

ENGLAND AND WALES / JUDGMENT

AB v BA

BEFORE

THE HONOURABLE MS JUSTICE HARRIS

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Neutral Citation Number:	[2025] EWHC 3562 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION
Case No:	FD25P00057 Strand London WC2A 2LL Wednesday, 30th July 2025
Before:	THE HONOURABLE MS JUSTICE HARRIS
BETWEEN:	AB and BA MS J PERRINS (instructed by International Family Law Group LLP) appeared on behalf of the Applicant Father MR T WILSON (instructed by Dawson Cornwell LLP) appeared on behalf of the Respondent Mother MS L KHANOM (Solicitor on behalf of Cafcass Legal) appeared on behalf of the Children through the Guardian

JUDGMENT

(Approved) This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved. 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. MS JUSTICE HARRIS: 1. 2. This is an application for the summary

return of two children, E, who is aged 11, and F, who is aged six, to Sweden. The applicant is the children's father, who has been represented at this final hearing by Ms Perrins. The first respondent is the children's mother, who has been represented at this hearing by Mr Wilson. The children are parties to the proceedings, and have been represented through their Guardian, Ms Veitch by Ms Khanom. I turn to the background. Both parents are of Kurdish heritage. Father has lived in Sweden since 2000. The parents were married in Kurdistan in 2009, and the mother joined the father in Sweden in 2010. Both of the children were born in Sweden, and the current position is that both Mother and Father and the children are Swedish citizens. The parents share joint custody for the children under Swedish law by virtue of being married to one another upon the children's birth. Their marriage has been recognised and registered with the Swedish Tax Authority in Sweden. The parents separated in 2022. Mother moved to her own accommodation, and the children lived with her. Father had regular contact with the children, I understand, facilitated at the school. 4. 5.

3. Mother initiated divorce proceedings in Sweden and was granted a divorce order in July

2023. That order records that joint custody of the children would continue. In July 2023, Mother took the children with Father's agreement to Kurdistan for what Father understood would be a holiday. Father says he expected the family to return to Sweden for the start of the school year, and he only became aware of Mother's intention to remain in Kurdistan when he was notified by the school of the children's failure to return. He says he spoke to Mother and tried to persuade her to return to Sweden. In December 2023, without Father's knowledge or agreement, Mother left Kurdistan and brought the children to the United Kingdom. In January 2024, Father commenced proceedings in Sweden, seeking that the children be placed in his care and he be granted sole custody in Sweden. It is perhaps unfortunate that Father did not commence Hague proceedings at that point, but Sweden was the court of the children's habitual residence, and Mother cooperated and engaged in those substantive welfare proceedings in Sweden. At the conclusion of the Swedish proceedings in October 2024, the Swedish Courts ordered that joint custody should continue, that the children should reside in the care of their father. Mother unsuccessfully tried to appeal that decision, the appeal being dismissed in November 2024. Father travelled to England in October 2024 to try and collect the children and return them to Sweden. Mother refused to hand the children over to him and refused to provide him with their passports and travel documentation. Father, therefore, initiated these Hague proceedings, seeking summary return of the children to Sweden in February 2025. A central feature of this case is that when Mother arrived in the United Kingdom in December 2023, she made a claim for asylum. It is now clear and accepted by Mother that her asylum claim was entirely false. She gave incorrect names both for herself and the children, incorrect nationalities, saying they were from Iran and provided a completely false narrative about facing a danger to her life in Iran related to her husband, not the father in this case, and having travelled to the United Kingdom across Europe in a lorry. That claim was rejected by the Home Office. Mother initially advised this Court that she was appealing that decision, but the appeal was subsequently withdrawn. A couple of

weeks ago, Mother made a further or new asylum claim on the basis that she would be at risk in Iraq as a result of experiencing a child marriage with Father when 15 years old, being a victim of serious domestic abuse by Father in Sweden and fearing honour-based violence both from Father and her family in Sweden and Iraq. 6. 7. 8. 9. 10. 11. That being the background to this application, by way of preliminary observation, this Court cannot help but observe that there is evidence before me that Mother has lied and perpetuated palpably false narratives to the UK authorities to further her own objectives. I remain concerned that she has continued to do that in these Hague proceedings and in her new or further submissions to the Home Office in her asylum claim, and that what she is doing, in effect, amounts to an abuse of the legal process. To give just one example, in her most recent submissions to the Home Office, she asserts that she is so fearful of Father, she cannot return to Sweden, and yet, since she arrived in the United Kingdom and made her claim for asylum in December 2023, she has travelled to Sweden twice to participate in the court proceedings relating to the children and has met up with Father in a park in this country and facilitated direct contact between him and the children. Those two things cannot be reconciled. Whilst these are summary proceedings, and the Court must approach matters with caution, given I have not heard any oral evidence, it is incumbent on the Court to evaluate and consider the evidence before me and its relevance to decision-making within the Hague proceedings. I turn to the position of the parties. Father pursues an order for immediate return to Sweden. Mother opposes the return order on the following basis: firstly, that the children have resided in this jurisdiction for more than 12 months and are now settled here. Secondly, that the following exceptions or defences are established under Article 13: firstly, the Article 13(b) defence of a grave risk of harm to the children and secondly, on the basis of the children's objections to a return to Sweden, and that in such circumstances, the Court should not exercise its discretion to return the children to Sweden. The Guardian's position is that she supports the making of the return order. I turn to the evidence. The Court has read and considered the following written evidence: three statements which have been filed on behalf of Mother; three statements filed on behalf of Father; the report of a single joint expert, a Ms Sandberg, on various relevant aspects of Swedish law; the Guardian's detailed report; and the papers disclosed for Mother's asylum applications. In accordance with the summary nature of these proceedings, the Court has heard oral evidence only from the Guardian. I have had detailed oral submissions from each of the parties. I can say, very briefly, that the short cross-examination of the Guardian did not undermine her assessment and the clear recommendations she makes within her final, detailed analysis. I turn, then, to the Court's decision and the legal framework and the relevant questions to be addressed under the Hague Convention. At the outset, it is important to remind ourselves of the core principles which underpin Hague Convention applications. It is a cardinal principle of the Hague to secure the prompt return of children wrongfully removed or retained to their country of habitual residence. That recognises that, *prima facie*, it is the Court of habitual residence that is best placed to make substantive welfare decisions regarding children's welfare.

12. As emphasised by Mostyn J in *B v B* [2014] EWHC 1804 (Fam), we should not forget that Hague applications are about where substantive welfare arguments should be heard. It is not about making those substantive welfare decisions. I pause there to note that one of the more unusual features of this case is that the Courts of habitual residence have already made a substantive welfare determination regarding the children's residence following and after the children's wrongful removal and retention from Sweden. There were substantive proceedings in Sweden commencing in January 2024 in which Mother was fully engaged and fully participated. This application for summary return was only necessary because of Mother's refusal to comply with the determination of the Swedish Courts made in October 2024.
13. I therefore turn firstly to, under the Hague Convention, the children's habitual residence. It has not been contested before me that the children were habitually resident in Sweden at the time of their wrongful retention in Kurdistan. Turning, then, to whether or not the children were wrongfully removed or retained from their state of habitual residence. In accordance with Article 3 of the Hague Convention, the removal or retention of a child is wrongful where (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone under the law of habitual residence; (b) at the time of removal or retention, those rights were actually exercised or would have been but for the wrongful removal or retention.
14. Mother has asserted that her marriage is invalid under Swedish law because she was only 15 years old when she was married to Father in 2009 in Kurdistan. That is firmly disputed by Father, who says she was 18 years of age. However, in light of the report of the single joint expert, Ms Sandberg, regarding the recognition and registration of the parents' marriage in Sweden and the legal consequences which continue to flow from that recognition if no steps are taken to challenge the validity of the marriage and its registration, it is accepted that Father continues to enjoy joint custody by virtue of being married to Mother when the children were born. Mother's removal or retention of the children in Kurdistan was, therefore, in breach of Father's rights of custody under Swedish law. Accordingly, in light of the single joint expert report, that matter has not been contested before me.
15. Turning then to the matters which have been the subject of substantive dispute, and firstly, the question of settlement. That matter arises under Article 12 of the Hague Convention. Article 12 provides that: "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. The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year, referred to in the preceding paragraph, the judicial administrative authority shall also order the return of the child unless it is demonstrated that the child is now settled in its new environment".

16. Mother's position is that the children are now settled in this country, and so the mandatory requirement to return the children to Sweden does not arise, and the question, therefore, is one for the discretion of this Court. The relevant date for determining whether the children have settled has been the subject of conflicting decisions in the High Court. The case of *Re N (Minors) (Abduction)* [1991] 1 FLR 413 held that settlement is to be determined at the date of application. In support of that decision, Bracewell J pointed to policy reasons underpinning the Convention which support that interpretation and avoid the removing parent being able to employ tactical delay within the proceedings to support their case.
17. Mostyn J in *ES v LS* [2021] EWHC 2758 (Fam), and very recently, Harrison J in *Re G* [2025] EWHC 911 (Fam), took a different view, holding that settlement should be determined at the date of the final hearing, the reason for that interpretation being that the Court could not sensibly ignore matters which have developed during the course of the proceedings in considering Article 12. I have not heard detailed submissions on the legal point as it is agreed between the parties that on the facts of this case, nothing will turn on whether the Court's assessment is undertaken as at the date of application, so, February 18. 19. 2025, or at the date of this hearing in July. I do, however, note that the express terms of Article 12 in making specific reference within its terms to the commencement of proceedings, in my judgment, would support the approach adopted in *Re N* in 1991. In any event, as I have noted, on the facts of this case, the matter does not turn on whether the date of July or February is adopted. In terms of the relevant law on the meaning of "settlement", that, again, is set out in *Re N* and is helpfully summarised more recently by Williams J in the case of *Re B (A Child)*
- [2018] EWHC 1643 (Fam). Turning to the relevant principles to be applied, the Court must take a broad and purposive approach. Settlement is to be considered from the child's perspective and not that of the adults. Settlement does not require complete settlement. It exists on a spectrum. Settlement involves physical, emotional and psychological components. In terms of physical settlement, it may involve consideration of such matters as the children's place, their home, their schooling, people, friends, activities and opportunities. Sir Mark Potter, in the case of *Re C (A Child)* [2006] EWHC 1229 (Fam), encapsulated those matters. It is a question of whether the children are "established" in a community and environment. It involves more than "mere adjustment" to that environment. In terms of the emotional or psychological component, that denotes a sense of security and stability and will include consideration of the impact of the removal on the children's relationship with the left-behind parent. The absence of a relationship with the left-behind parent will be an important consideration in determining whether the child can be said to be settled. In considering the children's stability, that includes a forward-looking assessment, looking at stability into the future. Again, as expressed by Sir Mark Potter in *Re C*, the Court must be satisfied that the existing situation is permanent insofar as anything can ever be said to be permanent. It was recognised by the Court of Appeal in the case of *Cannon v Cannon* [2004] EWCA Civ 1330, that a further relevant factor for the Court to consider is the impact

of any concealment or deceit on the child being settled, with concealment being likely to undermine an argument in favour of settlement. A removing parent should not be able to benefit from their concealment or deceit in avoiding return.

20. The Guardian, in her report, has given careful consideration to the question of settlement. She concludes that there are some factors present which do support the children having begun to set down roots in England and becoming physically settled here. She points to their current accommodation, where they have lived for over a year, and the children appearing as comfortable and familiar in that environment. They know the town they live in. They speak positively about fun days out, making use of local facilities. Although school enrolment was very significantly delayed, they are now settled in their new school and have made friends locally.
21. However, the Guardian goes on to weigh against those matters, factors which, in her view, clearly weigh against the children being settled for the purposes of Article 12. She notes that the children's home circumstances lack stability and security, as the basis on which they are residing here is an asylum claim which has, thus far, been rejected by the UK authorities. As a result, they are living with significant uncertainty about whether they may remain in this country or not, even before this application was made for summary return. She also notes that Mother is unable to work or access benefits and, therefore, is living on a weekly maintenance sum paid to asylum seekers. The family's accommodation is basic and temporary by its very nature. It is not, in her view, a permanent or settled home environment. Ultimately, they will need to move on as it is linked to the asylum claim. In her assessment, she also notes that it is her view that E has been provided with a sense of what she can and cannot say about how she reached the United Kingdom. If the Mother has recruited E into concealing how she arrived here, or repeating dishonest accounts which form the basis of the rejected asylum claim, she is likely to be confused and uncertain about why she is in the UK and whether she can stay here, and that this is not conducive to a sense of emotional and psychological security in their daily life and surroundings, giving rise to settlement in the United Kingdom. 24.
23. The Guardian also, in her analysis, places weight on the deteriorating relationship between the children and their father. Although contact continues, particularly between E and her father, it is of poor quality, and both children say to the Guardian they would rather there was no contact at all. The Guardian says that this relationship with the father, which appears to be floundering, with both girls reporting on it negatively, impacts on her assessment of their settlement. Accordingly, in her view, whilst the children have been present in England for over 12 months and their lives have some features of physical settlement, she does not consider that they are settled in this jurisdiction in a holistic sense. Having considered the Guardian's report alongside all other evidence before me, the Court concurs with the Guardian's assessment and analysis of the children's current circumstances and that they are not settled in the United Kingdom. In terms of the Court's consideration and those factors of particular importance, again, I note that there are some factors in support of growing roots.

I have weighed the fact that E has indicated her understanding that she was coming to live and make her life in the United Kingdom, the fact that they have lived here now since December 2023 and in accommodation in the town they live in with some stability since May 2024. However, in my judgment, significantly, that accommodation, of its very nature, is basic and temporary, being linked to the asylum application, making future moves inevitable. Whilst they are settled now in school, they spent 12 months not in education, but I have weighed that the limited information from the school suggests their English is making good progress and they have made friends locally, suggesting a degree of social integration. I have also weighed and considered that E has secured a place in her local secondary school for September.

25. However, again, weighing that sense of physical, emotional and psychological settlement, in my judgment, significantly, the ongoing asylum application gives a context of significant uncertainty and instability for the children. Of course, the question of whether there is a valid asylum claim is not for this Court but is for the Secretary of State of the Home Department. However, the Court has to note that the first asylum application has been rejected and the appeal withdrawn. A cursory consideration of the latest new application is gravely concerning, not least the fact that the children are and remain citizens of Sweden, a safe EU country which, under the rules, should render any claim for asylum within this country inadmissible. Looking forward, therefore, for these children, the reality is one of considerable uncertainty and instability, given their right to remain here is wholly dependent on the success of the asylum application. It is significantly undermining of settlement. Given the children's ages, they may have a limited understanding of the legalities of their right to remain within the United Kingdom, but factually, from the children's perspective, that is the case.
26. Turning to concealment, again, I have considered and weighed the impact of that on the children's settlement. Whether or not concealment or deceit by Mother has materially added to delay in these proceedings, it is clear that Mother has engaged in deceit. She did not tell Father that she had left Kurdistan and travelled to England. She made a false asylum application using false names, nationality and grounds, and I note that as late as March 2024, in her interview with Social Services in Sweden for the purposes of the Swedish proceedings, she was still presenting to them that she was living in Kurdistan.
27. The extent of the children's knowledge as to their precarious position is unclear, but the Guardian's assessment is that E exhibits notable anxiety and discomfort when questioned as to how she arrived in this country and the circumstances surrounding it. The Guardian's professional assessment is that E exhibits some degree of knowledge regarding this deceit and has been, to some extent, engaged in it. I also note Father's evidence, reporting an incident in which F corrected herself regarding whether she is living at an uncle's or in a hotel. The children's awareness of and engagement in concealing the truth as to the circumstances in which they come to be living in the United Kingdom, alongside Mother's concealment and deceit, is undermining of their settlement in this jurisdiction. I also note

and have weighed and considered that the real delay and undermining of any settlement for the children in this jurisdiction has also been the ongoing welfare proceedings in Sweden. Throughout their time whilst living in this country, there have been active and ongoing court proceedings in their state of habitual residence, in which Father has been arguing for the return of the children to Sweden. Mother has engaged in those Swedish proceedings throughout 2024, and again, it was her subsequent refusal to comply with the orders of the Swedish Courts which then necessitated these Hague proceedings to secure the children's return. That ongoing litigation and Father's clear refusal throughout to accept that the children should remain in the United Kingdom, again, is an important and relevant consideration for the Court. Again, it is undermining of any settlement within this jurisdiction. Finally, I also have weighed and considered the children's relationship with Father, and whilst the video contact continues, the relationship is an impoverished one. That is clear from their discussions with the Guardian and, again, in my judgment, is undermining of settlement. 28. 29.

30. Accordingly, for all of those reasons, I am satisfied that the children are not settled in this jurisdiction, and, therefore, this Court, in accordance with Article 12, must order return to Sweden unless one of the exceptions or defences under Article 13 is established. I therefore turn to those exceptions or defences as raised by Mother. I start with the children's objections. In accordance with Article 13(2), the State may refuse to order the children's return if the children object to being returned, and the children have attained an age and degree of maturity at which it is appropriate to take account of their views. If what are described as these two "gateway factors" are met, the Court then has a discretion whether it should order the return.
31. The approach to be adopted is set out by Black LJ as she then was in *Re M (Republic of Ireland) (Child's Objection) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ
26. Black LJ makes clear that the threshold stage should be confined to a straightforward and fairly robust examination of whether the simple terms of the Hague Convention are satisfied, and 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 her views.
32. The relevant considerations have also been helpfully summarised by MacDonald J in the case of *B v P* [2017] EWHC 3577 (Fam). I note the following: whether or not the children object is a question of fact. Objections are to be distinguished from a child's mere wishes or preferences. The objection must be to a return to the country of habitual residence, not to the care of a particular parent, although on the facts of a particular case, those two factors can sometimes be inextricably linked. If the gateway criteria are met, the Court then has an open discretion. Children's objections are not determinative. The Court will consider the nature and strength of those objections, the extent to which they are authentically the child's own views or a product of influence by the removing parent, and the extent to which they are consistent with or in conflict with other welfare considerations and the Convention's objectives. 34.

33. Again, the Court, in its determination of the Article 13(2) defence, has been greatly assisted by the Guardian's analysis and report. She has spoken directly to the children to ascertain their views, wishes and feelings and to assess whether they amount to objections and whether it is appropriate to take account of their views in light of their age and maturity. It is clear from the Guardian's report and evidence that both of the children expressed a clear preference to remain in the care of their mother. In terms of E, she is of an age where it would be appropriate to take account of her views. She is a bright child with some insight and understanding of her situation. She spoke positively about life in the town they live in, describing it as "fun" and that they had made a life here. She said she would miss her life in the town they live in if they had to leave and would be upset, as she described in her letter to the judge. However, significantly, E did not identify any worries or concerns regarding Sweden itself or her life there. Indeed, although she was positive about the town they live in, she was also positive about her life and the memories she had of her life in Sweden, speaking positively about her friends there, about school and missing Swedish food. The concerns that E expressed were all around her father. In terms of F, of course, she is much younger, at just six years of age and, therefore, not of an age and maturity whereby it would be appropriate to take account of her views, given her very limited understanding of her situation. Nevertheless, in terms of her wishes and feelings, she did express wanting to remain in England in her mum's care, but again, her views were centred not around Sweden, about which she had no particular memories and expressed no worries, but were about remaining with her mother and in her mum's care. She told the Guardian she would be happier if she could return with her mother to Sweden if that was required. In terms of the children's views and their wishes and feelings, the Guardian told the Court there was no evidence that the children had been coached by Mother, but the Guardian was concerned about the inconsistent and unbalanced nature, particularly of E's views, regarding her father. Whilst E's negative views that she expressed may find some foundation in her expressed concerns around Father inappropriately questioning them about Mother during contact sessions, the Guardian, nevertheless, was concerned at the lack of any positive memories the children expressed about Father and their view that they would rather have no contact at all with him. Rather than this being a matter of coaching, the Guardian's view is that the children, having been now in Mother's primary care for some considerable time, and having been exposed to the conflict between the parents and her views and feelings about Father, the Swedish court proceedings, and, indeed, these proceedings, the children have likely aligned themselves with her views. 35.
36. The Court has considered carefully, the Guardian's analysis. In her oral evidence, she again firmly expressed the view that the children were expressing preferences. Having considered the Guardian's evidence alongside all other evidence before the Court, I again concur with the Guardian's conclusion. The children's clear wishes and feelings, their preference, is to remain in their mother's care and, again, in terms of their wishes and feelings, they would prefer to remain in England. However, in my judgment, there is nothing within the Guardian's work with the children and in what the children have said to the Guardian that

would constitute an objection to returning to Sweden. It is argued on behalf of Mother that, given there is an order of the Swedish Courts in place that the children should reside with their father and Father's previously expressed intention to seek to enforce that order in Sweden, the children's views on a return to Sweden are inextricably tied to the issue of whether they will remain in their mother's care. The Court does not agree with that submission. Father has agreed and promised within these 37. 38. proceedings not to remove the children from Mother's care, pending any assessment by Social Services and/or application being made to the Swedish courts. In my judgment, and I remind myself of the relevance of the fundamental principle of comity between contracting parties to the Hague Convention, once the children are back in Sweden, the Swedish authorities can be entrusted to deal with any applications either parent makes regarding the need to reconsider and/or enforce previous orders of the Swedish courts given any new and relevant information Mother now seeks to advance, including, of course, any relevant information regarding the children's wishes and feelings. However, in my judgment, these are welfare decisions that can properly and rightly be made in the court of the children's habitual residence.

39. Accordingly, taking those factors together, in my judgment, the defence under Article 13(2) fails at the first gateway stage. I turn, then, finally to Article 13(b), the harm exception defence. Mother relies on three elements in support of that defence: firstly, risk of harm from domestic abuse, secondly, the risk of harm from separation from Mother in Sweden and thirdly, harm from the practical circumstances which Mother would face in Sweden. Again, in terms of Article 13(b), this Court would not be bound to return the children if Mother is able to establish the harm exception. I turn, then, to the law and what is required to establish the Article 13(b) defence. Firstly, the Court must be satisfied that 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 burden lies on the person opposing return to produce evidence substantiating the exception. The lead authority is, of course, *Re E* [2011] UKSC27, in which the Supreme Court sets out the guiding principles. I cite from that lead authority, commencing at paragraph 32; the Supreme Court hold: 40. 33. "32. First, it is clear that the burden of proof lies with the 'person, institution or other body' which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities, but, and I emphasise, 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 Article 13(b), and so neither those allegations nor their rebuttal are usually tested in cross-examination. Second, 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.... Third, the words 'physical or psychological harm' are not qualified. However, they do gain colour from the alternative 'or otherwise' placed 'in an intolerable situation' (emphasis supplied). As was said

in Re D, at para 52, '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'. Those words were carefully 34. 35. 36. considered and can be applied just as sensibly to physical or psychological harm as to any other situation. 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 also, we now understand, can be exposure to the harmful effects of seeing and hearing the physical or psychological abuse of her own parent... Fourth, Article 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. As has often been pointed out, this is not necessarily the same as being returned to the person, institution or other body who has requested her return, although of course it may be so if that person has the right so to demand. More importantly, the situation which the child will face on return depends crucially on the protective measures which can be put in place to secure that the child will not be called upon to face an intolerable situation when she gets home... There is obviously a tension between the inability of the Court to resolve factual disputes between the parties and the risks that the child will face if the allegations are, in fact, true. Mr Turner submits that there is a sensible and pragmatic solution. 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 placed in an intolerable situation. If so, the Court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues".

41. The guidance of the Supreme Court in Re E has, of course, been further considered and applied in a number of authorities. For the purposes of this judgment, I highlight the most important: firstly, Re A (A Child) [2021] EWCA Civ 939, a decision of Moylan LJ, where he provides important clarity on how the Court is to approach disputed allegations of domestic abuse, given the summary nature of the process. As, in my judgment, it is clear from the decision of the Supreme Court in paragraph [32] of Re E, the Court must undertake its own evaluation of the evidence. Moylan LJ in Re A holds: "92. This does not mean, as I said in Re C, that it was being 'suggested that no evaluative assessment of the allegations could or should be undertaken by the Court'. In support of this conclusion, I quoted what Black J, as she then was, said in Re K (1980 Hague Convention) (Lithuania) [2015] EWCA Civ 720, at [53], about the Re E approach: 93. 94. 'I do not accept that a judge is bound to take this approach if the evidence before the Court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13(b) risk'... It was for this reason that, in Re C, at [39], I commented that 'a judge has to be careful when conducting a paper evaluation' of the evidence. The Court has to be careful for the reason given by the Supreme Court, at [36],

namely ‘the inability of the Court to resolve factual disputes’. This creates the ‘tension’ there identified between this inability and ‘the risks that the child will face if the allegations are in fact true’. In the Guide to Good Practice, at [40], it is suggested that the Court should first ‘consider whether the assertions are of such a nature and of sufficient detail and substance, that they could constitute a grave risk’ before then determining, if they could, whether the grave risk exception is established by reference to all circumstances of the case. In analysing whether the allegations are of sufficient detail and substance, the judge will have to consider whether, to adopt what Black LJ said in *Re K*, ‘the evidence before the Court enables him or her confidently to discount the possibility that the allegations give rise to an Article 13(b) risk’. In making this determination, and to explain what I meant in *Re C*, I would endorse what MacDonald J said in *Uhd v McKay (Abduction: Publicity)* [2019] 2 FLR 1159, at [7], namely that ‘the assumptions made by the Court with respect to the maximum level of risk must be reasoned and reasonable assumptions’ (my emphasis). If they are not ‘reasoned and reasonable’, I would suggest that the Court can confidently discount the possibility that they give rise to an Article 13(b) risk”. 42. In my judgment, and in light of those authorities, it is unhelpful to talk about a starting point or assumption that the allegations are true or should be taken at their highest. Nor, as Mr Wilson’s skeleton may suggest, is the Court departing from the ordinary or conventional approach in *Re E*. In my judgment, this is the approach which was set down in *Re E*. The Court is required to undertake an evaluative exercise to determine, on the evidence, whether the allegations are of sufficient detail and substance to establish the grave risk or whether, on the Court’s evaluation of the evidence, he or she can confidently discount the possibility that the allegations give rise to an Article 13(b) risk. In my judgment, that must be right. Any other approach would enable any abducting parent, subject to arguments on protective measures, to readily defeat the clear policy objectives underpinning the Convention by raising allegations of serious domestic abuse under Article 13(b) that are placed beyond proper evidential scrutiny of the Court.

43. None of that, of course, is to say that the Court should not adopt, as made clear in the authorities, a cautious approach given the summary nature of proceedings. It is also incumbent on the Court when considering the written evidence to bear closely in mind the vulnerability of victims of domestic abuse, the impact of that vulnerability on the ability of victims to seek help and assistance from agencies during the relationship, and even after the relationship has ended. I take account of the impact of trauma on the ability of survivors of domestic abuse to provide clear, detailed and coherent accounts of their experiences, and the ongoing impacts of abuse on victims’ decision-making in matters such as child arrangements. It is, furthermore, incontrovertible that children exposed to domestic abuse are direct victims of that abuse. It causes them significant harm and, looking to the future, exposes them to the ongoing risk of physical, developmental and psychological harm. I make it clear that in considering the evidence before me, I have had all of those matters very firmly in my mind. In her written evidence, Mother makes very serious allegations against the father of sexual, physical, financial and emotional abuse. Those allegations, in summary, as contained within her first witness statement are that Mother was forced into a

marriage with Father when she was a child of 15 years old, that he did not financially support her, requiring her to pay rent and buy household essentials, that he did not pay her monies from the sale of the house and required her to pay Swedish government tax. In addition, that he was controlling and coercive, which impacted her mental health, that he would demean her to others, that he would often be drunk and was unfaithful and neglected the needs of the family, that he forced her to have an abortion, that he would rape her, and she fell pregnant with F. She says she told the women's centre and Social Services in Sweden about that sexual abuse and they spoke to Father about it. In addition, that her parents were opposed to a divorce, saying she would have to die to separate from him, that during the divorce, he bought a gun and threatened to kill her, that her family have cut all ties with her due to the dishonour of the divorce, saying the only way to restore honour is her death. 46.

45. These allegations are developed in her second statement. Her second statement includes further allegations that Father threatened to throw acid in her face and that the paternal family are involved in killing people in Kurdistan. She makes an allegation of a physical assault in 2020 when he slapped her around the face and threw a fork at her, and that she was left in significant debt due to Father not paying to her her half share from the sale of the house, withdrawing large sums from her bank account and taking her wedding gold. Those debts, she says, prevent her from securing accommodation in Sweden. If true, those matters would, in my judgment, and subject to protective measures, be sufficient to establish the Article 13(b) defence. However, and perhaps unusually, on the evidence in this case, there are a number of compelling reasons which lead this Court to confidently discount the possibility of the Article 13(b) risk. I start with Mother's credibility. In my judgment, Mother has a proven capacity to lie and to deceive the UK authorities to achieve her desired ends. Her asylum application was entire fabrication. She entered the UK using false names for herself and the children and false nationalities. Within these proceedings, she lied to the police about destroying the children's passports, and she has misled the Court about the status of her appeal against the rejection of her asylum claim. Of course, I remind myself that the fact Mother may have lied about these matters does not mean that she has lied about domestic abuse within her relationship with Father. However, given the clear issues with Mother's honesty and credibility, the Court must approach her evidence with caution. I turn then to the allegations made within these proceedings, and I start, first, with the allegation of child marriage. Of course, if true, that is a very serious matter and a form of domestic abuse. In terms of the evidence on this issue, Father is vehement in his position that Mother's date of birth is [...], and she was 18 years old when they married. Mother's core identification documents, on which she acquired Swedish citizenship, and as evidenced by her passport and driving licence, all have a date of [...], making her 18 years old at the point of her marriage. Mother, however, says her parents and father colluded to forge her birth certificate and enable the marriage to take place and to be recognised in Sweden. She 47. says her original birth certificate was destroyed, but she has now acquired a copy. Within these proceedings, Mother has produced a copy of birth and marriage certificates, which she says prove her date of birth being in 1994. Father says that these documents are all

forged. 50. 49.

48. Within summary proceedings, this Court is unable to determine the authenticity or otherwise of the various documents produced. I do note oddities in the documents produced by Mother. Her marriage date, for example, as it appears on the birth record she has produced is wrong, as is the identity of her husband. I note, of course, that in her asylum claim, she asserted that she was married to someone other than the father. The most persuasive evidence, however, in support of Mother's account is that in 2020, she told a doctor in Sweden that she was married at 15. The record of that consultation with the doctor, records Mother saying that she had felt unwell since her teenage years, that she was married at the age of 15 in her home country of Kurdistan, to a man she had never met, but that she had learned to live with him, says that he was "nice" and "more like a friend". She describes contracting chlamydia on two occasions during 2015 to 2017 and found out her husband had been unfaithful during trips he made to Thailand. She brought it up with him and says she tried to fight for the relationship. She describes having an abortion in 2016 as she felt she did not feel she could cope with another child. She says she has felt unwell in the past year and found temporary happiness in shopping, interior design and clothes. She describes spending many tens of thousands of Swedish krona. She says her husband found out about this when he received the large credit card bill, resulting in more rows in the past few months. She says she is thinking about filing for divorce, but is scared what the family will say and scared of losing custody of the children. In my judgment, that contemporaneous record of her discussion with the GP is significant in a number of respects. Of relevance to this matter, it provides some support for an account of an underage marriage. An underage marriage would create an imbalance of power in the relationship, certainly, at the outset, and a context for the allegations of domestic abuse she subsequently makes. However, the Court has to consider the relevance of these allegations of underage marriage to these proceedings. The parties, of course, remained married for some 13 years and bore two children. The mother, in that contemporaneous record, tells the doctor in 2020 that Father is "nice" and "like a friend" and that she is fighting for the relationship. She makes no allegations of abuse against Father, despite raising other issues of concern, including Father's infidelity. In the absence of evidence of ongoing abuse, which I will address in a moment, the Court must ask what is the risk to the children that would now arise from a return to Sweden as a result of Mother's alleged underage marriage. Given the contemporaneous account to the doctor and conflicting documentation on Mother's date of birth that this Court cannot resolve on a summary basis, I am satisfied on this issue that the Court cannot confidently discount the possibility it is true. However, the Court must examine in concrete terms the situation that would face the children on a return order being made. In my judgment, the allegation of underage marriage does not, without more, give rise to a risk to the children if ordered to return to Sweden. I turn then to those other allegations of sexual, physical and psychological abuse. On these allegations, there are, in my judgment, over and above a general concern regarding Mother's honesty, very significant issues with the credibility of Mother's account. On the written evidence, there are things she

has said within her witness statement which, on the basis of the contemporaneous documents, are highly unlikely to be true. Turning to those significant matters: firstly, on the documents, allegations of sexual and physical abuse against Father have never been raised by Mother to any services or within domestic Swedish court proceedings. Nor were they contained within her first asylum application in this country. 52. 51. 54.

53. Whilst the Court is very mindful of the difficulties facing victims of abuse in seeking help and support from services, particularly when within the relationship, Mother has now been separated from Father since 2022 and has lived in a different jurisdiction from him since July 2023. Since December 2023, it is incontrovertible that she has been living within a place of safety in the United Kingdom. In that time, there have been a number of court proceedings: divorce proceedings in Sweden in 2022 to 2023, Swedish child welfare proceedings throughout 2024 and her first asylum claim in the United Kingdom in 2024 to
2025. In none of those proceedings has Mother made any allegations of sexual or physical abuse against Father. It is notable that when engaging in the Swedish child welfare proceedings in 2024, she was doing so from the United Kingdom, a place of safety, and did make some allegations regarding Father's emotional or psychological treatment of her. She does not, however, make allegations of rape or physical abuse, which are of the utmost seriousness and would clearly impact on welfare decision-making for the children. Mother provides no explanation for why she did not do so. Secondly, the Court notes that in her witness statement, Mother says that she told Social Services in Sweden about the sexual abuse and rape. Father has, however, produced contemporaneous records of Social Services' involvement in 2022. Those written records make no reference to such serious and relevant allegations being made to them by Mother. In my judgment, it is inconceivable that these issues would not have been recorded by child protection services in Sweden, including any steps taken to address the allegations with Father. The records refer to latent violence, which is later, on further enquiries with Mother, detailed to be psychological violence and some time ago. In 2022, Swedish Social Services therefore assessed there to be no urgent safeguarding risk to the children. Issues are focused upon Mother's financial and housing issues on separation from Father. Furthermore, Father has produced the Social Services report prepared for the 2024 welfare court proceedings in Sweden, which records the previous involvement by Social Services. It states, in terms of their previous analysis and assessments: 55. 56. "Both parents describe during the investigation that their relationship is over and that they have moved apart from each other. Based on interviews with the parents, it appears that conflict arose when the parents lived together. The conflict was often about the parents' finances, and that [Mother] had debts. Based on what the mother described, much of the conflict arose at home, and the psychological violence is said to have occurred some time ago and not recently. Physical violence is said to have never occurred. Being with the mother gives the children protection. [Mother] knows where to turn if a violent situation arises, and she knows that there are different types of violence".

57. A similar position prevails as regards the mother's statement filed within the Swedish welfare proceedings. The statement which she has exhibited to her statement within these proceedings, which is clearly in response to Father's evidence to the Court in the Swedish proceedings in which he has been critical of her, describes Father's behaviour as "insulting and condescending about her health". She describes his family scolding her and him not standing up for her. She describes being "treated like a slave". She says this treatment impacted on her self-confidence and sense of self-worth. She describes this psychological pressure from Father and his family made her bad. That statement makes no reference to sexual or physical abuse. Again, there is no explanation why she would omit these forms of
58. abuse when she is able to raise allegations of psychological pressure, particularly when discussing the cause of her vulnerable mental health and depression. Significantly, in my judgment, the Swedish Court, who had all of this information before it, determined that the children were not only safe with Father but, particularly, given concerns around Mother meeting their educational needs, it was in their best interests to live with him. Again, this Court respects the principle of comity and the welfare decision-making of the Swedish Courts, who have very recently undertaken substantive welfare decision-making on the evidence available to them in Sweden, including that from Swedish Social Services. They did not consider there was any risk to these children from domestic abuse.
59. Turning to financial abuse, I note that Mother does make a complaint in her witness statement within the Swedish welfare proceedings that Father did not give her a share of the profits from the sale of their home in order to discharge the debt to the Swedish tax authority, resulting in her struggling to gain accommodation. However, again, in my judgment, the record of her discussion with the GP in 2020 is significant. Far from the mother disclosing financial abuse to the doctor, she tells the doctor that she has accrued thousands of pounds in debt due to shopping for clothes, interior design and so forth, which Father only discovered when he saw the credit card bills. In my judgment, that fundamentally undermines the allegation that Mother was a victim of financially abusive and controlling conduct by Father. I note that Father explains that the money from the sale of their home was used to settle Mother's extensive debts in Sweden.
60. Turning to the allegations of honour-based violence, Mother now says that she is at risk from Father and her family in Iraq from honour violence due to their disapproval of the divorce. Again, that simply does not sit nor can it be reconciled with her decision to return to her family in Kurdistan following her divorce from Father in July 2023 because of what she describes as the level of support she had there which allowed her health to recover. Indeed, she describes the children as "happy" in Kurdistan and the maternal grandparents as "the most significant people in their lives". That is all contained within her statement in the Swedish welfare proceedings. I note it is recorded in the Social Services report prepared for those Swedish proceedings that in their interviews and the evidence they gathered: "It has emerged that [Mother] has good contact with her family and has support from her parents in the separation, but neither of them is in Sweden. They want to observe there is a risk of the children having an insufficient network, and that [Mother] says that she wants to

move from Sweden to England or to Kurdistan, where her family is, and, therefore, wants to have sole custody of the children, which [Father] opposes". 61. 62. It is noted within that report that, "[Mother]'s family are opposed to the separation", but Social Services currently assess that "This concern is not major enough to affect the children negatively". I also note that Mother's claim made in her most recent asylum application is that she cannot return to Sweden because she is too scared of Father. As I have already noted at the outset of this judgment, that claim simply cannot be reconciled with the fact that she twice returned to Sweden for overnight stays in 2024 to engage in the Swedish welfare proceedings, and met with Father in this country following those proceedings, and has facilitated direct contact between him and the children and is not opposed to that contact being re-established if she remains in this jurisdiction. If any of what Mother says is true, it makes no sense, and 63. there is no explanation for why she did not disclose these matters as soon as she arrived in the United Kingdom, a safe country, and made her first asylum claim. Furthermore, in terms of additional wider evidence within the documentation, I note that in her interview with Social Services on 11 March 2024 for the purposes of the welfare proceedings, albeit, of course, she was lying to them about being in Kurdistan with the children, Mother describes Father as "a calm and a good father", and she confirms no violence between them. She describes going to Kurdistan for the support of her family and the security they provide. Of course, again, this is once she has arrived in the UK, allegedly in need of asylum. 65.

64. Accordingly, undertaking the evaluative exercise provided for in the authorities, and, again, being mindful of the summary nature of these proceedings, I am satisfied on the basis of that evidence, that this a case where the evidence on the domestic abuse allegations is such that Mother's allegations do not have any foundation of detail and substance and are such that I can confidently discount any risk to the children upon a return to Sweden. I therefore turn to the alternative basis on which the Article 13(b) defence is advanced. Secondly, the risk of grave harm as a result of the children being separated from Mother. I note, in accordance with the judgment of Moylan J in *Re A*, that this is capable of founding a grave risk for the purposes of Article 13(b). However, in terms, again, I must undertake an evaluation of the evidence as to whether or not that grave risk of harm is established. I note, firstly, the Guardian's report and the children's views regarding being separated from their mother and also their negative views regarding Father. However, I also have to consider the evidence of the Swedish Courts and that they have determined on substantive welfare reasons as recently as October 2024, that it is safe and in the best interests of the children to live with their father. I also have to weigh within this that this Court has not found there exists a grave risk to the children as a result of the domestic abuse allegations Mother now makes. In those circumstances, it cannot be said, in my judgment, that separation from Mother to reside with Father would now constitute a grave risk to the children. The principle of comity applies.

66. However, in any event, it is open to Mother to make immediate application to the Swedish Courts and/or to Social Services in Sweden upon her return to seek assessment and reconsideration of the substantive welfare decisions based on change or updated welfare information. The Guardian has indicated that she would support Mother taking such steps in Sweden and that Social Services in Sweden can be alerted to these issues in advance of the children's return. In those circumstances, I am, again, not satisfied that there is a risk of grave harm on the facts of this case as a result of any potential separation of the children from Mother's care.
67. Turning then to the Mother's circumstances, should she return to Sweden and her ability, for practical reasons, to meet the children's basic needs. Mother has given evidence of her debts in Sweden and the impact that has on her ability to secure housing for herself and the children. However, whilst Mother says that her landlord was exploitative, it is a fact that Mother has been able to secure private rental property for a number of months post her separation from Father and post accrual of the various debts. She maintained that separate accommodation between 2022 and 2023. Having done so once, post-separation, in my judgment, there is no reason why she cannot do so again. Moreover, Mother is a qualified health professional able to work in Sweden due to her Swedish citizenship, and speaks Swedish. Accordingly, there is no reason that she is unable to gain employment to financially support herself and the children.
68. Accordingly, in my judgment, this is not a case where the mother is unable to meet the basic needs of herself and the children in the state of habitual residence. There may be challenges for her, but that does not establish an Article 13(b) risk of grave harm to the children. Therefore, in my judgment, the Article 13(b) defence is not established on any of the grounds advanced by Mother. For completeness, if I am wrong on any of those issues, I turn to the question of protective measures. Again, in accordance with *Re E*, the situation which the child will face on return will depend crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home. In considering protective measures, if undertakings are offered, the Court has to take into account the extent to which they are effective in ensuring protection, compliance and enforceability. Father has offered a number of undertakings: 69. "Not to institute or support any proceedings, criminal or civil, for [Mother]'s punishment arising out of the wrongful retention of the children in August 2023 and the wrongful removal and retention of the children in December 2023. To pay for one-way direct flights to Sweden for the children. To accompany the children on their return, if necessary. Not to attend the airport upon the children's return. Not to harass, pester or otherwise abuse the mother. To cooperate with Swedish Social Services upon the children's return to Sweden, and to cooperate with any further assessment that Swedish Social Services wish to do. Not to seek to remove the children from their mother, save for agreed contact until Swedish Social Services have further assessed the family".

70. The report of the single joint expert is very helpful in assessing the effectiveness of protective measures for Mother. The single joint expert, Ms Sandberg, is clear that undertakings are not enforceable in Sweden. However, the single joint expert is equally clear that the system in Sweden is such that Social Services will provide the necessary protection and assistance to Mother that may otherwise have been contained within those undertakings offered by Father. To cite from her report, she says, in terms that: “Undertakings in Sweden is mainly incorporated as the protection of children, that is carried out by the Swedish Social Services. They operate 24/7 and intervene right away after a report is filed with them, or they are informed, in any way, that a child is in danger. As they are obliged under Swedish law to act very rapidly, if there is any need for protection of the children, and as they are obliged under EU law to have a very high standard of protection, this is what is provided in protection of children when they return to Sweden, that they will act rapidly if there are concerns. As this family also is already known by the Social Services and are already involved with the parties, which reports are provided in the materials provided to me, and in the reports and investigation carried out by the Social Services, in the form of procedures in the Swedish Court, they will react rapidly if they would be informed that the children are in danger in any way or if they need to intervene in any way. They do not need guarantees done beforehand. They are obliged by Swedish law to protect the children when they are in Sweden”.
71. Moreover, she goes on to observe that: “They are obliged by law to act on any signals that the children and the mother need help and support or protection when the children are in Sweden and the Social Services can also then act for the mother by giving her and the children protected shelter, and to assist with applying for hidden and secured identity which means that the children and the mother can live in a protected address not shown on any official registry or the public national registry”.
72. Therefore, it is clear from the report of the single joint expert that any risks posed from the allegations Mother makes of domestic abuse, that Mother can seek immediate assistance from Social Services and/or the Courts immediately upon her return to Sweden. Indeed, Social Services can be notified in advance of their return, and they have a clear obligation to assess and act on any new information pertaining to the children’s safety. This Court can be confident that they will do so. Mother, again, as I have noted, will be able to access the Swedish Courts insofar as necessary should Father seek to renege on the promises he offers in these proceedings regarding the enforcement of the existing order and regarding where the children should live. I am, therefore, satisfied that not only is Mother protected in Sweden from domestic abuse, but that the children will not be separated from her unless the Courts of habitual residence consider it to be safe and in their best interests.
73. As regards meeting the children’s basic needs, given the practical challenges for Mother, again, I am satisfied that Mother will have access to what housing and financial support she requires. That is clear from what the single joint expert sets out regarding the obligations of Social Services to provide her and the children with protected shelter if she requires it. I am

satisfied that Mother can engage immediately with Social Services in Sweden to ensure necessary arrangements are in place for the children's return, and this Court can be confident in the Social Services welfare net available to Mother and the children in Sweden.

74. Again, I am satisfied on this alternative basis that, given the protective measures in place in Sweden, the Article 13(b) defence is not made out. Therefore, for all of those reasons and in conclusion, I am satisfied that the mandatory obligation to make the return order under Article 12 of the Hague Convention applies in this case. Given the desirability of prior liaison with Social Services in Sweden, and to enable Mother to make the necessary urgent arrangements for her own travel documents, I will order the return in 14 days. I prescribe 14 days because, in my judgment, it is important for the children's welfare that they are back in Sweden for the start of the new school academic year.
75. That is the Court's decision. End of Judgment. Transcript of a recording by Acolad UK Ltd 291-299 Borough High Street, London SE1 1JG Tel: 020 7269 0370 legal@ubiquus.com Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. This transcript has been approved by the judge. 20

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/fam/2025/3562>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/HagueConvention-court-unknown--6a3ea5013b1caa9129800dbb>

Prepared on 24 October 2026 · Esheria