeguarding concerns for either child.

The evidence from Dr Pickering

41. Dr Pickering is a chartered psychologist and registered clinical psychologist. She met with the Mother on 12 November 2024 and filed a comprehensive report on 25 November 2024. The key findings were set out in the summary to her report:

“• [The Mother] was presenting with severe depression and anxiety at the time of the assessment. [The Mother] said she has no history of mental health problems but attributed her current difficulties to the stress within her relationship with [the Father] and her anxiety about possibly having to return to Poland.

• There was evidence of symptoms of post-traumatic stress but she did not meet all of the criteria for a formal diagnosis of post-traumatic stress disorder (PTSD). The Mother’s] symptoms are most likely to be explained by her diagnosis of severe depression and anxiety following acute stress and unhappiness in her relationship.

- [The Mother] reported unwanted thoughts and memories of her relationship with [the Father] and these appeared to be ruminative thoughts as part of her depression and anxiety following her unhappiness and acute stress in her relationship....
 - There was evidence of avoidant coping and [the Mother] appeared emotionally detached, which is likely to highlight how overwhelmed she felt in the relationship due to the stress she felt she was experiencing. Whilst there are symptoms of trauma from her prolonged experience of stress and alleged abuse in her relationship, she did not meet all the criteria for a diagnosis of PTSD during the formal assessment and many of her symptoms can be understood within her diagnosis of depression.
 - [The Mother] presented with an unusual manner and characteristics. She was somewhat uncomfortable with social interaction and she appeared withdrawn and detached.
 - [The Mother] presented with thought disorder with incoherence of speech, disorganised thinking, a lack of clarity, providing vague and unrelated responses, confusion in her discussion, poor recall and poverty of speech. [The Mother] does not present with a mental illness such as schizophrenia, psychotic disorder or mania but it is likely that her thought disorder is associated with her acute level of stress and severe depression
 - [The Mother] reported sleep disturbance due to excessive worry and this is likely to impact further upon her disorganised thinking and thought disorder.
 - [The Mother] reported persistent depressed mood, loss of interest, sleep disturbance due to excessive worry, increased agitation, tiredness and low energy, loss of motivation and impaired ability to think and concentrate. [The Mother's] symptoms are indicative of a severe depressive episode.
 - [The Mother] presented with symptoms of excessive worry and anxiety, difficulties controlling her worry, restlessness, becoming easily fatigued and irritability.”
42. In her report, Dr Pickering noted that the Mother had told that “*if she had to return to Poland she would not manage. She said she immediately thinks about being homeless in Poland. She said if she returned, she would be isolated and said she has no friends or family there. [The Mother] said she feels [the Father] would take over and said she cannot speak Polish and would not be able to do basic things for herself. [The Mother] referred to difficulty accessing schools and doctors by herself.*”
43. Dr Pickering said in her summary that:
- “3.1 Overall, [the Mother] presents with severe depression and anxiety and symptoms of PTSD. [the Mother] presented with thought disorder and this is likely to be best understood within her diagnosis of severe depression. Whilst I cannot comment on matters of fact, it appears that the relationship has caused [the Mother] persistent stress, unhappiness and led to severe depression. If [the Mother] were to return, it is my opinion that her depression and anxiety will

persist and potentially worsen, as will her symptoms of traumatic stress. There is no clear evidence of a risk to self, associated with her depression but it is my opinion that her mental health is highly likely to deteriorate further if she had to return.” (Emphasis added)

44. Dr Pickering was asked by the parties to consider the protective measures put forward by the Father and to comment upon whether they would in isolation or cumulatively provide the Mother and children with the emotional and physical safety needed upon their return to Poland. In her report Dr Pickering answered that question as follows:

“3.12 I cannot comment on matters relating to the children’s experiences or the impact of returning to Poland upon their wellbeing. With regards to [the Mother], it is concluded that her mental health is highly likely to deteriorate further if she were to return. In my opinion, this is most likely to occur in the circumstance that [the Mother] is having to rely upon [the Father] and the paternal grandparents, or if she were unable to ensure adequate distance from [the Father] to be able to process her experience of the relationship and associated depression, anxiety and trauma symptoms. A return to the home that she shared with the father is likely to impact upon her mental health as will any regular ongoing contact with [the Father]. In order to minimise the impact on her mental health, she is likely to require support outside of the paternal family, a separate living space and independent life away from [the Father] so she can process and cope with the end of the relationship and the impact she feels the relationship has had upon her. [The Mother] said she is isolated in Poland and has no other support and therefore feels she cannot return. It is my opinion that [the Mother’s] mental health difficulties will make it difficult for her to integrate and establish an independent life in Poland. [The Mother] is currently heavily reliant upon her family due to her current mental health difficulties.”

45. At para 3.13 of her report Dr Pickering said:

“I recommend that [the Mother] access cognitive behaviour therapy (CBT) to address her depression and anxiety. This approach may be integrated with trauma focused CBT in order to address her symptoms of trauma. She may benefit from pharmacological treatment alongside therapy. I would recommend between twelve and sixteen sessions of integrated therapy. [The Mother] will be able to seek a referral to psychological therapies from her GP or access this work privately. Treatment may alleviate [the Mother’s] symptoms and provide her with the therapeutic space to process her experiences within her relationship, to better manage her symptoms and to increase her coping strategies. Therapy is likely to assist [the Mother] in terms of her ability to cope better with any future contact and interactions with the father as separated co-parents.”

46. In answer to questions from Mr Bennett on behalf of the Father, Dr Pickering confirmed that the Mother was not a suicide risk. So far as Dr Pickering was aware the Mother was not being prescribed any medication. Nor, she said, had the Mother ever spent any time hospitalised because of her mental health. Dr Pickering did not think that the Mother was in need of hospitalisation. She was asked whether the Mother’s condition was of such a severity that she was unable to get out bed in the morning. Dr Pickering replied that the Mother was struggling and that her mother

was helping her. Although she presented with severe depression and said that there with feelings of being overwhelmed, the Mother was able to function. At the moment the only help she was receiving for her depression was counselling.

47. Dr Pickering was asked whether the Mother would benefit from pharmacological treatment. She replied that the Mother might benefit from that, although that was not within her remit as a clinical psychologist. She said that that would be a matter for the Mother's GP to advise upon. Dr Pickering thought that the Mother should have a course of 12-16 CBT sessions. Those would be weekly. Although they could increase to 2 per week she thought they would not be more than 1 per week as the Mother would need time to process the sessions and assimilate new coping and therapeutic skills.
48. Mr Bennett asked about the prognosis if the Mother returned to Poland and had somewhere entirely independent of the Father as well as security of income. She said that all she could say was that depression was linked with her relationship. Dr Pickering confirmed that she was aware that the Mother had sought assistance from a psychiatrist in Poland and had also engaged in CBT in Poland. She agreed that the Mother was not so ill that she would not access support in Poland. Dr Pickering said it was difficult for her to say whether arranging therapy in advance of a return would help with the transition back to Poland. However, what she could say was that that the Mother would benefit from therapy wherever she was.
49. Miss Renton asked Dr Pickering to comment further on para 3.12 of her report (cited above). Miss Renton suggested to her that there were two ways of mitigating the effects of a return to Poland: support outside of the paternal family and having an independent life. She asked whether in the absence of both of those factors it was correct that the Mother's condition was highly likely to deteriorate. Dr Pickering said that if the Mother returned, the risk that it would lead to a deterioration would be more heightened if she was in a situation where there was ongoing contact with the Father. The deterioration could be lessened if she lived completely separately and had support. Miss Renton asked whether or not the effectiveness of the CBT was dependent on the Mother having support and an independent life. Dr Pickering agreed that CBT would be more effective if the Mother was outside the stressful situation and could process those experiences. She was asked about the fact that previously the Mother was advised to stop CBT until out of the relationship with the Father. Dr Pickering agreed that the Mother had to be in the right environment for the CBT to be effective. She was asked about whether she had any concerns about the Mother's parenting in England. Dr Pickering said it was not within her remit to assess the Mother's capability to parent.
50. Miss Renton asked whether, given Dr Pickering's view that the Mother was highly likely to deteriorate upon return to Poland, and where the Mother would not have support or independence in Poland, Dr Pickering would have a concern that the Mother would be a risk to herself. Dr Pickering said that there would no risk of the Mother harming herself. A protective factor would be the children. Dr Pickering had not found any evidence of a risk to herself.
51. Finally, Miss Renton asked whether at the end of 12-16 weeks of treatment the Mother would need further treatment. Dr Pickering confirmed that evidence indicated

that at the end of that period of treatment patients had a skill set which enabled them to manage their emotion and better able to cope. At the end of that treatment, the Mother was likely to be better able to understand and manage her symptoms. In answer to a question from me, Dr Pickering confirmed that pharmacological treatment might last a longer period of time but that was a matter for the GP.

The parties' positions

52. Each of the parties made detailed submissions to me both orally and in writing. I have borne in mind all of the arguments which they have made. What follows is a summary of the main points raised by each of them.

The Father's position

53. The Father argued that neither child objected to a return to Poland. He argued that to the extent T objects, the court should exercise its discretion to return in any event. The Father submitted that *“any risk arising out of [the Mother's] contested allegations of domestic abuse and her mental health issues can be dealt with by the protective measures [Father] offers, and the steps that the Mother can take prior to return to put support in place for her on return.”*
54. The protective measures offered by the Father were summarised by Mr Bennett in his Skeleton Argument in this way:
- (a) on a no admissions and no findings basis, not to intimidate, harass, or pester Mother;
 - (b) not to remove the children from the Mother's care or from school until further order of the Polish court;
 - (c) to accept what contact with the children the Mother is prepared to offer him without reservation until further order of the Polish court;
 - (d) to pay for the Mother and the children's flights back to Poland;
 - (e) not to attend the airport at the date and time of arrival;
 - (f) to either vacate the former matrimonial home, or to pay the deposit and rent on a separate 2 bed apartment of the Mother's choice, for three months or an earlier order of the Polish court;
 - (g) to pay maintenance to the Mother of 1500 zloty per month for three months, or until an earlier order of the Polish court;
 - (h) if the Mother wishes to take advantage of private medical or therapeutic treatment for her mental health in Poland, to pay for this;
 - (i) the Father does not object to Cafcass making a child protection referral to Polish social services;

- (j) the Father is content to refer the family himself, if the court considered it appropriate, to Polish social services to inform them of any need to carry out a risk assessment in respect of contact with him;
 - (k) not to support or institute any civil or criminal prosecution of the Mother for child abduction in Poland;
 - (l) to institute private law proceedings in Poland.”
55. Mr Bennett indicated on behalf of the Father that the measures referred to above could be expressed either as undertakings or orders under Article 11 of the 1996 Hague Convention. At the hearing Mr Bennett indicated that the Father would also agree to pay all utilities bills on the Mother’s property either directly or indirectly. He also agreed that the state child benefit of 800 zloty per month per child should be paid direct to the Mother. The Father would take any steps necessary to ensure that maintenance is paid to the Mother. These arrangements could all be put in place in advance of the return to Poland which would mitigate the effects on the Mother’s mental health of a return to Poland. Mr Bennett noted that the court could make a return order containing conditions that had to be satisfied before the children’s return (relying upon *Walley v Walley* [2005] EWCA Civ 910 as authority for such an order). Mr Bennett said that the Mother on her own account had previously worked in Poland and that the Father had evidenced a potential range of jobs that the Mother as an English speaker without much Polish could do.
56. Mr Bennett argued that the evidence before the court did not indicate that the impact on the Mother’s mental health of a return to Poland would impact adversely on the children. He noted the Mother was not suicidal, had never been hospitalised, she had previously accessed psychological and social services in Poland before. Although he accepted that each case turned on its own facts, he submitted that the Mother’s mental health issues were significantly less severe than in cases where the court had refused summary return because of a parent’s mental health. The protective measures were such that the children would not be placed in an intolerable situation.
57. Mr Bennett said that the Father had obtained legal advice to the effect that a Polish court could consider an application arising from this case within 1-4 weeks.
58. As to T’s objections, Mr Bennett argued that although the bar to establish whether a child objects or not is low, the evidence did not indicate that T objected to return arguing that Ms Veitch’s report indicated that T’s own voice was hard to capture, and Ms Veitch could not rule out maternal influence. He argued that a “teased out” indication that T did not wish to return to Poland because of the Father’s shouting was not sufficient to amount to an objection as opposed to a preference. Mr Bennett argued that if, contrary to that submission, the court concluded that T had objected then the court should exercise its discretion and direct return in any event. The concerns leading to the objection can be met through the protective measures. The children’s entire lives have been in Poland. The policy considerations underpinning the 1980 Hague Convention strongly support their return.

The Mother’s position

59. Miss Renton explained that Article 13(b) of the 1980 Hague Convention was the centre piece of the Mother's defence to the application. She submitted that the domestic abuse allegations and the mental health issues were interlinked. The mental health difficulties for the Mother were "*situational*" she said and a consequence of the Mother's "*lived experience*" in Poland. The court should proceed on the basis that the domestic abuse allegations were true.
60. In respect of the mental health issues, Miss Renton argued that was not appropriate to discount them on the basis that the Mother was not suicidal. Miss Renton submitted that the Mother's case had similar features to that in the Supreme Court case of *Re S* where there was no suggestion that the mother was at risk of suicide.
61. The court was required to scrutinise the efficacy of the protective measures carefully. In her submission there were no protective measures that would mitigate the risks. If she was wrong on that, then the protective measures were "woefully inadequate". The Mother had no friends in Poland, only a few acquaintances. She is severely depressed and anxious and completely reliant on her parents. The effectiveness of CBT was dependent on the Mother having a support network. It would not be the appropriate environment for the Mother in Poland. The Mother would need more than the 1500 zloty maintenance offered by the Father and the 800 zloty per child benefit. There was no evidence that the Father would be able to make those payments or that he would be able to fund the Mother's treatment. All of which led Miss Renton to submit that the Article 13(b) defence was made out.
62. Miss Renton argued that if the court determined that the article 13(b) defence was established, then the grave risk of harm that would be caused by the children if they were summarily returned to Poland should be the court's 'lodestar' at the stage of discretion and the reason for ordering a non-return. Issues of policy would pale into comparison at that stage.
63. In her oral submissions Miss Renton did not address the child objections defence. In writing she argued that T objected to a return and referred to Ms Veitch's tentative view that T's age was commensurate with her maturity. She argued that the gateway stage was established.

The Law

The Hague Convention 1980

64. One objective of the Hague Convention 1980 is set out in the preamble:

"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,"

65. As explained by Baroness Hale and Lord Wilson in *Re E (Children) (Abduction: Custody Appeal)* [2012] 1 AC 144:

"[14] ... This objective is, of course, also for the benefit of children generally: the aim of the Convention is as much to deter people from wrongfully abducting

children as it is to serve the best interests of the children who have been abducted. But it also aims to serve the best interests of the individual child. It does so by making certain rebuttable assumptions about what will best achieve this: see the Explanatory Report of Professor Perez-Vera, at para 25.”

66. Article 12 of the 1980 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.”

67. Article 13 provides, so far as material:

“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 –

...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.”

Harm and Article 13(b): the law

68. The Mother relies on the harm exception set out in Article 13(b) of the Hague Convention 1980. The law in respect of the defence of harm or intolerability under Article 13(b) was considered by the Supreme Court in *Re E* (cited above) and *Re S (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257.

69. In *Re E*, the following principles were set out:

- (a) Factual disputes regarding allegations of domestic violence are likely to be better able to be resolved in the home country of the family (para 8).
- (b) Nowhere does the Convention state that its objective is to serve the best interests of the adult person, institution or other body whose custody rights have been infringed by the abduction. The assumption underlying the Hague Convention is that the best interests of the child will be served by a prompt return to the country where the child is habitually resident (para 15).
- (c) The Courts of the requested state are not expected to carry out a ‘*full-blown examination of the child’s future ... which it was the very object of the Hague Convention to avoid*’ (para 22):
- (d) There is no need for Article 13(b) to be “*narrowly construed*”. By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or gloss (para 31).

- (e) The burden of proof lies on the person who opposes the return. The standard is the ordinary balance of probabilities. *“But in evaluating the evidence the court will, of course, be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under Art 13(b) and so neither those allegations nor their rebuttal are usually tested in cross-examination.”* (para 32)
- (f) The risk to the child must be “grave”. It is not enough, as it is in other contexts such as asylum, that the risk be “real”. It must have reached such a level of seriousness as to be characterised as “grave”. Although “grave” characterises the risk rather than the harm, there is in ordinary language a link between the two. (para 33)
- (g) “Intolerable” is a strong word, but when applied to a child must mean “a situation which this particular child in these particular circumstances should not be expected to tolerate”. *“Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself. Among these can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent.”* (para 34)
- (h) Art 13(b) is looking to the future: the situation as it would be if the child were to be returned forthwith to 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 secure that the child will not be called upon to face an intolerable situation when she gets home. (para 35)
- (i) There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risk that the child will face if the allegations are in fact true. Where allegations of domestic abuse are made, the court should first ask whether if they are true there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise place in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. (para 36).
- (j) The clearer the need for protection, the more effective the protective measures must be (para 52).

70. In *Re S* Baroness Hale said at para 34:

“In the light of these passages we must make clear the effect of what this court said in *Re E (Children) (Abduction: Custody Appeal)*. The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. 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.”

71. In *Re S* Lord Wilson held that the methodology articulated in *Re E* formed “*part of the court’s general process of reasoning in its appraisal of a defence under the article*” (at para 22), which process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. It follows that when evaluating the evidence, the court will be mindful of the limitations involved in the summary nature of the Hague Convention process.
72. It is preferable for the judge to adopt this two-stage process under Article 13(b). As Moylan LJ stated in *Re C (Article 13(b))* [2021] EWCA Civ 1354 at para 58:
- “...unless the court properly analyses the nature and severity of the potential risk which it is said will arise if the child is returned to the requesting State, the court will not be in a position properly to assess whether the available protective measures will sufficiently address or ameliorate that risk such that the grave risk required by Article 13(b) will not have been established. As set out in *Re E*, at [36], the question the court is considering is “how the child can be protected against the risk” (my emphasis). The whole analysis is contextual and forms part of the court’s process of reasoning, as referred to by me in *Re A*, at [97], adopting this expression from *Re S (A Child) (Abduction: Rights of Custody)* [2012] 2 AC 257.”
73. This second stage requires a proper evaluation of the sufficiency and efficacy of any protective measures with a view to determining whether the nature and extent of those measures addresses or sufficiently ameliorates the risk(s) which the allegations potentially create (*Re. B (Children)* [2022] EWCA Civ 1171 at paras 71-72). Moylan LJ explained at para 96 of *Re A* [2021] EWCA Civ 939 that the question of how “*how the child can be protected against the risk*”
- “is a broad analysis because, for example, the situation faced by the child on returning to their home state might be different because the parents will be living apart. But, the court must carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to a grave risk within the scope of article 13(b). And, to repeat what was said in *In re E*, at para 52: ‘The clearer the need for protection, the more effective the measures will have to be.’”
74. In assessing the efficacy of any such orders or undertakings, the fact that they are enforceable in the requesting state under the terms of the 1996 Hague Convention is a relevant consideration: *Re. Y (Abduction: Undertakings)* [2013] 2 FLR 649 (see also Cobb J in para 53(v) in *Re T* [2023] EWCA Civ 1415).
75. The HCCH 2020 Good Practice Guide states at para 44 that in some cases protective measures may need to be put in place in advance of the return of the child:
- “Protective measures may be available and readily accessible in the state of habitual residence of the child or, in some cases, may need to be put in place in advance of the return of the child. In the latter case, specific protective measures should only be put in place where necessary strictly and directly to address the grave risk. They are not to be imposed as a matter of course and should be of a

time-limited nature that ends when the state of habitual residence of the child is able to determine”

76. If a number of different allegations are made, the judge should consider the cumulative effect of the allegations as a whole, not individually, before evaluating the nature and level of risk. While there may be distinct strands which have to be analysed separately the court must not overlook the cumulative effect of the allegations for the purpose of evaluating the nature and level of any grave risk(s) that might potentially be established as well as the protective measures to address such risks (*Re. B*, [2022] 3 WLR 1315, paras 70-71).
77. In *Re C Moylan* LJ endorsed what MacDonald J said in *G v D (Absence of Protective Measures)* [2020] EWHC 1476 (Fam) at para 39, namely:
- “Finally, it is well established that courts should accept that, unless the contrary is proved, the administrative, judicial and social service authorities of the requesting State are equally as adept in protecting children as they are in the requested State (see for example *Re H (Abduction: Grave Risk)* [2003] EWCA Civ 355, [2003] 2 FLR 141, *Re M (Abduction: Intolerable Situation)* [2000] 1 FLR 930 and *Re L (Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433). In this context I note that Lowe et al observe in *International Movement of Children: Law, Practice and Procedure* (Family Law, 2nd edn), at para 24.55 that: 'Although, as has been said, it is generally assumed that the authorities of the requesting State can adequately protect the child, if it can be shown that they cannot, or are incapable of or, even unwilling to, offer that protection, then an Art 13(b) case may well succeed. It seems evident, however, that it is hard to establish a grave risk of harm based on speculation as opposed to proven inadequacies in the particular cases.’”
78. If a point is reached at which the court has to consider whether to exercise its ‘discretion’ whether to order a return, the approach is that set out by Baroness Hale in *Re M (Abduction: Zimbabwe)* [2007] UKHL 55 at para 43:
- “...in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare”
79. At para 48 Baroness Hale continued:
- “...the policy of the Convention does not yield identical results in all cases, and has to be weighed together with the circumstances which produced the exception and such pointers as there are towards the welfare of the particular child. The Convention itself contains a simple, sensible and carefully thought out balance between various considerations, all aimed at serving the interests of children by deterring and where appropriate remedying international child abduction”.
80. In *Re G (Abduction: Consent/Discretion)* [2021] EWCA Civ 139 Peter Jackson LJ gave further guidance at para 41 of his judgment:

“The exercise of the discretion under the Convention is acutely case-specific within a framework of policy and welfare considerations. In reaching a decision, the court will consider the weight to be attached to all relevant factors, including: the desirability of a swift restorative return of abducted children; the benefits of decisions about children being made in their home country; comity between member states; deterrence of abduction generally; the reasons why the court has a discretion in the individual case; and considerations relating to the child's welfare.”

Child's Objections: the law

81. The leading authority on the child's objections exception is *Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26.
82. The applicable principles in *Re M* were helpfully summarised by Cobb J in *Re W and E (Habitual Residence)* [2024] EWHC 2596 at para 50:
 - “i) It is appropriate to break down the exercise into two parts – the "gateway stage" and the discretion stage (§18);
 - ii) the gateway stage has two parts in that it has to be established that (a) the child objects to being returned and (b) the child has attained an age and degree of maturity at which it is appropriate to take account of his or her views (§18); the gateway stage represents a fairly low threshold (§70);
 - iii) 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 (§69);
 - iv) whether a child objects to being returned is a matter of fact, as is his or her age (§35);
 - v) the degree of maturity that the child has is also a question of fact (§35); it is now recognised that children as young as 6 can be of sufficient maturity to have their objections taken into account (§67);
 - vi) the child's views have to amount to objections before they can give rise to an Article 13 exception (§38); there must be more than a mere preference expressed by the child (§39);
 - vii) the child has to object to returning to the country of habitual residence rather than to returning to particular circumstances in that country, although it has been clear from early on that there may be difficulty in separating out the two sorts of objection (§42);
 - viii) the objection must be to returning to the country, although it may be difficult to extricate that from a return to the parent; the wording of article

13 does not inhibit a court from considering the objections of a child to returning to a parent (§44);

ix) the fact that a child objects to being returned does not determine the application (§46); the child's views are *not* determinative of the application or even presumptively so (§63);

x) The child who has suffered an abduction will very often have developed wishes and feelings to remain in the bubble of respite that the abducting parent will have created, however fragile the bubble may be, but the expression of those wishes and feelings cannot be said to amount to an objection unless there is a strength, a conviction and a rationality that satisfies the proper interpretation of the Article (§54);

xi) an over-prescriptive or over-intellectualised approach to what, if it is to work with proper despatch, has got to be a straightforward and robust process is to be discouraged (§77).”

83. So far as the exercise of discretion is concerned, in *Re M (Children) (Abduction: Rights of Custody)*, cited above, Baroness Hale considered discretion in child's objections cases:

“In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances.”

Discussion and conclusions

Harm and Article 13(b)

84. The burden is on the Mother to demonstrate that this defence has been established. There are two strands to the Mother's case on Article 13(b) which I will consider in turn and then cumulatively (*Re. B*, [2022] 3 WLR 1315, paras 70-71, cited above).

Allegations of abusive behaviour

85. As I have set out above, there is a range of documentary evidence that supports the Mother's allegations of coercive and controlling behaviour as well as on occasion

physical abuse. They are documented in the extracts from her diary and in the 2021 letter prepared on behalf by lawyers at the CPK centre. The behaviour which she has described in her evidence would correspond with the definition in Section 1(3) of the Domestic Abuse Act 2021 and PD12J.

86. I accept Miss Renton's argument that these allegations cannot be discounted as lacking validity or cogency on their face. Recognising the tension between the summary nature of these proceedings and the court's inability to resolve factual disputes between the parties and the risks that the children if will face if in fact they are true I take them at their highest. Having done so, the question is whether they represent a "grave risk" that the children would be exposed to a physical or psychological harm or otherwise place the children in an intolerable situation. Taking the allegations at their highest, in my judgment there would be such a grave risk on three counts. First, the risk to T of physical and psychological harm if the accounts of the Father shouting at her and pushing her are true. Second, the risk to the children of being witness to the Father's abusive behaviour to their Mother. It is well established that it is not reasonable to expect children to be exposed to seeing and hearing the abuse of their own parent (see *Re E*, para 34, cited above). Thirdly, the risk to H of witnessing the Father's behaviour towards his sister, T.

The Mother's mental health

87. The starting point is to emphasise that the question for this court is not whether or not a return to Poland would expose the Mother to psychological harm: nowhere does the Convention state that its objective is to serve the best interests of the adult person whose custody rights have been informed by the abduction (see *Re E*, para 15, cited above). The question is whether or not the impact on the Mother's psychological health would be such as to expose the children to a grave risk of psychological harm such that they would be in an intolerable situation (see *Re S* at para 34).
88. Although both parties submitted that each case needed to be determined on its own facts Mr Bennett argued that some assistance might be gained by comparing the Mother's mental health difficulties with other cases where return had been refused because of a parent's mental health. Mr Bennett argued that those cases indicated a significantly more severe psychiatric history. Miss Renton argued that the absence of a suicidal risk did not mean that the Mother's case was dissimilar to those cases where return had been refused. She referred to the Supreme Court's judgment in *Re S* where the mother's psychological health was similar to that of the Mother's.
89. I agree with the parties that each case needs to be determined on its facts. Other cases concerning instances where a parent's mental health has been raised by way of an Article 13(b) defence may be helpful as a benchmark for a decision (see para 41 of the judgment of Cobb J in *Re A (Article 13(b)(Mental Ill-health)* [2023] EWHC 2082 (Fam)). The key factor is that those cases where return has been refused are predicated upon evidence that the impact on the parent's mental health of a return would be such as to give rise to a grave risk that the child would be placed in an intolerable situation. Although there are some similarities between this case and the Supreme Court's judgment in *Re S*, it is notable that in that case that the impact of return would be such that the mother's capacity to "*hold herself together*" would be

undermined and would diminish her attachment to the child (see para 18 of Lord Wilson's judgment). In any event, other cases only assist the court so far.

90. I turn then to whether such evidence is available in this case.
91. I take into account the unchallenged diagnosis by Dr Pickering that the Mother has "*severe depression and anxiety*". The symptoms were indicative of a "*severe depressive disorder*". I also take into account that overall Dr Pickering's evidence was that the Mother's mental health would deteriorate on return to Poland. At one stage in her report Dr Pickering that "*If the Mother were to return, it is my opinion that her depression will persist and potentially worsen*". Later in her report however she said that the Mother's mental health was "*highly likely*" to deteriorate further and confirmed that in her oral evidence. However, Dr Pickering said that the deterioration was most likely to occur in circumstances where the Mother returns to Poland and had to rely on the Father and was unable to have adequate distance from him. Living entirely separately would enable the Mother to "*process and cope with the end of the relationship and the impact she feels the relationship has had upon her*".
92. On the critical question of whether the impact on the Mother's mental health would be such as to give rise to a grave risk of harm to the children, I take into account:
- a) Dr Pickering said that she was unable to comment on whether or not the impact on the Mother's psychological health of returning to Poland would impact on her ability to care for her children.
 - b) The evidence does not indicate that the impact on the Mother of returning to Poland would mean that she could not care for the children or that her relationship with the children would be adversely affected.
 - c) Dr Pickering was clear that the Mother was not at risk of suicide or other self-harm. She did not require hospitalisation. To the extent that the Mother would benefit from pharmacological treatment that would be a matter for the GP. There was no suggestion that she would need a referral to a psychiatrist.
 - d) The Mother told Dr Pickering that she had no history of mental health problems but attributed her current difficulties to the stress within her relationship and her anxiety about possibly having to return to Poland.
 - e) Dr Pickering considered that treatment with CBT would be effective wherever it was conducted. However, its efficacy was likely to be improved if the Mother was removed from the stressful experiences and so able to process them. That view was consistent with the view expressed by Ms Antolini in March 2024 when the Mother had CBT in Poland.
 - f) Dr Pickering did not consider that the Mother would need psychological treatment beyond the 12-16 weeks of treatment that she had recommended.
 - g) The Mother has previously accessed CBT and social services support in Poland. Although the Mother told Dr Pickering that she would have difficulty accessing doctors by herself (see above at paragraph 42) the evidence indicates that the Mother has been able to access support. Whilst I accept that the Father's parents

had previously helped in accessing some of that support, there were other occasions when the Mother accessed support herself.

h) Although this a forward-facing assessment of whether there is a grave risk in the future, I note that there is no evidence before the court that suggests that the Mother's psychological problems have impaired the Mother's ability to care for the children in the past whether in Poland or in the UK.

93. It follows therefore that if the Mother's mental health was the only basis for her defence under Article 13(b), I would be unpersuaded that the necessary threshold had been passed. However, the Mother's mental health is not the only basis upon which the Mother advances an Article 13(b) defence. Whilst the parties addressed each of the two aspects of the Mother's defence separately, they each rightly argued that I needed to take into account the cumulative effect of both aspects. The cumulative effect of the allegations must be considered so as to evaluate the nature and level of any grave risks that might potentially be established as well as the protective measures to address such risks (*Re. B*, cited above).

The cumulative effect of the two strands

94. The Father's proposed protective measures contain a number of important features that meet the cumulative risks.

95. First, they enable return to be effected once suitable accommodation has been identified and secured. That means that the children and the Mother would not be returned to the former matrimonial home nor to the block of flats that is owned by the Father's family. The Mother and the children can live independently and separately. That would significantly go towards ameliorating the grave risk of harm to the children through witnessing abusive behaviour by the Father and it would also significantly assist in the efficacy of the CBT treatment for the Mother. It would mean that CBT could be commenced when the Mother is away from the stressful context of living in the former matrimonial home and in the block of flats owned by the Father.

96. Secondly, there would be no contact between the Father and the children save as agreed by the Mother, pending the order of the Polish court. That reflects the recommendation of Ms Veitch and would significantly address the risk of any harm to the children.

97. Thirdly, Cafcass will make a child protection referral to Polish social services and the Father will also self-refer to Polish social services.

98. Fourthly, private law proceedings will be commenced in Poland. There is no evidence to suggest that the administrative judicial and social services authorities of Poland are not as adept in protecting children as they are in this country (see *Re C* and *G v D*, cited above).

99. Fifthly, the Father will undertake to provide maintenance to the Mother. Although Miss Renton says that this would be insufficient it is not unreasonable to suppose that the Mother will secure employment as she had done previously. The two children will be at school. The Father has said that he would make the maintenance payments in whatever way the Mother requires so that she can have independence. Payment of

the maintenance offered in advance and an undertaking that the Mother will receive the child benefit direct would meet this objective.

100. Sixthly, the return order would be conditional upon all of the foregoing being put in place. Reflecting the guidance at para 44 of the 2020 Good Practice Guide cited above, these specific protective measures should be put in place in advance as they are necessary strictly and directly to address the risks. Although these measures would need to be put in place in advance, they should be effected with expedition.
101. Seventhly and finally, all but the maintenance provisions can be reflected in an order under the jurisdiction given to the court by Article 11 of the 1996 Hague Convention.
102. Overall, taking into account these protective measures, I am satisfied that the risks on return to the children can be addressed and sufficiently ameliorated so that the children will not be exposed to a grave risk within the scope of Article 13(b).

Conclusion: Article 13(b)

103. In my judgment the Mother has not discharged the burden of establishing that there is a grave risk that the return of the children to Poland will expose them to physical or psychological harm or otherwise place them in an intolerable situation.

*Child Objections**The gateway stage*

104. This defence is only raised in relation to [T], the court having determined that [H] is too young for his wishes and feelings to be ascertained. The question at the gateway stage is (a) whether T objects to being returned and (b) whether T has attained an age and degree of maturity at which it is appropriate to take account of her views.
105. I have considered Ms Veitch's report carefully as well as the references in the documentary material in the bundle to T's wishes. Ms Veitch's report gives the best evidence of T's wishes and feelings and I have given far greater weight to that report than to what is recorded in the parents' statements or the report from the counsellor.
106. The evidence as to whether T "objects" is mixed. At times T expresses a "*preference to remain living in England*" to use Ms Veitch's words. That preference seems to be a wish to live in England with her mother rather than that T objecting to a return to Poland. However, she expressed a strong adverse reaction when asked about returning to Poland (she screwed up her face in distaste and nodded vigorously in response to Ms Veitch saying it "*looked really not want to go back to Poland*"). In the letter to the Judge she said that "*I really don't want to go back to Poland*". Accepting there is a fairly low threshold at the gateway stage (see *Re M*, at para 70), I conclude (albeit with some hesitation) that T "objects" to the return to Poland.
107. However, I am unable to conclude that T has attained an age and degree of maturity at which it is appropriate to take into account her views:
- a) First, Ms Veitch said that her opinion as to T's maturity had "*significant limitations*" because T did not speak to her much. Her view that T presents with the appropriate maturity for her age was only tentative.
 - b) Secondly, Ms Veitch said that she was unable to capture T's own voice to any real extent.
108. If I am however wrong and if instead, I had concluded that gateway stage had passed, I would not have exercised my discretion in favour of non-return. Having regard to para 46 of *Re M* cited above, as well as *Re G*, I would have taken into account:
- (a) There is uncertainty as to whether T's views as expressed to Ms Veitch were authentically her own. Ms Veitch suspected that T was influenced by the Mother.
 - (b) The policy of the Convention carries weight in a case such as this and in circumstances where the children were wrongfully retained away from their place of habitual residence.

- (c) The welfare considerations that would weigh heavily are balanced by the fact that the protective measures would address what seems to drive T's views: not wanting to be in Poland with the Father shouting.
- (d) The children have lived all of their lives in Poland.

Conclusion

109. As the Mother has failed to establish either of her defences to a return, I will make an order that the children are returned to Poland once the conditions referred to above have been met. Accordingly, I invite the parties to agree an order. If there are aspects which cannot be agreed, then the parties should file brief submissions setting out the points of dispute.