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There is a concern amongst some of those practising in the field of child abduction in England & Wales that returning abducted children has become exceptionally unpredictable and difficult. Unlike many other jurisdictions, England is remarkable because of the volume of international child abduction cases that come before the courts and the resulting density of our jurisprudence. This is one of the reasons that courts in most other jurisdictions are influenced by English judicial precedents when making decisions. Those jurisdictions look to ours for guidance. Consistency and predictability, therefore, are important. Regrettably, the predictability of such decision-making is starting to be questioned within and outside this jurisdiction. A review of recent cases of international child abduction, including those where an abducted parent has asserted that they will refuse to return with their child to their country of habitual residence, demonstrates why

questions are being asked. We discuss some of these cases below and explain why guidelines and training are needed in this area to try to attain a consistency in approach and to return to our previous unquestioned support of the aim of discouraging abduction. This would be in line with our international commitments and obligations. The growing international perception that our commitment to returning children, both to countries within or outside the Child Abduction Hague Convention, is waning needs to be countered. This can be achieved by a return to more consistency in decision-making and by demonstrating our ongoing commitment to those children's return.

A question arises, as a result of some of the decisions being made in the Family Division as to whether we should review the application of how, in particular, the Art 13b defence is operating and to analyse why it seems easier

now to satisfy that defence in this jurisdiction than it has ever been before. There are examples of it succeeding here with a simple assertion by the taking parent of non-return or mental health stress at the same time as some decisions maintaining a higher standard. Where the defence has been so easily established, the commitment of this jurisdiction is being questioned. There is also an inconsistent approach in non-Hague cases where the long-settled principle that it is preferable that decisions about a child's welfare should be made in the country of his or her habitual residence is, in some cases, being ignored without providing any reasons and in others being upheld. Either way, word is spreading further than just the abduction Bar in England and Wales, that our commitment to this principle is at least on the wane.

Non-Hague cases

In a recent, currently unreported, non-Hague abduction case – *N v S* – a Deputy High Court Judge, decided not to return three young children to Pakistan. The subject children were Y, a 7-year old boy and his 4-year old twin siblings. Although the Judge did not believe any of the reasons as to why the mother said she was justified in abducting the children, he believed her on the single issue that, if he made a return order for the children, she would not return to Pakistan with them. He determined that, if the children were to return without their mother, this would not be in their welfare interests. The

mother was a dual Pakistani-British citizen, who had been brought up in Pakistan but whose secondary and university education had been in the UK. The father held only Pakistani citizenship. This was a non-Hague case as Pakistan's accession to the Hague Convention has not yet been accepted by the United Kingdom.

In reaching his decision, the judge purported to follow the two leading cases on non-Hague summary returns – *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40 and *Re NY (A Child)* [2019] UKSC 49 where the House of Lords and the Supreme Court respectively had emphasised that, in non-Hague cases, the court must regard the welfare of the individual child as its paramount consideration. Although a different test is to be applied in non-Hague cases, the presumed best starting point when the court considered the child's welfare, was that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against doing so has to be made out by the abducting parent.

In the current case, however, that did not seem to be the starting point. The judge did not find any evidence of domestic abuse and felt that the mother was in 'no sense intimidated or cowed into submission by the father. Indeed, it could be said that the most rude and oppressive text

messages and WhatsApp messages have come from her to him'. Unusually for these types of cases, whilst alleging risk to herself from 'honour'-based violence if she returned and having retained the children for many months, on the father's arrival in the UK, the mother immediately allowed him unsupervised contact with their three children. In addition, she resumed their intimate relationship as soon as he arrived and then denied the same. One of the mother's main criticisms of the father was that, when they lived in Pakistan, he was 'too involved' with the children. Her other criticism had been that he wouldn't establish their family in a separate home away from his wealthy parents (it mattered not to her that the father himself earned a modest living working for the government).

After a contested hearing, focussed mainly on the mother's assertion that she could not return to Pakistan due to the risk of 'honour' based violence or killing, the judge found that she (and her mother) had lied about that alleged risk. Also, the mother had lied about resuming a sexual relationship with the father on his arrival in England. Nevertheless, having rejected her evidence on all other fundamentals, the judge accepted her bare assertion that she would not return with the children if an order for their return were made. He gave no explanation as to why he believed she would not return when he had not believed her on the main thrust of her defence – her alleged reasons for saying she

could not return to Pakistan – ie, honour-based abuse.

The evidence showed that the mother had chosen to start a family in Pakistan, a country where she was born and where she grew up. She had worked in Pakistan after she was married and which she accepted had been a good phase of her life but had not worked after the first child's birth or since Covid which had further exacerbated her frustration with her own situation. This is not something that was unique to families living in Pakistan and the cultural norms were not unfamiliar to her.

Surprisingly, permission to appeal was refused by the Court of Appeal on the papers, the Lord Justice being of the view that, despite all of the other adverse findings on her credibility, the finding that the mother would not return to Pakistan had been clearly open to the judge even when he had found that she had lied about other, fundamental aspects of her evidence, including the reasons for not returning- the judge having found that the alleged risk of 'honour' killing was 'either made up completely or wildly exaggerated'. This finding was, according to a Lord Justice of Appeal, clearly open to the trial judge even though it was based only on that bare assertion made by the retaining mother at an advanced stage of the proceedings and repeated in her oral evidence – oral evidence that, in all other respects, the judge had disbelieved.

The question therefore arises as to whether a bare assertion of non-return by a taking parent who is a primary carer is now sufficient to enable that taking parent to retain the child here. If that is so, should practitioners consider a mere assertion of such non-return as an independent defence in child abduction cases even if the underlying defences of reasons why a parent could not return are not found to be true. And, if this is sufficient to defeat an application for return to a non-Hague country, are we also to have such a bare assertion recognised as a more general defence in Hague Cases as part of Article 13b. The concern among some practitioners, both here and in other jurisdictions, is that an abducting parent can now establish a defence to a return order merely by saying 'I will not return'.

In *N v S*, the Lord Justice who considered the father's application for permission to appeal felt that the mother's bare assertion that she would not return to Pakistan was sufficiently considered by the judge so that he properly determined that it was in the best interests of the children not to order their return to their country of habitual residence. Whilst finding that there was sufficient reason for the children to be allowed to remain in England after being abducted, and when considering the mother's assertion of non-return, the trial judge found that her refusal to return was essentially because she preferred living in England as opposed to being subjected to honour-based abuse there. He noted that: 'It

is deeply unfortunate that this has happened, since the real dispute here is the choice between living in England and Pakistan, not whether the individual human beings are more or less suitable'. The main focus appeared to be on the mother's **preference** for living in England rather than on the independent evidence before the court that the children missed Pakistan; that the older child had expressed a desire to return to Pakistan; that the couple and their children had a far more affluent lifestyle in Pakistan where both parents had been caring for the children together, along with two nannies, household staff and a wider paternal family; that the children's father had no immigration status in the UK; and the children's and mother's contrasting position in England where they were living on social security benefits. The analysis overall related primarily to the mother's situation rather than to the children and to their mother's preferences rather than to the effect of her actions on the children's lives – in the short and longer term.

When considering why the mother would not herself return to Pakistan, if an order for the children's return were made, the judge went on to state 'I have reached the conclusion that what has really happened here is that the mother has become very unhappy with her role as a non-working mother in a conservative and perhaps slightly old-fashioned house owned by her in-laws. This university-educated and fiercely independent and intelligent woman has

become unhappy with the situation and she has become unhappy with what perhaps are perfectly culturally normal situations in such a household in such a country as Pakistan. She has become frustrated at her failure to persuade the father to try something more modern and different. Recent events suggest that she still has love for the father despite the existence of these proceedings and the high levels of pressure that this has placed on everyone, and believes that he has love for her and respect, of which she is right'.

There was a time not so long ago when a parent becoming unhappy with her life choices would not, and could not, have trumped the children's right to have decisions about their welfare decided in the country of their habitual residence – whether that was a Hague or a non-Hague country – rather than to allow a discontent parent to make a unilateral decision about where her children should live.

In essence, the judge felt that the mother missed a more independent lifestyle which was better offered to her by living in England and that this in itself was a sufficient reason for her to refuse to return with her young children to Pakistan. The fact that the father offered protective measures including agreeing to fund the rent of a separate property in which the children and the mother could live independently as well as maintenance based on what the mother had herself proposed was not considered by the judge to be sufficient

to neutralise the mother's concern of not feeling independent. In a reminder of the types of cases that Lord Justice Thorpe abhorred, the judge also stated that he felt that, if the father wished to relocate or have contact, he could seek that in England as a litigant in person if necessary (since he could not afford legal fees and his current application was funded by the Legal Aid Agency) and that this would be preferable to the mother having to commence proceedings in Pakistan. In commenting in this way, the judge seemed to ignore the undertaking tendered by the father to pay a litigation fund to the mother to cover the whole of any relocation proceedings in Pakistan and the fact that the mother had previously instructed lawyers in Pakistan to commence litigation against the father when the parents had earlier fallen out.

That non-Hague case was decided in June 2025. It is not known how many other potential appeal cases like this have been refused on the papers. The problems arising from refusals by abducting parents to return is not confined to non-Hague cases. As the family in this case are well-known in Pakistan, the decision first of the judge and then of the Court of Appeal has caused consternation in legal circles in Pakistan. The concern is that this outcome for Pakistani children unilaterally retained in England may have an effect on applications made in relation to British children in Pakistan.

Hague Convention cases

In the Hague Convention case of *R (Child Abduction: Parent's Refusal to Accompany)* [2024] EWCA Civ 1296, decided in late-2024, after an oral permission hearing at the Court of Appeal, an application for return to France was refused on another bare assertion by an abducting mother that she would not return if the children were returned. That was a case which highlighted the issue within Hague Convention cases of the need for a careful balancing between a parent's assertion of non-return and the assessment of written evidence without the benefit of oral evidence as to whether such an assertion was likely to be genuine on the part of an abducting parent. In this case, the mother had retained the children following a 2-week holiday in England. She opposed a return order on the basis of Art 13(b), arguing that a return would expose the children to a 'grave risk' of harm, as she would not accompany them back to France. There was nothing more than a bare assertion by the abducting mother that there had been domestic abuse and a bare assertion that she could not, and would not, return to France despite having lived there for more than ten years and her three daughters having been born there. On the evidence, it looked again like a mother who changed her mind about where she wanted to live. In this case also the Court of Appeal dismissed the left-behind father's appeal and did not return the children.

In *R*, the first instance court (another Deputy High Court Judge) had made an evaluative assessment on the papers of the mother's assertion of non-return as to whether that intended refusal to return was genuine and would therefore establish a defence under Art 13(b) – namely a risk of grave harm to the children if a return were ordered and separation of mother and children resulted. The Court of Appeal (Peter Jackson LJ) confirmed that the established guidance from the Supreme Court in *Re E* [2011] UKSC 27, namely that allegations of domestic abuse had to be taken at their highest, did not apply to assertions by an abducting parent of non-return. Rather, Peter Jackson LJ provided new guidance for courts of first instance to assess, sometimes orally and sometimes only on the papers, the genuineness of such an assertion. He provided a non-exhaustive list of factors against which such an assertion should be considered including the overall circumstances, the family history, any professional advice about the parent's health, the reasons given for not returning, the possibility that the refusal is tactical, and the chance of the position changing after an order is made. The court would then, he said, factor its conclusion on this issue into its overall assessment of the refusing parent's claim to have satisfied Art 13(b).

Although this is a plausible test and one that might work in some circumstances including where there was some documentary or other

corroborative evidence of domestic abuse, applying it to the facts of that non-return threat by the mother meant that there was no return even though there was no more than a bare assertion of non-return from the abducting parent. In that case, with no corroborating evidence of her assertions of domestic abuse and no psychiatric evidence as to the effect of a return on the mother and having to apply the *Re E* test of taking the allegations at their highest, there was no consideration of the credibility of what would otherwise have to be objectively viewed on the evidence as incredible assertions of violence.

Allowing such a bare assertion to defeat a Hague return application could appear to dilute our commitment to returning children by very much lowering the bar on what level of evidence and risk there must be to satisfy an Article 13b defence. But that case is very different to two other recent decisions about Article 13b defences by two full-time judges of the Division in what seemed to be objectively more justifiable uses of the defence by women desperate to not return to Israel.

In contrast to being satisfied by the bare assertion approach above, in these two recent cases involving Israeli mothers, the Article 13b defence was unsuccessful. In each of those cases, there was psychiatric evidence of the likely severe effect on the mother of an order for return. In

both cases, when ordering returns, the judges found the 13b defence was not satisfied and that the courts in Israel were best placed to determine child arrangements.

In *Re A (Retention: Article 13(b): Return to Israel)* [2024] EWHC 1879 (Fam), the retaining mother asserted that she would not return to Israel with the children if an order for their return were made as: a) she would be shunned as a divorcee by the Chasidic Charedi Orthodox Jewish community to which both parents belonged; and b) she felt that the children should not be exposed to the escalating risk of war as well as the psychological impact of living in a war zone. These reasons were not considered by the judge to be sufficient to satisfy the court that she would not return. The judge felt that the mother's concerns for the former could be neutralised through protective measures offered by the father including that he would not remove the children from her care until an Israeli court determined their living arrangements. That decision was in June 2024 at a time when the judge may not have foreseen how these particular children would be impacted by the worsening conflict in Israel.

However, in the second recently-reported Israeli case from May 2025, *Y v Y* [2025] EWHC 1598 (Fam), the mother also raised an Article 13b defence but when the war had indeed escalated. That mother expressed fear that returning to

Israel would significantly worsen her mental health and lead to a relapse in her alcohol abuse. She presented expert evidence from Dr McEvedy who concluded that a return to Israel 'would have a detrimental impact on her psychological wellbeing, and therefore on her functioning' and that she would be reasonably likely to relapse to problematic drinking, self-harm and suicidal intentions. Despite the expert evidence, the judge felt that the mother had not satisfied the high threshold for Art 13b. He found that the high bar for 13b was not satisfied and that, in any event, the protective measures offered by the father were sufficient. The principal justification for the return order being made was the fact that there was protection for the children in their father's joint care on their return from any mental health consequences for the mother of a return. He also took account of the fact that the town from where the children had been abducted was in a relatively safer part of Israel.

In a third, slightly older, case, *Re C (A Child) (Child Abduction: Parent's refusal to return with child)* [2021] EWCA Civ 1236, the Court of Appeal dismissed the mother's application for permission to appeal where her appeal was based on an assertion that the trial judge had been wrong to conclude that she would return to France when she had stated that she would not. The Court felt that the trial judge had correctly approached the mother's assertion of non-return as he had not based his assessment on any

objective criteria of what a reasonable person ought to do but that, given the circumstances, he felt that this loving and devoted mother would not separate herself from the child that she loved.

Conclusion

The three cases above where 13b defences failed, demonstrate the high threshold that the courts sometimes apply to any attempted reliance by an abducting or a wrongfully retaining parent on an Art 13b defence and generally a court's circumspection about accepting assertions of non-return – a demonstration of their awareness that, to allow abducting parents to remain in this jurisdiction on the basis of a bare assertion, risks opening the proverbial floodgates when considering cases where a parent states they will not return. This reflects the traditional approach to Art 13b – a high bar. As LJ Butler Sloss put it in *C v C (Minor: Abduction: Rights of Custody)* [1989] 1WLR 654, allowing a bare assertion of an intended non-return to defeat a claim for return following an abduction 'would drive a coach and four through the Convention, at least in respect of applications relating to young children. I, for my part, cannot believe that this is in the interests of international relations. Nor should the mother, by her own actions, succeed in preventing the return of a child who should be living in his own country and deny him contact with his other parent'.

How do the above first instance cases where

Article 13b defences failed and return orders were made sit with the Court of Appeal agreeing that a bare assertion of non-return in *Re R* was not wrong? Taken together, they illustrate the inconsistency and unpredictability of court decisions in Hague abduction cases where a carer says that they will not return with their children. And what of the inconsistency in *N v S* where a mother's preference and her lies were sufficient for the judge to say the children did not have to return to their country of habitual residence? While non-Hague cases do not have to be, and are not, decided on the same basis as Hague cases, is the difference between them so great that the two Israeli mothers fail to persuade a court that they will not return with the children to Israel despite an escalating conflict and strong evidence of the negative impact on their mental health while in *N v S* the mother's mere preference to remain in England without any other evidence and in *Re R*, a bare assertion of non-return were sufficient to allow the children to remain here?

If we remain committed as a jurisdiction to the prompt return of children who have been wrongfully removed from their country of habitual residence or wrongfully retained, it may be that better training and perhaps guidelines are needed for those charged with conducting and judging these cases. More consistency is needed – and more predictability. Abduction is a form of child abuse and we need to remember the trauma

that affects the child and the left-behind parent as well as listening to legitimate reasons, where there is evidence to support them, of women victims who really cannot return to the children's countries of habitual residence.

If a bare assertion of non-return is sufficient to defeat an application to return abducted children, we should then prepare for the floodgates. Is the guidance provided in *Re R* to apply also to non-Hague cases? Will that guidance work in Hague cases without oral evidence, as appears to be the recommended approach when the test for hearing oral evidence is whether it is 'necessary'. Guidance on this to judges is needed. Is there a need to look again at the *Re E* test on domestic abuse when the *Re E* test, if accompanied by an assertion of non-return, can make an unanswerable defence even when there is no evidence in support of the domestic abuse allegations. Currently, too much seems to depend on the individual judge rather than on any objective criteria.

On the current status, litigants and practitioners are left guessing as to what will be believed and what will not be believed. Whether a return is ordered – now in both Hague and non-Hague cases – depends very much on the individual judge allocated to the case. The current status quo risks encouraging every abducting parent to simply assert non-return and to expound it vociferously, including making applications for

oral or other evidence to back up the assertion, in the hope that the judge will believe them. In addition to unpredictability, is the current trend of seeking, even after return orders are made, to set them aside is leading to further delay in the resolution of these cases that have, historically (and rightly) been viewed as urgent court business.

A further consequence of the inconsistent outcomes above in incoming abductions is the impact of this uncertainty on judicial diplomacy and on the reputation of our jurisdiction in foreign jurisdictions – both those with whom we do frequent child abduction ‘business’, such as Pakistan and India. There is a concern that, with decisions like *N v S*, where a lenient and low test appears to have been approved by the Court of Appeal, when their turn comes, they too may apply a low test rather than honouring the commitment to return children. Conflicting jurisprudence is not just noted by practitioners in England. This jurisdiction has by far the largest number of judicially decided cases of child abduction. Countries such as Singapore, Malaysia, India, Pakistan, Australia and New Zealand (to name a few) look to English judicial precedents for guidance. The current situation where it is easy to defeat our long-held principles of return to countries of habitual residence erodes our reputation and ethos in both Hague and non-Hague countries that abducting parents should

not be given an easy ride when they arrive unlawfully with their children in this jurisdiction.

In *N v S*, the Judge commented that Pakistan ‘is best placed to decide where [the children’s] interests may lie’ but at no later point offered a good reason in law for why he did not facilitate that happening by making a return order. This kind of decision is very difficult to explain to Pakistani lawyers and judges who believe that the British system of justice would expect a parent to use a lawful route to relocate especially when Pakistan has in place a relocation jurisdiction which is also based on similar principles of welfare as in England. There is a real risk that such decisions will be viewed as being a breach of the spirit of this jurisdiction’s declared commitment via the Pakistan Protocol 2003 to disapprove of abduction by a parent of their children from Pakistan to England and vice versa. Non returns, such as these, are further exacerbated when the left-behind parent does not have British nationality and must rely on challenging financial conditions and sponsorships from the abducting parent to visit England and maintain contact with the children. The fact that real considerations like these are not factored into judicial deliberations may appear insensitive to nationals of many countries who do not obtain entry as of right.

We need to look carefully in the mirror and see what others are beginning to see.

Fact-Sensitive and Comparative: How *F (A Child)* Reshapes Hague Habitual Residence Analysis

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Following the Court of Appeal’s judgment in *F (A Child) (Habitual Residence)* [2025] EWCA Civ 911 handed down on 16 July 2025, Carolina Marín Pedreño, Partner and Head of the Children Department, and Kandice Philipps, a solicitor at Dawson Cornwell LLP consider the new summary guidance on how to approach an assessment of where a child’s place of habitual residence lies under the 1980 Hague Child Abduction Convention.

The Court of Appeal emphasised the need for a comparative, global analysis of the child’s connections with competing jurisdictions at the relevant date, cautioning against treating integration in the ‘arrival’ state as a decisive yardstick.

Background

This case concerned a 7-year-old child, born in Colombia. The father was a dual British and Ecuadorian national. The mother was a Colombian national. The parties separated in 2018.

The child had lived exclusively in Colombia until December 2023, when she travelled to England with her father for an agreed temporary stay. The purpose of the visit was to see paternal relatives and obtain a British passport, with a return date set for April 2024.

The mother joined the family in January 2024 but returned to Colombia in April 2024 due to work commitments, leaving the father and child in England, as the child’s passports had