

Neutral Citation Number: [2014] EWHC 2195 (Fam)

Case No: FD13P02034

IN THE HIGH COURT OF JUSTICE

**FAMILY DIVISION**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 13/06/2014

**Before** :

THE HONOURABLE MRS JUSTICE ROBERTS

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**Between :**

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| --- | --- | --- |
|  | **TF** | Applicant |
|  | **- and -** |  |
|  | **PR**  | Respondent |

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**Mr Michael Gration** (instructed by **Hanne &Co Solicitors**) for the **Applicant**

**Mr Christopher Hames** (instructed by **Bindmans Solicitors**) for the **Respondent**

Hearing dates: 12th and 13th June 2014

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Judgment Approved by the court
for handing down

**The Honourable Mrs Justice Roberts**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

1. **The application with which I dealt on 12 / 13 June 2014**
2. These are proceedings arising in the context of the Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (‘the Hague Convention’) as supplemented by Council Regulation (EC) No. 2201/2003 (‘Brussels II revised’). Over the course of two days on 12 and 13 June 2014, I dealt with the final determination of an application made by the father, TF, for the summary return to Italy of a child, R, who was born on 27 June 2010 and is now just 4 years old.
3. His mother, PR, is the respondent to this application. The father is an Italian national; the mother is Welsh. The parties were involved in a relationship between 2009 and 2011, although they never married. As confirmed by an order made on 23 April 2013 during the course of proceedings which were ongoing in the Italian courts (the Youth Court in T), both parents share rights of custody, albeit that as at that date R was living in the primary day to day care of his mother at what was then her home in T.
4. R and his mother left Italy on 9 September 2013. Since arriving in this jurisdiction, they have been living at an address in Wales. That is where this mother was brought up and it is where R’s maternal grandmother still lives. Despite the fact that the mother regards her departure from Italy as a return to her home in Wales, there is no issue between the parties that this was a wrongful removal (and subsequent retention) for the purposes of the Hague Convention and Brussels II revised. At the date when she left, the Italian courts were properly seised of the matter and all aspects of R’s care, including the issue of his contact with his father. He was removed from that jurisdiction in breach of the father’s rights of custody at a time when those rights were being exercised. Within those proceedings, the mother had applied for permission to remove their son permanently to this jurisdiction. Both that application and a subsequent appeal had been rejected, the latter only two months before she took the unilateral decision to leave Italy and bring R to Wales.
5. Thus, despite the fact that he has now lived in this jurisdiction with his mother for some nine months, I have well in mind the fact that there are ongoing proceedings in the Italian courts and that those courts will inevitably wish to conduct a further review of the appropriate arrangements for R’s care based upon a full welfare enquiry.
6. Over the course of two days on 12 and 13 June 2014, I heard the father’s application whereby he sought orders which would require the mother to facilitate R’s summary return to Italy. The mother resisted his application on the basis of the potential defence available to her under Article 13(b) of the Hague Convention. She maintained that there was a grave risk that R’s return at this juncture would expose him to physical or psychological harm or otherwise place him in an intolerable situation.
7. The evidential platform from which she launched that case was (amongst other medical evidence) the report which had been prepared by Dr Cosmo Hallstrőm, a consultant psychiatrist. The report is dated 3 April 2014. Her case, as it was presented to me, rested upon the consequences for R in the event of a return to Italy in circumstances where she would be unable to accompany him and/or (if she did) where his care would be severely impacted by her emotional and psychological state. Dr Hallstrőm came to court to assist me and to speak to the contents of his detailed and comprehensive report. His instruction as a single joint expert had been authorised by order of Mr Justice Bodey made on 21 March 2014 in the context of the mother’s application to set aside, vary or stay an earlier order for summary return on the basis of a material change of circumstances. On 10 April 2014, the matter came before Mostyn J. On that occasion, and having read Dr Hallstrőm’s report, the learned judge granted the mother’s application and set aside a previous order made by Ms Alison Russell QC (as she then was) which had required the summary return of R to Italy.
8. Thus, my function was to consider *de novo* the father’s application for a summary return of this child on the basis of the fresh evidence which was then available. Both parties attended court on 12 and 13 June 2014 and each was represented by counsel. The father was assisted by an interpreter who sat beside him throughout the proceedings. Whilst I had before me all the previous material which was placed before Ms Russell QC (now Ms Justice Russell) and a transcript of her judgment, I approached my task from the foot of a careful consideration and evaluation of all the available evidence, including the protracted history of these proceedings both in this jurisdiction and in the Italian courts. Before me by this stage were three full volumes of written material, including several statements from each of the mother and the father, as well as medical reports and hospital records. Given the nature of these proceedings, I did not hear oral evidence from the parties, although both were present in court and I was able to observe each over the course of the two days which this case occupied. Having listened carefully to the evidence of Dr Hallstrőm on the first day, I heard submissions from counsel for each party during the course of the second day. Mr Michael Gration appeared on behalf of the father; Mr Christopher Hames appeared for the mother. Each had put before me written skeleton arguments which I had read with care, along with the contents of two of the bundles, before the case was opened to me on 12 June. I have since then read the entire contents of the third bundle, which consists in the main of the mother’s hospital and other medical records.
9. Given the importance of my decision to both parties, and because it was clear by the afternoon of the second day that there would be insufficient time available to deliver a detailed judgment setting out in full my reasons for the decision I had reached, I advertised to counsel my intention to give a short ex tempore judgment on the basis I would subsequently hand down a written judgment setting out in full the reasons for my decision.
10. At the conclusion of the hearing on 13 June 2014, I dismissed the father’s application for the summary return of R to Italy. I said that, in refusing his application, I had considered very carefully all that I had heard and read in the case. My evaluation of that evidence had led me conclusively to the view that the mother had established on the balance of probabilities that such an order at this stage would create a grave risk that R’s return to Italy would expose him to psychological harm or otherwise place R in an intolerable situation. To that extent, I found that the mother had established a defence pursuant to Article 13(b) of the Hague Convention.
11. I further considered that none of the protective measures advanced by the father provided sufficient protection for R were he to be returned (with or without his mother) and accordingly the provisions of Article 11(4) of the Convention were not engaged.
12. I said that in reaching that conclusion, I had paid particular attention to the gravamen of the evidence I had heard and read from Dr Hallstrőm both in terms of his detailed written reports and the oral evidence he had given the previous day.
13. I recorded the fact that R was then wholly dependent upon the care which he was receiving from his mother. They had never spent as much as a single night away from each other since the day of his birth. I recorded the fact that the mother’s case was, and is, that her emotional and psychological fragility makes it impossible for her to return to Italy and that Dr Hallstrőm to a very significant extent supports that position. I said that even if she was able to accompany R to Italy, I was satisfied that the impact upon her of such a return would have a significant and detrimental effect on her ability to care for her child to the extent that he would thereby in my view be exposed to the level and type of risk envisaged by Article 13(b) as an exception to the clear expectation that children wrongfully removed from their place of habitual residence should be swiftly returned to that jurisdiction.
14. I stressed to both parties that the Italian court would retain its established jurisdiction over all decisions concerning R’s future and that my decision would not pre-empt the full welfare enquiry in that jurisdiction which would inevitably follow. I made it clear that, in dismissing the application before me, I was simply providing that R would remain in Wales with his mother whilst that process was undertaken.
15. Having said that, and in according the full respect which is clearly due to another full Member State and signatory to the Hague Convention, I would hope and expect that the evidence which was put before me and my evaluation of it in reaching the conclusion I did might be afforded appropriate weight and consideration in any future decisions taken by the Juvenile Court of T (or any other court in Italy) as to R’s future living arrangements. They are, in my respectful view, matters which cannot and should not be ignored in the context of the very full and careful investigation into his welfare which I anticipate will follow shortly in that jurisdiction.
16. **The background to this litigation and its course through the English courts**
17. The father’s originating application seeking R’s summary return was issued on 23 September 2013, very shortly after the mother had removed R to this jurisdiction. That removal occurred but a matter of weeks after the dismissal of her appeal by the Italian court on 27th June 2013 refusing her permission to relocate permanently in Wales with the parties’ son. There is reference within the papers to the possibility of a further appeal to the Supreme Court in Italy but whether or not that further avenue remains open to her is not a matter which I need to consider for the purposes of this judgment.
18. The proceedings in this jurisdiction have involved a number of hearings before various judges of the Division, as well as an unsuccessful application to the Court of Appeal. Notwithstanding that she had secured permission to mount an appeal, on 13 March 2014 the mother’s appeal against the order of Ms Alison Russell QC made on 29 November 2013 was dismissed. The mother’s case on the appeal was focussed upon the refusal of the deputy High Court judge to allow her to adduce in evidence a full psychiatric report as to her mental health. On that occasion, Lord Justice McFarlane (who delivered the leading judgment and who had given permission to appeal) declined to disturb the judge’s case management decision on the basis that the material which was before the court in November 2013 simply failed to establish that the instruction of such an expert was ‘necessary’ for the purposes of Part 25 of the Family Proceedings Rules 2010. In other words, the material which the judge had then been considering was insufficient to establish that the mother’s mental health was, or might be, such as to enable her to make out a defence under Article 13(b) to the standard required under English law and, in particular, the tests laid down by the Supreme Court in the cases of *Re S* and *Re E*. (I shall need to return to a detailed consideration of the law in due course*.)* Lord Justice McFarlane went on to determine that any issues arising regarding the implementation of the order for return should be listed before a High Court judge of the Family Division for directions. That direction was made because during the interval between the appeal being heard on 26 February and the delivery of judgment on 13 March 2014, the mother’s solicitors had sent an email to the Court asking for a short delay in releasing the judgment because of a significant decline in her health, described to me as a ‘melt down’.
19. On 24 March 2014, the mother (who then had on board the fresh legal team who had conducted the appeal) issued an application to set aside, vary or stay the order for return made in November the previous year. The matter had been listed for directions before Mr Justice Bodey at which hearing her counsel, Mr Hames, had advertised that the issue of such an application was imminent. Deeming the application to have been made and the requirements of Part 25 of the Family Procedure Rules 2010 to be satisfied in relation to the expert evidence which she sought to adduce, the parties were directed to agree the identity of a consultant psychiatrist who was to be instructed as a single joint expert to assess the mother’s mental and emotional health and to prepare a full report on the same by 9 April 2014. The judge also directed the father on that occasion to file a statement setting out his detailed proposals for the repatriation of R to Italy if her case for review of the return order should fail and she declined to accompany R to Italy. At this stage, it was no part of the father’s case that R should be separated from his mother’s care. Indeed, he had confirmed that position to Ms Russell QC through his counsel at the earlier hearing on 29 November 2013 and had provided a written undertaking not to separate R from the care of the mother.
20. Dr Hallstrőm’s report was available and was put before the court when Mostyn J came to hear the mother’s set aside application on 10 April this year. On that occasion, Mr Hames appeared for the mother. The father was represented by leading counsel, Mr Henry Setright QC, and by Mr Gration. The decline and/or collapse in the mother’s health following the decision of the English Court of Appeal and the development of the father’s case that R should be returned to his sole care in the event that she declined to return to Italy were both factors relied upon in support of her contention that there had been a material change of circumstances since the order for return on 29 November 2013.
21. The learned judge found that, contrary to the submissions advanced by Mr Setright QC on behalf of the father, there was a power arising under rule 4.1(6) of the Family Procedure Rules 2010 (SI 20 10/2955) to revoke the original order of 29 November 2013 provided that it was demonstrated that since the date of the order there had been either non-disclosure or a significant change of circumstances. He then went on to consider, amongst other factors, the evidence which was by then available to the court in the form of Dr Hallstrőm’s report.
22. The factors which underpinned the mother’s case in relation to ‘material changes in circumstance’ were set out by the learned judge at paragraph 25 of his judgment. They were these :-
23. She was now unable to return to Italy. Since R had always been in the primary care of the mother, assisted by his maternal grandmother in recent months, and in circumstances where the father had little contact, a separation and placement in the hands of a comparative stranger in respect of whom allegations of violence were made was not envisaged by the court in November 2013. Indeed, the court was anxious to ensure that there was then no risk of separation;
24. The father’s position had now changed in that he was, for the first time, advocating such a separation if the mother did not return;
25. It was highly unlikely that R would leave his mother without considerable coercion and the risk was accordingly grave that he would suffer far more than the usual rough and tumble discomfort and distress which every child should be expected to put up with;
26. The mother no longer had a home or employment in Italy and there was no nursery place for R.
27. The learned judge went on to remind himself about what he described as ‘the very limited scope of evidence relating to the mother’s mental health that was before the court on 29 November last year’, an issue which was addressed by McFarlane LJ in his judgment in the Court of Appeal on 13 March 2014 in paragraphs 21 to 30. He went on to quote reasonably extensively from various passages from Dr Hallstrőm’s report which he described as ‘extremely comprehensive’ and which set out his diagnosis of the mother as being ‘seriously mentally ill’. The underlying cause of that illness was said by the joint expert to be multifactorial but there was probably a genetic basis to her condition as well as a developmental component.
28. At paragraph 42 of his judgment, Mostyn J said this :-

‘This evidence goes far beyond anything that was before Ms Russell or the Court of Appeal. To my mind it represents a sea change in the relevant evidence appertaining to the mother’s mental health. That alone, in my opinion, justifies a finding of a material change of circumstances. However, I also find that the other matters relied on by Mr Hames themselves also amount to material changes of circumstances, in particular the fact that the father is now advocating separating R from his mother, in contradistinction to his case hitherto.’

1. He set aside the order for summary return made on 29 November 2013 and gave directions for the filing of further statements by the parties, including a provision requiring both the mother and the father to set out their respective cases in relation to protective measures in the event that the court were to order a return of R. Permission was given to each to raise by way of clarification such questions of Dr Hallstrőm as they wished and provision was made for his attendance at the hearing on 12 and 13 June 2014. That hearing was listed for final determination of the father’s application for the summary return of R to the jurisdiction of Italy. It was how matters stood when the matter came before me on 12 June 2014, save that I also had the benefit of the further statements filed by the parties on 9 May and 5 June 2014 and the supplementary report prepared by Dr Hallstrőm on 15 May 2014 in which he addressed a number of questions raised on behalf of the father.
2. To overburden this judgment with a detailed exposition of the chronology and significant milestones of this litigation to date in two separate jurisdictions would, in my view, detract from its primary purpose of setting out in clear terms the reasons for the decision which I announced in my short extempore judgment at the conclusion of proceedings on the 13 June 2014. However, each of the judgments of McFarlane LJ in the Court of Appeal and, subsequently, Mostyn J to which I have already referred set out in very helpful and concise terms the material facts and the events which have occurred both in this jurisdiction and in the Italian jurisdiction prior to the case reaching me for final determination of the issue of summary return. I had full transcripts before me. They are reported respectively as *Re: F (A child)*[2014] EWCA Civ 275and *TF v PJ*[2014] EWHC 1780 (Fam). Insofar as they set out facts and matters which are not in dispute between the parties in terms of the background chronology, I would hope and expect that they will be made available to the Italian courts with this judgment in order to inform a full understanding of the course which the proceedings here have taken. I am also proposing to include by way of an appendix to this judgment the *curriculum vitae* of Dr Hallstrőm as it appears in the court bundle at **[D41-42]**.
3. **The final hearing of the father’s application for summary return on 12/13 June 2014**
4. And so I turn now to the evidence and submissions which were made at the final hearing before me on 12 and 13 June 2014. I have already indicated that I had three volumes of written material to consider (all of which I read) and detailed written skeleton arguments by way of opening from counsel. I heard oral evidence from Dr Hallstrőm over the course the first day of the hearing and closing submissions from each of Mr Hames and Mr Gration which occupied a full half day of court time. I should like to thank both counsel for their clear and careful submissions which assisted me in reaching the conclusions I have already expressed on an ex tempore basis.
5. I did not hear oral evidence from the parties, although I read with care the several statements which each has put before the court, together with the material appended by way of exhibit.
6. Although I did not hear from the parties, I was able to observe them in court. The father listened intently throughout and I am satisfied that, with assistance from his interpreter, he was able to follow the proceedings closely. The mother sat behind her counsel and made virtually no eye contact with the father. At times she was visibly trembling. She was clearly in some distress and at times rocked backwards and forwards in her seat with her arms clasped around her.
7. I am, of course, conscious of the need to evaluate with particular care in a case such as this both potentially self-serving statements made by the mother in her written evidence and her demeanour in court. Her distress appeared to me to be genuine despite the fact that I had no opportunity to listen to any oral evidence from the witness box.

*The mother’s case and the history which informs it*

1. In recording the material chronology and the events which have a direct relevance to my decision to refuse an order for summary return, I have drawn upon all the material which was put before me. Much of the background is uncontroversial and the father takes no issue with it. Where I record developments in the mother’s mental health issues, I have taken the information either from primary material in the form of records or reports, or from what has subsequently emerged from Dr Hallstrőm’s reports. Where he has expressed an opinion as opposed to a statement of fact, I have recorded it as such.
2. The mother grew up in Wales and subsequently studied at English universities where she obtained a degree in psychology and, two years later, a Masters degree in Human Resources. She was clearly academically able but her later adolescence appears to have been blighted by episodes of anxiety which, according to Dr Hallstrőm, may have found its roots earlier in her childhood. She received some counselling whilst she was still at school but it seems that her first significant mental breakdown occurred whilst she was an undergraduate in the mid-1990s. She was then describing panic attacks and obsessional thoughts and was referred to a psychiatrist who prescribed what have been described by Dr Hallstrőm in his report as ‘substantial doses of Prozac’ (para 44). A year of weekly psychotherapy followed during which the mother was described as having ‘a fragile personality development’.
3. After leaving university, the mother secured a job in the Human Resources Department of an investment bank in London. She was prescribed anti-depressants in 2000. Following the end of what appears to have been a fairly chaotic relationship with her then boyfriend (with whom she was sharing a flat) which the mother alleges to have been characterised by violence directed towards her, she was admitted to the Priory Hospital in 2001. (That is a well-known centre which specialises in the care and treatment of patients who are suffering from various mental health problems.) After some therapeutic intervention, she spent three months in Italy where she was able to secure a job teaching English. In September 2002, she moved to Italy albeit that she was then taking powerful anti-depressant medication which had been prescribed by those responsible for her care.
4. The first two years of her life in Italy appear to have been a difficult time. She was prone to anxiety attacks and gave up teaching for a while. Throughout this period, she returned regularly to her home in Wales about three times a year, but was still consulting her GP in 2003. She went back to teaching younger students and this appeared to give her a more fulfilling role since she states that her life revolved around her job during this period. The collapse of a four year relationship in 2005 appears to have triggered a further mental breakdown and during this period she took overdoses of her medication on three or four occasions. This medication had been prescribed as a tranquiliser (Lorazepam). Whether or not these were serious attempts on her life is not clear but each of these episodes required her admission to hospital and was followed by weekly psychotherapy for about a year. In total, as Dr Hallstrőm was to confirm, she appears to have taken similar overdoses of medication on nine separate occasions between 2005 and the end of 2008. She was hospitalised on eight occasions for up to three days as a result of each overdose she took. Her long term medication continued until the early part of 2009. Dr Hallstrőm told me that he was not in a position to say whether she had a fixed suicidal ideation and intent on each of these occasions, but he confirmed that the number of these incidents was significant and a cause for concern.
5. In June 2009, the mother met the father who was then working as a stone mason. Within weeks, their relationship appears to have become serious and within three or four months he had moved into her apartment. The following month, in October 2009, she became pregnant. This pregnancy was not a planned event, I was told.
6. Shortly before meeting the father, she had taken a conscious decision to reduce the amount of anti-depressant medication she had been taking over a number of years up to that point. She appears to have had some success in reducing her dependence on sleeping tablets but found it difficult to manage without the Lorazepam and benzodiazepine tranquiliser which she was still prescribed. She describes in her second statement dated 20 March 2014 how, by the summer of 2009, she was free of all medication. Her discovery that she was pregnant within a matter of weeks thereafter was in all likelihood an additional incentive to remain free of medication and R was born on 27 June 2010, some 12 months after her she had met the father.
7. The mother describes their relationship as abusive from the start. These allegations are contentious and are denied by the father. She alleges that his violence towards her increased after R’s birth. She sets out a catalogue of allegations in her first statement dated 19 November 2013. Whilst she describes a ‘rocky’ relationship in its early days during which he would display ‘jealously, aggression and moodiness’, by the time of R’s birth, she says he had become controlling and violent.
8. The mother describes an incident of violence (denied by the father) which occurred on 28 July 2011. R would then have been 13 months old. It arose, on her account, out of an argument between the parties over flights she had booked for a trip to Wales whilst the father was helping his mother to move home. She says that he flew into a rage and lost control. She was slapped around her face and head. When she held up her arms to protect her face, he hit her arms leaving bruising. It is the mother’s case that she told her psychologist, Dr VM, about that incident on the following morning (ie. 29 July 2011) and that the doctor was able to see for herself the extent of the bruising to her arms.
9. Less than a month later, on 25 August 2011, shortly after she had returned from visiting her mother in Wales for a two week holiday, M alleges that there was a further serious assault during which the father put both hands around her neck and tried to strangle her. According to her account of events (which the father denies), she managed to escape but was subsequently hit by him on her face. There is within the material before me contemporaneous evidence to support the mother’s account of this incident in the form of a police report and hospital records which establish that the mother attended at the accident and emergency department of the local hospital on that occasion. The staff observed and recorded evidence of *‘multiple contusions with bruises on limbs and face’*. The police removed the father from the apartment they then shared and the Italian court thereafter granted an emergency protection order which was expressed to last for a period of one year, although that was subsequently reduced to four months.
10. I have in the material before me a translation of the findings and observations of the judge who dealt with a hearing on 9 September 2011 **[C64]**. (The written Italian judgment appears to have been signed by the judge on that date, although there is reference elsewhere in the papers and in Mr Hames’ submissions to the hearing having taken place on either 11 or 13 September 2011.) The judge appears to reject any suggestion that the mother had fabricated her account of events whilst recognising the potential prejudice (if she had) to the father. There was then before the Italian court evidence from Dr VM, a local psychologist and psychotherapist whom the mother had been consulting. That professional was able to report to the court a contemporaneous account of the events recounted to her by the mother shortly after the alleged assault on 25 August 2011 when she, the doctor, was able to see bruising. She also described a similar report which the mother made to her about an earlier incident the previous month, on 29 July 2011, when again she had witnessed bruising on the mother’s person*.*
11. It is clear to me that the Italian court was aware of these two incidents when, on 27 June 2013, they refused to allow the mother permission to leave Italy and return with R to this jurisdiction. They are specifically referred to in the judgment which was delivered on that date at **[E2]**. It is also recorded in that judgment that, as a result of those incidents, the mother had ‘insisted for the issuing of urgent measures in order to control the relationship between the father and son with protected conditions for the wardship of R’. That appears to have resulted in the further court hearing on in September 2011 to which I have referred above.
12. The mother claims that at this point, contact between the father and R was temporarily suspended by the Italian courts and contact only restarted on a weekly basis for one hour in January 2012 in the presence of the paternal grandmother.
13. It was in the context of this rapidly disintegrating relationship that she was pursuing her application seeking the permission of the Italian courts to take R permanently back to the United Kingdom. Her formal application appears to have been issued on 29 July 2011 which would have coincided with the date of the earlier assault to which Dr VM referred the Italian judge. The more serious allegation of assault, which resulted in the removal of the father from the family home, occurred about a month later on 25 August 2011.
14. On 7 October 2011, there was a further hearing in the Juvenile Court in T. It is recorded at **[E2]** that on that occasion the father had appeared before the court ‘to notify the truthfulness of the reconstruction of the facts operated by [the mother] and to demand the re-establishment of the relationship with his son’. (I take this to mean that he was challenging the truthfulness of the mother’s account of the assaults which are alleged to have occurred in July and August 2011.) By this stage, the relationship between the parties had ended. There appears to have been a further hearing a few days later, on 11 October 2011. It seems that the local social services had become involved by that stage and it was at this point that the father’s contact with R was reinstated on a temporary basis provided that it took place in the presence of the paternal grandmother. A social worker was asked to ensure that arrangements for contact between the father and R took place on at least a weekly basis. The expectation then was that the mother would receive support to settle R into a local nursery placement. It seems from the judgment at **[E3]** that on the same occasion the court refused the mother’s request to spend the remaining period of her maternity leave in her ‘home country’ on the basis that the court considered more time was needed to ‘give priority to the relationship between little R and his father’.
15. The mother launched her appeal in the Italian court and was given limited permission to take R to Wales for the Christmas holidays. No further decisions appear to have been made as to his longer term future at that stage.
16. She says that when she returned at about the same time as the protection order expired in January 2012, the father appeared contrite. On her case (which he does not accept), he apologised for the assault he perpetrated upon her in August the previous year. There was no reconciliation between the parents and such attempted *rapprochement* as there might have been over arrangements for contact appears to have been short-lived. The mother describes the pressure under which she was put to withdraw the criminal assault charge which was then proceeding against the father; she describes an ill-tempered telephone call when he harangued her for over an hour about some missing computer equipment; he started to question R’s paternity and was insisting on a DNA test.
17. The mother describes a further assault on 14 June 2012 which she says occurred at the apartment at which she was then living with R. She contends that he held a knife to her throat and threatened that, unless she signed the agreement to discontinue the criminal prosecution for the earlier assault charges, he would make life very difficult for her. She alleges that incident was witnessed by R who was woken from his sleep. She says she attended the local hospital the following morning. I have within the material which was placed before the court an English translation of the report prepared on 15 June 2012 by Dr CM which records a *‘bruise on right arm and right periorbital area, scratches on neck and face from violence inflicted by a third party’*. The mother was referred back to her family doctor with ‘*results of clinical tests, setting in place of treatment and scheduling of further examinations if necessary’*, an ice pack having been applied locally to the bruising which was observed by the medical staff. She was given pain relief and told that she should make a full recovery within 6 days unless complications arose.
18. The mother describes in her statement of 19 November 2013 how she believed she bore some responsibility for the alleged attack, having allowed the father to enter her apartment. She says she was advised that there was little prospect of the Italian court granting her a second protection order for that reason and because she was in the process of withdrawing formal charges arising from the assault which she alleged took place in August the previous year. She says she told no one about what had happened apart from her Italian lawyer, her closest friend and Dr VM.
19. In July 2012, she returned with R for a month’s holiday in this jurisdiction. She recounts that the initial attempts to set up a daily supervised contact regime for three hours (that having been an arrangement which their respective lawyers had apparently drawn up) were not successful from R’s point of view. In September, there was a further agreement dealing with contact. The mother made it plain at that point that she was willing to remain in Italy until September 2013 in order to allow the father to establish a relationship with his son but that thereafter she would seeking permission from the Italian court to relocate to the United Kingdom. It seems that at this stage of the Italian proceedings there had been no final adjudication on her earlier application made in July 2011.
20. I accept from the material which I have seen that Mr Hames, counsel for the mother, has correctly identified a further court hearing on 16 October 2012 when issues of custody and contact were before the Italian court. That is plain from the later order which flowed from the court’s decision on 27 June 2013. This is what is recorded as having occurred at the hearing in October 2012 (and I take this extract from the English translation with which I have been provided) :

*‘… the court confirmed pro tempore the agreement reached by the necessary parties concerning R custody with the control of the periods in which R stays with his father and the determination of the parental contribution to support R; the Court also stipulated “CTU” direct to check the responsibilities that go with parenthood, the well-being condition of the minor and the quality of his relationship with both his parents, taking the firm conviction into account that [the mother], despite the different verification, made by the Social Work, about the parental inappropriateness of [the father] with a consequent unwillingness to expect a gradual increase of the time for R to stay with his father and a reiteration of the request of authorization to move with R to her home country before an appreciable consolidation of the relationship between father and son’.*

1. Shortly after the hearing in October 2012, at the request of Judge Dr Giuseppe Pietrapiana, Dr LD, a local clinical psychologist, became involved with the family and was directed to provide a formal report as to the parties’ respective parenting skills. His report dated 7 March 2013 has been translated and is within the material before me. It is clear that he was liaising for the purposes of that report with the mother’s psychologist, Dr VM, and another doctor, Dr T.
2. The mother recounts in her own evidence the acute distress she felt as a result of a joint session with the father which was set up for the purposes of preparing that report. She records her alarm at the absence of any sufficient emphasis in the report about the domestic abuse she alleges she suffered at the hands of the father. She plainly believes that Dr D’s report was an influential piece of evidence when it was put before the Italian court in March 2013.
3. I have read Dr D’s report with care. Of the joint meeting which was set up between the doctor and the parties, the report describes the mother as *‘constantly keep[ing] a fearful attitude, distancing herself from her former companion and primarily turning to the other interlocutors’* (para 6) **[C383]**. It is clear from an earlier passage in the report that the mere suggestion of a face to face meeting induced in the mother what is described in the report as *‘a striking alarm reaction, with tears, marked distress, anticipatory anxiety and evident situational panic’* **[C369]**. It refers to the stress she experiences in her communications with the father and the fact that she was trying to avoid speaking to him by communicating about contact arrangements through text messages. This passage then appears in the report (and I quote from the English translation) :-

*‘[The mother’s] interpreting system seems to be based on past experience, which go beyond from the here and now of the meeting, and on a projectivity rate that can come to highlight distorting inclinations. [The mother] is exposed to a traumatic factor in terms of the bring up to date, that is the recall of a frame of mind related to the threat. Her anxiety disorder, the persistence of her emotional alteration, her efforts of avoidance are in the form of conceptual scheme in which defensively stiffen her own position. In the face of [the father’s] declarations of willingness [the mother] presents expressions of mistrust, sometimes of restrained sarcasm, confirming a negative view to which the more positive or reassuring information have difficult access.’*

*‘The resistance, with splitting traits in the failure to integrate positive and negative images, affects cognition. It is believed that [the mother’s] intelligence, skills, cultural and psychological and emotional resources allow her to elaborate such discomfort, provided that it is consciously tackled as a possible interference element in the relationship with her son, in the first place resulting in the stiffening of the functions that in the literature relate to …. The role of gatekeeper, or guardian of the father-to-child relationship through the availability or unavailability to the mediation and the dialogue with the father.’*

1. In the section of his report dealing with his conclusions, Dr D says this :-

*‘a) [The mother] has specific cultural, personological, adaptive resources that allow for an adequate management of herself, her professional responsibilities, her interpersonal relationships, her parenting skills potentially favourable to R’s development and maturational process. In view of this, [the mother] also has supervisory and alarm reactions, with anxiety and avoidance, related to the figure of [the father] in inelaborated condition that overlaps – even in a projective way – her experiences, the mistreatment referred, the facts of reality and imaginative functions to the persecutory, hindering the activation of the co-parenting itself.’* **[C386]**

1. Whilst the translation of the report into English might obscure some of the ‘flow’ or precise nuanced meaning of the original, I collect from these passages a clear sense which Dr D conveys very graphically about the mother’s subjective fear of the father and her responses to any interaction with him.
2. It seems from the translation of the judgment delivered by the Italian court on 27 June 2013 that the ‘headline’ points to emerge from Dr D’s report, as received and recorded by the court, were :-
3. The mother had *‘persecutory sentiments’* and these were preventing her from underestimating the significant consequences of a potential move with R to Wales as compared to maintaining a significant relationship with his father **[E3]**.
4. The mother on that occasion had represented to the court that she had always been willing to abide by the agreement which she made with the father on 6 October 2012 and she was of the view that contact had proceeded in such a way as to re-establish a positive relationship between R and his father. In the circumstances, she pressed her application for permission to move with R to Wales from September 2013. She put before the court her proposals for ongoing contact between father and son.
5. The father relied on the evidence before the court of his increasing success in re-establishing a relationship with his son and highlighted the practical and other consequences to the progress of that ongoing contact if the mother were to leave Italy, especially in the new circumstances of what appears to be the recent loss of his employment.

The father’s submissions were, perhaps, predictable.

1. The court on that occasion had to balance those competing considerations. Whilst it is not altogether easy to determine from the translated document, the relevant findings of the court appear to be prefaced by the word ‘reckoned’, whereas the arguments are prefaced on each occasion by the word ‘acknowledged’. If I am correct in making that assumption, the Judge found that,

*‘the relation father/son must furthermore strengthen before hypothesizing a child’s move abroad so that he could, even considering that getting older and with a stronger relation with his father, better understand the meaning of the move and he could better face periods of his stay with his father even without his mother’;* and

*‘this choice* [ie. decision] *would not be an undue limitation of [the mother’s] freedom of circulation, but would only be the consequences of her choice of life and of her obvious responsibility towards the well-being of her son and towards [the father’s] right to carry out significantly and responsibly the paternal part’*.

The Italian court then went on to stress the importance of ongoing therapeutic work (including counselling and mediation) before rejecting the mother’s permission to move to Wales with R.

1. I set out the above passages for one purpose only, and that is to extract from the material which has been placed before me the reasons for the court’s decision and the information which was available to it at the relevant point in time. Significantly, it seems to me that there was no specific consideration at that juncture of the mother’s state of health in terms of her emotional stability or the likely impact upon her of a decision which required her to remain in Italy against her will. The court had before it the assessment carried out by Dr D (informed as it was by input from the mother’s psychologist, Dr VM), but it is clear to me that the mother’s mental health was not an issue to which the court considered it should attach any central or overriding importance in reaching its conclusions. On the basis of the evidence which was then before the Italian court, it is difficult to see how it might have reached a different conclusion. It was certainly not then a central feature of the mother’s presentation in support of the application for permission to live with R in Wales.
2. It is the mother’s case that the Juvenile Court in T did not have before it full details of the extent of her medical history because she was given advice that to expose the full extent of her psychological difficulties over many years may have damaged her case for retaining residential care of R, whether in Italy or in this jurisdiction (which was clearly where she wished to establish a permanent home with R). I cannot make any findings about the nature of the advice she was given, but I do gain some insight into her psychological condition in the weeks following that decision of the court in Italy from a report which had been prepared by Dr J, a consultant psychotherapist practising at the SY Hospital in Wales. He saw her on 12 July 2013 (just over two weeks after that hearing whilst she was back in Wales for part of the summer holiday) and again on 15 November 2013, following her removal of R from Italy. Dr J’s report records the mother’s fear of the prospect of returning to Italy and refers to her ‘low mood, tearfulness and marked anxiety'. The report records her depression and anxiety scores as being at the higher end of the scale and indicating what Dr J refers to as ‘impairment to activities of daily living because of emotional distress’. At that point in time, I also have evidence that her GP, Dr L, was prescribing medication for anxiety and insomnia which the mother had been taking for the past six months. (She was unable to take medication for depression during a period of about 22 months following R’s birth in June 2010 because she was breast feeding R.) A letter which he provided for the purpose of the English proceedings on 22 November 2013 records that he had by that stage prescribed 20mg daily of Fluoxetine ‘because it has become apparent that her level of depression is now of such a degree that she needs an antidepressant’ **[E9]**.
3. Whilst these reports postdate the final departure of the mother from Italy, they do provide me with some insight into her likely psychological frame of mind as she returned to Italy after her month in Wales during July 2013. It may not be without significance that her own mother accompanied them back to Italy and remained in the mother’s apartment for a few days. By that stage, the mother had been on unpaid sick leave from her employment for over two months since the beginning of June 2013, although she had not been at work for the previous three months before taking official sick leave.
4. It is at that point that the mother alleges that there was a further assault upon her by the father. On 3 August 2013, she states that during the course of a heated altercation when the father came to collect R for contact, he punched her face leaving her stunned. She says that this incident was witnessed by R who had been reluctant to leave his mother to go with the father for contact. The father denies any such assault. However, I have in the material which was placed before me a report from the emergency centre of the SC Hospital in T dated on the same day **[C76]**. It records the mother’s attendance at the hospital shortly after 11am and her contemporaneous report of having sustained a punch in the face. When she was examined by Dr P about an hour later, the report records *‘pain when left cheekbone is palpated, local bruising’* and later *‘bruise on left cheekbone’*. The doctor attending the mother prescribed pain relief and advised her to treat the bruising with an ice pack which she should apply three or four times a day for fifteen minutes. It appears from the prognosis recorded in that report that Dr P anticipated that the mother’s injuries would take some ten days to heal. She was discharged into the care of her local doctor shortly after 2pm that afternoon. There was sufficient concern at the time to refer the mother to the x-ray department in the hospital where she underwent a CT scan of her facial bones. The report from that department is also in the material which was placed before me.
5. The mother made a formal complaint to the policetwo days later. I have seen a copy of that report which accords with the mother’s description of events in her subsequent statement **[C82]**. She also produced to the police the medical report from the emergency department of the local hospital. It is her case that the bruising on her face was still visible several days later. The police appear to have been involved on two further occasions when the father arrived at the mother’s home to collect R for contact visits. By this stage, the local social services were involved with the family. There appear to have been at least two meetings between the mother and Dr MT who was based in the local social services department in T. She had been made fully aware of the recent alleged assault and had seen the medical records recording the treatment which the mother had received at the hospital. It appears from a letter which I have read dated 23 August 2013 written by the mother to Dr MT **[C86]** that she had attempted to mediate between this couple and had advised that the father should step back for a period of time in order to allow some time for matters to settle down. Within the letter is a plea from the mother to Dr MT to assist her to reach what she calls ‘a peaceful joint solution’.
6. It is the mother’s case that, as a result of the social worker’s intervention, the father agreed initially (albeit reluctantly) to ‘protected visits’ (which I take to mean supervised or supported contact) until R felt comfortable seeing him alone again. According to her evidence, he subsequently reneged upon that agreement and the mother was informed by Dr MT that she did not have the authority to set up ‘protected visits’. When the mother sought legal advice as to her position, she was told that it was highly unlikely that the Italian court would make a further protection order and (perhaps, for her, of greater concern) that she faced a risk of the court ordering formal intervention by the local social services with the possibility of R being removed from her care. Of course, I can make no findings for the purposes of this judgment whether (a) that was the substance of the advice which she received from her lawyer, and/or (b) whether the local Italian court would have been likely to grant further protection orders in these circumstances.
7. What I do know is that, against the background of events which I have recorded, and within a matter of days, the mother removed R from Italy and took him back to her mother’s home in Wales arriving in this jurisdiction on 10 September 2013. The mother was apparently unable to fly because of recurring panic attacks and made the journey by car. She describes her reasons for leaving in these terms :-

*‘I knew this was my last chance to escape and leave [the father]. I couldn’t get any protection in Italy but I knew in the UK, I would have my family around me, to support and protect me’.* **[C37]**

1. The proceedings initiated by the father under the Hague Convention followed swiftly and I have already described the progress of the future litigation in the English court to date.
2. Reference has already been made in this judgment to the treatment which the mother was receiving from her doctor at the end of November 2013. She was taking daily medication for depression. That state of affairs appears to have continued throughout the end of 2013 and into the New Year whilst her appeal in this jurisdiction was pending. On 26 February 2014, the Court of Appeal announced its decision to dismiss her appeal. Judgment was formally handed down just over two weeks later on 13 March 2014. As is clear from the judgment of Lord Justice McFarlane, the primary issue in the appeal was the court’s earlier refusal to allow the mother to instruct a psychiatrist for the purposes of putting before the English courts some expert evidence as to her mental health generally and the prognosis for her future health were she required to return with R to Italy. Mr Hames, counsel who appeared on the mother’s behalf in the Court of Appeal as he has appeared before me, had argued that, without a psychiatric report, the court should not and could not have proceeded to make a final determination of the mother’s Article 13(b) defence. As I have already indicated, in expressing the unanimous view of the court, Lord Justice McFarlane held that the material which the mother had been able to put before the court (set out in paragraphs 21 to 26 of the judgment) was insufficient to establish that her health was, or might be, such as to satisfy the test advanced by Lord Wilson in *Re: S (A Child) (Abduction : Rights of Custody)*[2012] UKSC 10, [2012] 2 FLR 442. At paragraph 34 of his judgment, Lord Wilson had formulated what he referred to as ‘the critical question’ in this way :-

‘The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother’s anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court’s assessment of the mother’s mental state if the child is returned.’

I shall return to the formulation of this test and its application to the facts of this particular case at a later stage of my judgment.

1. What was not before the court on 29 November 2013 (when the original order for summary return was made) or on 26 February 2014 (when the Court of Appeal dismissed the mother’s appeal against the judge’s case management decision over the instruction of an expert) was the evidence which was before me in the form of Dr Hallstrőm’s two reports. His first (substantive) report had also been available to Mostyn J when he made his order setting aside the original order for summary return of R.
2. The report speaks, in part, to the mother’s reaction to the dismissal of her appeal. She describes that reaction as a ‘meltdown’. In the days which followed, she says that she could neither eat nor sleep. Dr L, her general practitioner, prescribed beta blockers but these were apparently of little effect in preventing successive panic attacks which the mother experienced over the course of the following days. I have seen a letter from Dr L dated 19 February 2014 in which he confirmed that he was currently prescribing 20 mg of Fluoxetine daily in addition to 80 mg of Propranolol. He confirmed that the mother’s clinical condition with regard to anxiety, insomnia and depression remained unchanged as of that date.
3. A few days later, the mother states that she experienced a succession of escalating panic attacks, which rendered her hysterical. Dr L at this point took the decision to refer her urgently to a local consultant psychiatrist, Dr QI. Because she was unable to see him immediately, Dr L referred the mother to the local mental health crisis team who saw her on 3 March 2014. I have seen a report which was produced on that occasion. It includes observations as to her mental state on that occasion as being one of ‘extreme stress’ **[C:202]**. It records a situation of her ‘not coping very well due to her intense fear of having to return to Italy’, of her ‘living on the edge due to the constant fear’, of being ‘preoccupied with fears of having to return to Italy’ and ‘a fear of losing [her] son’.
4. On 5 March 2014, some two days later, a support worker from the local domestic abuse services in Wales wrote to Dr L. She recorded her concerns regarding the safety and security of both mother and son in terms of their health and wellbeing in the event they were to return to Italy. In particular, concern was expressed about the effects of separating mother R. There were, at that stage, no concerns about the mother’s care of R who was reported to be developing well.
5. The consultant psychiatrist (who continues to be responsible for the mother’s care), Dr QI, had his first consultation with her on 14 March 2014. In a letter which was written on 19 March 2014 (and which he was aware would be placed before the court), he presented his professional assessment of the mother in these terms :-

‘[The mother’s] current symptoms and history are suggestive of a Major Depressive episode as part of a Recurrent Depressive Disorder precipitated by a background of persistent stress over a number of years …..’

‘[Her] current symptoms include feeling constantly anxious with occasional attacks of panic with somatic symptoms of breathlessness, palpitations and feeling churned up, outbursts of anger and tearfulness, low mood with feelings nightmares, loss of appetite, feeling tired, distracted and unable to concentrate and has had thoughts of running away from the country and committing suicide if she were forced to return to Italy. She is able to attend to her son’s needs with support from her mother and able to derive some pleasure whilst spending time with him.’

1. Having recorded his decision to change her medication to a different antidepressant, Dr QI says this,

‘I think that [the Mother’s] psychological condition is likely to deteriorate significantly if she were to return to Italy and could result in attempted self- harm. She is being supported by her mother in looking after her son whose care is also likely to be adversely affected both practically and emotionally without the support she is receiving from her family and friends.’ **[C209-210]**

1. I have also had available to me a much fuller report which Dr QI sent to Dr L on 28 March 2014. In that report, he made very similar observations and suggested that her allocation for support and monitoring by the local community mental health team should be made a priority in the event that her condition should worsen, a situation which he viewed as highly likely in the event of an unfavourable decision by the court in relation to an enforced return to Italy **[E48-51]**.
2. Those reports were, of course, made available to Dr Hallstrőm as part of the material he was asked to consider in the context of his own examination of the mother as the single joint expert in the case.
3. It is thus to the evidence of Dr Hallstrőm that I now turn.

*Dr Hallstrőm’s psychiatric reports : 3 April 2014 and 15 May 2014*

1. Dr Cosmo Hallstrőm has practised as a consultant psychiatrist for over thirty years. He has very extensive experience of preparing medico-legal reports for purposes such as these. He was appointed as a single joint expert and, as such, his primary role is to assist the court. In that sense, he is entirely independent of the parties. His abbreviated curriculum vitae is appended to this judgment **[D41-42]**.
2. His main report was prepared on 3 April 2014 following an examination of the mother on the previous day. His supplemental report was produced some six weeks later, in response to some questions which were put to him on behalf of the father.
3. The principal conclusions and assessments arising out of his main report were summarised succinctly by Mostyn J in paragraphs 30 to 41 of his judgment delivered on 10 April 2014.
4. For the purposes of my judgment, I set out below the key features of Dr Hallstrőm’s main report :-
5. The predominant diagnosis of the mother’s condition is one of a significant anxiety disorder with panic and associated depression. This has been a long standing condition, present throughout most of the mother’s life although its severity and manifestation has varied according to external circumstances superimposed upon an underlying vulnerability. Her condition predates her meeting the father, although it was in remission when they first met (paragraphs 4 and 20).
6. The cause of her condition is ‘multi factorial’ and there is likely to be a genetic basis as well as a developmental component. Because she has an anxious constitution, her condition deteriorates markedly when she is subjected to stressful and anxiety provoking circumstances.
7. One manifestation of her condition is a tendency to choose unsuitable and abusive partners. This may or may not arise out of her own experiences as a child and her subsequent vulnerabilities (a matter on which Dr Hallstrőm declined to speculate). Notwithstanding her condition, he was not aware of any suggestion that she was anything less than a good mother to R (paragraphs 6 and 7).
8. Of the allegations of physical assaults and the evidence of contemporaneous medical evidence which he had seen, Dr Hallstrőm concluded that if the mother was being physically and emotionally abused as she suggests (and as is denied by the father), then this will have a significant impact upon her overall condition by adding to her feelings of anxiety and disempowerment. Regardless of the truth or otherwise of her allegations, her long term mood disorder is a genuine condition, irrespective of the father’s input (paragraph 10).
9. Despite her underlying vulnerabilities, the obvious trigger for her current significant deterioration is her anxiety about having to return to Italy, together with R (paragraph 17).
10. In his view, the mother was not fabricating her symptoms or exaggerating her illness. She feels petrified and is highly emotional. Her anxieties are exacerbated by her current situation and her fear of being returned to Italy. The mother has been trying to escape from what she perceives to be an intolerable situation back in Italy for some two and a half years. It is a situation in which she feels unsupported, has limited friendships only amongst her professional peers, feels socially isolated and is without family close to hand. She has real anxieties about the ability of the father to interfere in her life, his propensity to become physically violent and the potential that R may be removed from her care (paragraphs 18, 19 and 22).
11. Her condition can properly be described as severe in clinical terms. It is a genuine condition. She is currently receiving treatment from a consultant psychiatrist with substantial doses of medication and is receiving additional support from local therapeutic agencies. She may well be referred on for more structured psychotherapy (paragraphs 23 and 24).
12. Her condition deteriorated as part of the prelude to the court hearing but underwent a marked deterioration on 29 November 2013 when the return order was made. Her panic attacks appear to have worsened, as have her sleep patterns and nightmares (paragraphs 25 and 26).
13. Dr Hallstrőm’s professional opinion (which follows what appears to be a general consensus, in his view) is that the mother’s condition and its deterioration are entirely consequences of her desire not to be forced to live in Italy and the consequences of a return to that jurisdiction, albeit superimposed on her underlying vulnerability to developing a mood disorder at times of stress (paragraph 27).
14. All the evidence points to the mother suffering a further deterioration (or at least no resolution) in her mental health if she were to return to Italy (paragraph 28).
15. The mother has suicidal ideation but, in Dr Hallstrőm’s view, her ongoing care of R provides some protection from that occurring. If R were to be removed from her care, there would be a significant deterioration in her mental state and she might well make a further suicide attempt. Because of her family history of suicide, he would be concerned over ‘the real risk of suicide’ in her case (paragraphs 29 and 32).
16. Her condition will improve if she were given the right to remain in the United Kingdom. It is self-evident that her mental state will not be likely to improve if she goes back to Italy and there will be emotional crises for the foreseeable future. A return to Italy which is likely to be followed by a further crisis will produce a situation where she would lapse into a state of despondency and depression and her condition will gradually settle into the state of chronic depression and despondency which was present prior to her coming to this jurisdiction (paragraphs 30 and 31 and 33).
17. The mother’s tendency to depression is not a significant bar to her parenting of R, except in its most extreme form. There will be an impact upon R in terms of his mother’s mental ill health for so long as it continues in decline (paragraphs 33 and 34).
18. Medication will only relieve the most acute of her symptoms. Therapy will offer some support but no treatment is likely to be materially effective whilst the acute stressor of a return to Italy remains. If she is given permission to remain in the United Kingdom, her condition will gradually improve over the next few weeks and months. If she is forced to return, in Dr Hallstrőm’s view any medication or psychological support she receives is unlikely to be very effective and she will continue in a distressed mental state for the foreseeable future (paragraphs 35, 36 and 37).
19. By the time he prepared his supplementary report dated 15 May 2014, Dr Hallstrőm had been provided with additional material, including the mother’s medical records. He noted eight overdoses, initially between 2005 and 2007 which in his view demonstrated significant self-harming behaviour. (He was subsequently to accept during the course of his oral evidence that the likelihood is that there were in all a total of nine overdoses.) He had been asked a number of questions on behalf of the father through his English solicitors. He responded in some detail to those questions but the prognosis set out in his main report and his various observations about the mother, the cause of her depression and its effect on her ability to care for R remained as before.
20. Dr Hallstrőm attended court on the first day of the hearing before me. He spent most of the afternoon responding to questions which were put to him by counsel for the mother and the father. In what was a detailed forensic evaluation of the mother’s past experiences, her current situation and the likely reasons and causes which underpinned both his diagnosis and prognosis, he spoke of the mother as being a reliable informant in relation to her mood and symptoms which were supported by what he described as a ‘huge weight of evidence to support the fact that her symptoms were genuine’. He accepted that she appeared to be well and had ‘tailed herself off medication’ for some time after she became pregnant. However, from 2009 (shortly before his birth) until the present, there was evidence of making contact with professionals and seeking counselling. In Dr Hallstrőm’s view, she was not well during this intervening period when she was repeatedly trying to leave Italy. When it was suggested to him by the father’s counsel, Mr Gration, that she was coping adequately during this period, he said this :-

‘Coping is a very broad concept. I do not think that she was well. She was consistently trying to leave. She maintains that she was assaulted. She was seeing various professionals. She was anxious about taking medication in case her mental health came under scrutiny during the Italian proceedings.’

1. He confirmed that in his view she was significantly impaired and this impairment inevitably had an impact upon what he referred to as ‘activities of daily functioning’ whilst she had been living in Italy. Whilst she had not been functioning ‘disastrously’ in Italy, he believed that her prospects of a healthy functioning life, and her ability to care for her son in circumstances where she had an entirely realistic prospect of recovery, were significantly greater if she were to be permitted to remain in this jurisdiction. If she were to be forced to go back to Italy, he considered the extent to which – after the initial shock – she would be likely to cope. He confirmed that, in this situation, his view was that she would not be happy but she would function to the limited extent she had before.
2. He was asked about a letter of resignation which the mother had written on the day of her alleged collapse (‘meltdown’) at the end of February this year to her former employer in Italy. Dr Hallstrőm said that, in the light of the mother’s condition at the time, this could properly be seen as an impulsive decision fuelled by her emotional state which was entirely consistent with the symptoms she was experiencing rather than as a somewhat crude attempt at manipulation. He expressed his concern again at the prognosis for this mother and for R if she should settle into a long term pattern of emotional distress and panic. He spoke of its potential to impact on a negative way on R’s long term welfare. However, he made it clear that he was not in a position to judge what the actual long term impact on R might be in circumstances where the mother felt trapped and unhappy. I agree entirely that this was not an issue for Dr Hallstrőm.
3. He was asked at some length about the protective measures which might be put in place for the mother had I been minded to order a summary return. In terms of available medical treatment, he pointed to the overwhelming probability that any treatment which might be available was unlikely to be effective in treating the underlying cause of the mother’s condition. He described the availability of medication as simply ‘papering over the cracks’. He accepted that she may unreasonably have focussed upon the positives of what life at home in Wales had to offer and the negative contra-indicators of being forced to remain in Italy but those latter factors had nevertheless informed her clear subjective ideation. In these circumstances, he doubted whether even the best psychiatric treatment which might be available in Italy would be effective in dealing with the underlying stressor, as he described it.
4. He was asked by counsel for the mother, Mr Hames, to comment upon the genuineness or otherwise of the mother’s current position that she was quite simply unable to comprehend a return to Italy. (As she had put her situation in her statement dated 20 March 2014, *‘It is not that I “will not” return to Italy with R, I “cannot” mentally cope with a retrun to Italy; I know I would have a mental breakdown’* **[C182]**.) Of that position, Dr Hallstrőm said ,

‘I can imagine her believing that. But I can also imagine her position changing if R is required to return and she has to choose whether to go back with him or remain here without him. There is a reasonable prospect that she would choose to go with her son. I think any subsequent collapse in her health would be catastrophic for a period of time but then she would recover to a state of relative despondency and distress.’

[The emphasis is mine as I recorded it in my note as Dr Hallstrőm was giving his evidence.]

1. He continued,

‘If the mother was required to go [back to Italy], I can imagine [her condition] getting worse. There would likely be another hospitalisation or suicidal action. It may take weeks or even months for her to recover.’

1. He was asked about how she would cope in her dealings with the father. Dr Hallstrőm referred to the view which had previously been expressed by the Italian court psychologist, Dr D. She has projected a great deal of anxiety onto the father and he – the father - is a large focus of her distress. He remains a chronic stressor. As a result of having become a mother, he told me that she has an established and long-standing desire to return to what she perceives to be a protective environment at her home in Wales. This is a causative factor. Unless and until that is removed, it will be extremely difficult for her to make a full recovery. His clear view, as expressed to me, was that this episode is unlikely to resolve if she goes back to Italy. Her fear is reinforced by a genuine concern that R will be removed from her care if she returns to Italy. Dr Hallstrőm told me that it was a significant factor in her decision not to seek help from medical professionals in Italy at the time. She feared it might count against her.
2. When asked to consider how she would cope as a single parent in circumstances where she might, in the event of a return, be displaying the sort of symptoms he had described as likely, Dr Hallstrőm told me that it could ‘seriously compromise’ R’s welfare if his mother were to experience a significant collapse in her health. He was asked by Mr Gration what might happen in the event that the Italian court made an order that R should return in any event. In these circumstances, Dr Hallstrőm told me, there would in all inevitability be a collapse in her health. In terms of a future risk of suicide (to which he had referred in his written report at paragraph 29), he said that the risk was twofold. Matters could always go further than might be intended (in his words, ‘the risk is always that things can go wrong accidentally’) and/or an impulsive act might be successful. He told me that if this mother were separated from her child, her condition would undoubtedly deteriorate; she would be likely to display her emotional distress in various actions which, whilst dramatic, were not intended to deceive or manipulate. In these circumstances, and given the history, he could not rule out the possibility that she might take a further overdose and that it might result in consequences which she may not actually have intended.
3. Thus, what was before me (but not before Ms Alison Russell QC on 29 November 2013 or the Court of Appeal on 26 February 2014) was a full and comprehensive medical history of the long standing issues surrounding this mother’s mental health. That history was underpinned and supported by a number of different reports and records prepared by professionals involved with and treating the mother. Dr Hallstrőm had used his considerable expertise in these matters to carry out his own comprehensive and wide-ranging review of the mother’s medical history, her current diagnosis and the prognosis for the future. He had properly considered the views expressed by other professionals who had been involved in treating the mother, both in this jurisdiction and in Italy. His firm conclusions were that :-
4. there was every likelihood of a catastrophic collapse in the mother’s mental health in the event of either of an order requiring her to return to Italy with R or an enforced separation between mother and child if she felt unable to accompany him;
5. the probability was that following that catastrophic collapse, she would recover to a state of relative despondency and distress;
6. there would be no effective treatment available to her in Italy other than to medicate her continuing symptoms. The underlying causes of her fragility and vulnerability could not be addressed in circumstances where she was living in a country where she felt trapped and isolated, those circumstances having been part of the original cause of the current significant deterioration in her health;
7. for so long as she remained in Wales where she felt safe and protected (whatever the truth or otherwise about the allegations she had raised against the father), her ability to care for R (at present with support from her mother) remained such that there were no existing concerns from any of the professionals with whom she had been in contact since coming to the United Kingdom some eight months ago. The Italian courts had expressed no previous concerns about her ability to care for him and neither had the father;
8. the prospects of a recovery in the mother’s health would be significantly enhanced in circumstances where she was permitted to remain in this jurisdiction.
9. Thus, the main thrust of the mother’s case in resisting a summary return was (and is) the deterioration in her health caused in the main by a genuinely held and substantial fear of the consequences of returning to Italy leading to a complete inability (as she puts it) to contemplate such a return even if this means a separation from her child. Before turning to my conclusions, I remind myself of the legal framework within which I have to consider the father’s application for summary return.
10. **The Law**
11. In terms of the requirements of the Hague Convention and specifically Articles 3 to 5, the mother accepts that the preconditions which the father has to establish in order to make his application for summary return of R to Italy are met. At all material times, R was habitually resident in the jurisdiction of Italy whose courts were properly seised in relation to matters concerning his future. Both parents shared legal rights of custody for the purposes of the 1980 Hague Convention and there was no consent to or acquiescence in his removal and/or retention on the part of this father. In these circumstances, it is accepted that R’s removal by his mother on 9 September 2013 was ‘wrongful’ and that the provisions of Art 12 are fully engaged unless she is able to establish a defence under Art 13(b) which states as follows :-

‘… the requested state is not bound to order the return of the child if the person, institution or other body which opposes its return established that – (a) …; or (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation ….. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child’s habitual residence’.

1. An important factor which I am bound to take into account in considering the mother’s defence to a summary return are the very important policy considerations underlying the 1980 Convention. I have those considerations well in mind and I remind myself, in particular, of the observations made by Baroness Hale of Richmond in paragraph 42 of her judgment in *Re M (Abduction: Zimbabwe)*[2007] UKHL 55, [2008] 1 FLR 251:-

‘In Convention cases, however, there are general policy considerations which may be weighed against the interests of the child in the individual case. These policy considerations include not only the swift return of abducted children, but also comity between the contracting states and respect for one another’s judicial processes. Furthermore, the Convention is there, not only to secure the prompt return of abducted children, but also to deter abduction in the first place. The message should go out to potential abductors that there are no safe havens among the contracting states.’

1. The Convention is designed to protect the interests of children by securing their prompt return to the country from which they have wrongly been taken, but it recognises some limited and precise circumstances when it will not be in their interests to do so.
2. In *Re D (A Child)(Abduction: Rights of Custody)*[2006] UKHL 51, [2007] 1 AC 619, the House of Lords made it clear that, whilst there were circumstances in which a summary return would be so inimical to the interests of the particular child that it would be contrary to the object of the Convention to require it, it is not for the authorities of the requested state to conduct their own investigation and evaluation of what will be best for the child.
3. In this case, and because Italy and the United Kingdom are the two European Union states involved, I have to consider in tandem with the 1980 Hague Convention the provisions of Brussels II revised. Of particular relevance in this context is Article 11(4) which provides that :-

‘A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.’

1. Article 11(6) – (8) are also important in this context. Pursuant to Article 11(8) :-

‘Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.’

1. As I made clear to the mother and everyone else present in court when I announced my decision on 13 June 2014 dismissing the father’s application for summary return, it will be the Italian court which will reconsider what arrangements should be put in place for R on the basis of a full welfare based enquiry within that jurisdiction. My judgment will be made available to the Italian court for the purposes of that enquiry and I would hope and expect that the evidence which was available to me and the reasons for the conclusions which I have reached will inform any subsequent decisions in that jurisdiction to a greater or lesser extent. That will be a matter for the Italian court based upon a full consideration of R’s best interests in all the circumstances then prevailing, including any arrangements for contact between R and his father whether such contact takes place in this jurisdiction or in Italy, or in both. R’s entitlement to have a full and meaningful relationship with his father is clearly a very important consideration in any future consideration of the arrangements for his care.
2. There is no provision under Brussels II revised for any opposition to or appeal from a decision against a future judgment made in the Italian court. That is clear from Article 11(8). Accordingly, the final decision in this matter rests with the Italian court, regardless of any temporary or longer term reprieve which my decision may have brought the mother. If, having taken due and proper account of all the evidence which is now available, a decision is taken which requires R to be returned to Italy, the English court will have no further role to play other than to assist in the process of enforcement.

*The mother’s allegations of domestic abuse*

1. In this case, the mother’s allegations of domestic abuse against the father have a central relevance to her Article 13(b) defence because, according to Dr Halllstrőm, they are so closely related to her current state of health, her situation in Italy as it was immediately prior to her departure in September 2013, her overwhelming fear of the father and inability to engage with him, and the impact which the prospect of a return to that jurisdiction is likely to have.
2. I have no function in determining the truth or otherwise of those allegations or to resolve any other material issues of fact which arise between these parties. As far as I am aware, the specific allegations raised by the mother have never been tested forensically in the context of a fact-finding exercise in the Italian courts exercising a civil or criminal jurisdiction. I have had to decide whether, on the balance of probabilities, this mother has made out her defence to a summary return under the terms set out in Article 13(b).
3. In terms of those allegations, it is clear from the decision of the Supreme Court in *Re E (Children) (Abduction : Custody Appeal)*[2011] UKSC 27, [2011] 2 FLR 758 that I do not need to grapple with them in terms of determining their truth or otherwise. Rather, I should proceed on the basis that they are true. It is clear from paragraph [36] of the judgment delivered jointly by Lord Wilson and Baroness Hale that the correct approach under English law is to ask, first, whether, if they are true, there would be a grave risk that R would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how R must be protected against the risk. The appropriate protective measures and their efficacy would vary from case to case and from country to country. In the absence of protective measures, the court may have no option but to do the best it can to resolve the disputed issues.
4. From *Re E*emerge these and other principles of fundamental importance to any decision involving a defence raised pursuant to Article 13(b). They can be summarised thus :-
5. It is for the ‘person, institution or other body’ opposing R’s return to establish the defence on the ordinary balance of probabilities. Here, the mother has borne that burden.
6. The risk to R must be ‘grave’. It is not sufficient that it is ‘real’. It must have reached such a level of seriousness that it can properly be characterised as ‘grave’ in order for the defence to succeed. Whilst the mother has to establish that it is the risk which properly attracts that description, there is inevitably a correlation between the assessment of that risk and the nature or seriousness of the harm envisaged by the risk.
7. In considering the type of situation to which a child might be exposed and the alternative scenarios envisaged in Article 13(b), there is no qualification to the plain words used in terms of what is meant by ‘physical or psychological harm’ or ‘placed in an intolerable situation’. Nevertheless, ‘intolerable’ is a strong word and as their Lordships accepted in *Re E*, it must mean more than the certain amount of rough and tumble, discomfort and distress which is a normal part of growing up which every child will experience. I have to consider for these purposes whether an order for summary return will expose this particular child in these particular circumstances to a situation which he should not be expected to tolerate. As was made clear by the court in *Re E*, such circumstances can include exposure to the harmful effects of seeing and hearing the physical or psychological abuse of a parent. In this context, it is clear, too, that the presence of domestic violence may well establish a viable defence to an abducting parent not least because the position of any child affected by it is inevitably and vitally affected by the position of the mother. Thus, the absence of violence directed specifically towards any child who is the subject of an application for summary return is not necessarily fatal to an Art 13(b) defence. If the effect upon the mother of the father’s conduct is severe, the court is entitled to consider the issue of grave harm or intolerability in the context of children’s exposure despite the absence of abuse directed specifically towards them : see *Re: W (Abduction : Domestic Violence)*[2004] EWCA Civ 1366, [2005] 1 FLR 727, per Wall LJ at para [49] and*Re: S (A Child)(Rights of Custody)*[2012] 2 FLR 442 (SC) (to which I shall return below).
8. Article 13(b) looks to the future. It looks to the situation as it would be if R were to be returned forthwith to his home country. Crucially, the situation to which R may be exposed in the event of a return depends upon an evaluation of the range of protective measures which can be put in place to ensure that R will not have to face an intolerable situation in the event that he were to be returned home. The absence of effective protective measures is thus a factor which can properly be considered in the exercise of the discretion once the court is satisfied that, on the balance of probabilities, a grave risk exists in terms of either or both limbs of the Article 13(b) defence.

(see paragraphs [32] to [36].)

1. Where, as here, the risk relied upon is a deterioration to R’s primary carer’s mental health in the event of a return, I must also factor in to my decision what was said just nine months later in *Re S (A Child) (Abduction : Rights of Custody)*[2012] UKSC 10, [2012] 2 FLR 442 when the Supreme Court was once again considering the issues raised in the context of an Article 13(b) defence. That case also involved a situation where there was evidence in the form of a report from a jointly instructed consultant psychiatrist which went to the likely psychiatric and psychological impact on the mother of a return to Australia, which is where the children were habitually resident immediately before their removal. That case, too, involved allegations of domestic abuse perpetrated against the mother by the father. One of the issues which had to be determined in the context of that case was whether or not the mother’s anxieties were reasonable or unreasonable. She relied upon those anxieties and their effect upon her mental health as creating a situation which would be intolerable for the child (aged 2 years) which was the subject of the father’s application for summary return. Charles J, the trial judge, concluded after a careful appraisal of all the evidence that the mother had made out a good prima facie case and that she had been the victim of significant abuse at the hands of the father. He went on to find that the mother’s anxieties about the conduct she might face in the event of a return and the grave risk which these anxieties created for the child in terms of exposure to the types of harm envisaged by Article 13(b) were based upon objective reality. He refused the father’s application for summary return. The Court of Appeal overturned that decision. The Supreme Court allowed the mother’s appeal and restored the order made by Charles J.
2. At paragraph [34] of his judgment, Lord Wilson said this :-

‘In the light of these passages we must make clear the effect of what this court said in *Re E (Children)(Abduction : Custody Appeal).* The critical question is what will happen if, with the mother, the child is returned. If the court concludes that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for the child, then the child should not be returned. It matters not whether the mother’s anxieties will be reasonable or unreasonable. The extent to which there will, objectively, be good cause for the mother to be anxious on return will nevertheless be relevant to the court’s assessment of the mother’s mental state if R is returned.’

I have already referred to this passage at an earlier stage of my judgment (see paragraph 64). I repeat it again here in my review of the law I must apply because it my answer to this ‘critical question’ will have a central bearing upon the conclusions and findings of fact which I make.

1. Finally, in this context, I was taken by both counsel to the recent decision of the Grand Chamber of the European Court of Human Rights delivered in Strasbourg on 26 November 2013 in the case of *X v Latvia*(Application No. 27853/09).In delivering its assessment of the general principles to be applied in Hague Convention cases, the court stressed the need to strike a fair balance between the competing interests at stake : those of the child, of the two parents involved and of ‘public order’ and the policy considerations underpinning the Convention. However, ‘the best interests of R must be of primary consideration and that the objectives of prevention and immediate return correspond to a specific conception of “the best interests of the child” : see paragraph 95. The exceptions, the court noted, were specifically incorporated into the Convention in recognition of the fact that ‘a return cannot be ordered automatically or mechanically’ : see paragraph 98.
2. **The parties’ competing arguments**

*The mother’s case*

1. The mother’s case as it was advanced by Mr Hames, her counsel, at the conclusion of the evidence from Dr Hallstrőm, was that the picture which had clearly emerged from his expert evidence, whilst not decisive as a matter of law, had left the court with little room to manoeuvre in terms of rejecting the father’s case for summary return. He submitted that if the allegations of abuse were true (or were assumed to be true), there would inevitably be a grave risk of harm because, whilst the mother might well continue to function on a very basic level, her anxieties would be such that she would not cope in any real sense and certainly not in the sense envisaged by Lord Wilson in terms of the critical question he posed in *Re: S.*To this extent there is clearly a grave risk that, on return, the mother will suffer such anxieties that their effect on her mental health will create a situation that is intolerable for R, and R should not be returned.
2. However, he goes further than this and invites me to consider the case in the light of the mother’s stated case that she ‘cannot’ as opposed to ‘will not’ return to Italy. In these circumstances, I must, he says, consider the impact upon R of a separation from his mother in the event that I were to order a return. He points to Dr Hallstrőm’s evidence that there is little doubt about the extent of the ‘catastrophic collapse in health’ which she would be likely to experience either in the event of a return or in the event of a separation from R. In either event, he asks me to look at the likely effect upon R. He points to the clear and documented evidence of nine overdoses which he says I cannot ignore as possible suicide attempts. He points to the spiralling effect of the deterioration in her emotional well-being which this mother has already experienced as a result of both the father’s conduct towards her and the impact of the current litigation. He emphasised Dr Hallstrőm’s conclusion that the risks in this case were multi-factorial, and included the risk of R being removed from her care. These risk factors included her feelings of being trapped in Italy; of having to engage with the father in circumstances where she plainly believes she has been subjected by him to both emotional and physical abuse not only during the course of their relationship but after its demise; and of having to engage in ongoing court procedures in a foreign jurisdiction where she did not feel adequately protected from the process.
3. He invited me to consider carefully the full effect of Dr Hallstrőm’s evidence that there could be no effective treatment for this mother for so long as she was obliged to remain in Italy because her presence there was the root cause of her current mental illness. Whilst there, it was impossible for him to envisage circumstances in which she would ever make a full recovery and that, says Mr Hames, has enormous repercussions for R given that she will continue to play a very significant role in his life.
4. In terms of the second scenario, which is that the mother will not accompany R back to Italy if his summary return is ordered, he reminded me that this small child of just 4 years had never spent a single night away from his mother and had had little consistent contact with his father over the course of the last eight months. There was, he contended, a very significant risk to this child if he were to return to a household where he would be cared for predominantly by his paternal grandmother during his father’s absence at work. Whilst the father had maintained contact via Skype on alternate days, it had never been possible to sustain conversations for more than a very short period of one or two minutes. Both the father and the grandmother were wholly untested as long term carers and, on the mother’s case, R had witnessed the abuse she had suffered at his hands on more than one occasion. He reminded me that when Ms Russell QC had made the original order for summary return in November last year, not only was she making her decision in the absence of the very full medical history and the expert evidence which is now available to this court, she was also operating on the basis of an assumption that there would be no separation of mother from child.

*The father’s case*

1. The father’s case was deployed with great skill by Mr Gration, his counsel. He made the compelling point that it was unfair to criticise the father for the manner in which the litigation had developed in this jurisdiction since that was a factor entirely outwith his client’s control. He had fully engaged in the litigation which had been ongoing in the Italian court since 2011. There had been no findings of fact concluded against him in that jurisdiction and, in terms of a criminal prosecution, the mother accepted that she had on one occasion withdrawn her complaint and in another instance the prosecuting authority had decided to take no further action.
2. The clear expectation of the Italian courts had been that contact would gradually increase over time. The father had engaged successfully in two assessments undertaken by Dr D. In each case, the mother’s care of R had been found to be good but, of equal significance, there had been no concerns raised about the father’s relationship with R.
3. In considering how the new material put before me for the purposes of the hearing on 12 and 13 June this year is actually relevant in my assessment of the issue of intolerability which is relied on by the mother, Mr Gration contends that I should break down the underlying factual matrix into its constituent parts, being :-
4. the position as it was before R was removed wrongfully from Italy;
5. the situation as it was before the court on 29 November 2013; and
6. the situation as it had developed by the time the case reached Mostyn J on 10 April 2014 and as it has been presented to me on 12 and 13 June 2014.
7. It seems to me that this is an unduly mechanistic and unnecessary exercise for me at this stage. I accept entirely that the father appeared to be engaging in the assessments and other therapeutic work which had been ordered by the court in Italy, or which it considered was likely to be necessary. It seems to me that I do not need to ask the question whether a return in these former circumstances would have been an intolerable situation for R, nor do I undertake my assessment and evaluation of the evidence by way of any review or interference in the findings reached by Ms Russell QC in November 2013 when she made the order for summary return. She made her decision and delivered her judgment on the basis of the facts and other material which were then before the court. She was upheld on appeal.
8. For the purposes of Article 13(b), I have to look to the future as it would be, or is likely to be in the event of a return. I have to make my assessment on the basis of all the information and material which is now before the court. Mr Gration submitted in this context that it would be improper for me to attempt to consider the substance of, or to seek to review, previous judgments made in the Italian courts. I have no intention of embarking upon an exercise of that kind, and I agree that it would be an entirely improper course for me to attempt. What I have done is to extrapolate from the history of the proceedings in that jurisdiction the time line of events and the significant milestones which have occurred. This exercise has enabled me to put in their proper context the facts and matters now relied upon by the mother in terms of the case she has advanced before me.
9. On behalf of the father, Mr Gration accepts that the focus of my enquiry must be determined by a proper consideration of his third constituent element of the chronology. In other words, I must evaluate the risk which might in future be presented to R in the event of a return. Whether or not the mother might find a return intolerable is not the point, save insofar as it might impact upon her own health and wellbeing and, by implication, her ability to care appropriately for him. In a similar way, I am not in any sense seeking to forecast what might be best for R in the longer term. His welfare and his best interests are obviously an important factor but only insofar as they fall to be considered in the context of ‘intolerability’ and the existence or otherwise of a grave risk of a situation of intolerability arising in the event of a return to Italy. To that extent, I accept the limitations of the decision in *X v Latvia* in terms of my consideration of Article 13(b) and the exception it provides to the usual requirement for summary return. I am required to look at the arrangements which are proposed for this child in the period between the date when the request for return is made and the full welfare enquiry which will follow in the requesting state. Because of the unusual course which the litigation in this jurisdiction has taken, that window has necessarily been perhaps a longer window of time than in the majority of Convention cases which do not involve issues of acquiescence or settlement. As I made quite clear to everyone who was present in court on 13 June 2014 when I told them of my decision, I had decided only that R would remain with his mother in Wales whilst that process took its course in the Italian courts.
10. **Conclusions and reasons**
11. I look first at the incidents of domestic abuse which are relied upon by the mother. From these allegations flows the underlying rationale for her fear of both the father and a return to the due process of the Italian Court, which, in turn, have contributed to the marked and substantial deterioration in her health in the early part of this year. As I have said, I am permitted under English law to proceed to reach my conclusions on the basis they are true : *Re E*.
12. Nevertheless, because of the objective element to the test in *Re S*, I ask myself this question (and for these purposes I need only ask it rhetorically). What is the likelihood of these allegations being trumped up charges designed by the mother to prejudice the father’s case and secure for herself a litigation advantage in the application to remove R from the jurisdiction of Italy ?
13. I will not repeat the detail of the four specific allegations of physical abuse relied on by the mother. I have set this out at some length earlier in my judgment. They span a period of just over two years, the first having allegedly occurred when R was 13 months old; the last when he was just 3 years old. It is alleged that he witnessed two of these assaults. In each case there is both a contemporaneous report of the alleged abuse to a professional, or to the police, or to both. In each case, there is independent evidence in the form of a medical report to corroborate what the mother says in terms of the injuries she sustained. Dr VM witnessed bruising on the mother’s person on both the 29 July 2011 (the day after the assault is alleged to have occurred) and on 26 August that same year (again, within 24 hours). On the second occasion, the police were involved and the father was removed from the apartment which they then shared. The court granted the mother an emergency protection order on that occasion and Dr VM was able to inform the court that the mother had reported the incident to her within 24 hours on which occasion she had seen fresh bruising.
14. On 14 June 2012, the mother contends that R witnessed an assault during which it is alleged that the father held a knife to her throat and punched her in the face. She attended hospital the following morning and I have already quoted from the contemporaneous hospital report produced by Dr CM, one of the doctors who saw the mother in the accident and emergency department. He noted bruising on the right periorbital area and scratches to the mother’s neck and face. These injuries appear to be consistent with the narrative account given by the mother.
15. On 3 August 2013, when the mother alleges she was punched in the face, I have a report prepared by Dr P, the doctor who saw the mother at the accident and emergency department of the SC Hospital. That report was produced on the same day within hours of the alleged assault. It records ‘pain in the left cheek when palpitated’ and ‘local bruising to cheek bone’. It was a sufficiently serious injury for the doctor to insist upon a CT scan of her facial bones. The advice given to the mother on that occasion was that it would take approximately ten days for these injuries to heal. She reports that the bruising to her face was still clearly visible several days later. She made a formal complaint to the policy within 48 hours and produced to them a copy of the hospital medical report. There was involvement as a result by the social work department and Dr MT who was herself shown a copy of the hospital report.
16. As I say, it is neither necessary for me to make findings of fact, nor do I attempt to do so. But it seems to me I am entitled to take this evidence into account in considering whether there are objective grounds for believing that there is a good prima facie case for the anxieties expressed by this mother, whether reasonably or unreasonably held : *Re: S*.
17. Mr Gration reminds me, quite properly, that the Italian court did not make specific findings in relation to this incident when the matter returned to court shortly thereafter, despite its willingness to make the emergency protection order sought by the mother. He says that the English translation of the judgment which is within the material I have seen gives the wrong nuance in one particular respect. It records the judge as having spoken of ‘a violent dispute’ whereas the actual words used (*‘forte litigio’*) are more accurately translated as ‘a strong argument’. He says that the father has obtained his own medico-legal report which appears to suggest that the mother’s injuries were not caused in the way she has described and were not as serious as suggested in the hospital medical reports.
18. With respect to those arguments, I am still left with the undisputed fact that the mother has, on at least four occasions in the two years before her departure from Italy, sustained physical injuries which have been observed and documented by doctors within hours of the alleged assaults. The father offers me no plausible explanation as to how those injuries occurred, save that it was not by his hand. He does not advance a case that they were self-inflicted by the mother in support of a manufactured case against him. I place no weight on the suggestion made on behalf of the father that the mother’s subsequent willingness to withdraw criminal charges against the father is somehow supportive of the fact that her allegations were untrue.
19. In the light of everything I have heard and read, and bearing in mind the gravamen of the evidence from Dr Hallstrőm, I am left in no doubt at all that the mother’s anxieties and her fear of the father have operated, and continue to operate, on her mind to the extent that they have a direct impact on her mental health in the circumstances so graphically described to me by Dr Hallstrőm.
20. Mr Gration reminds me of what he refers to as ‘the caveat’ in Dr Hallstrőm’s report. The passage to which he refers appears in paragraph 10 at **[D3-4]**. He says this :-

‘If mother wrongly accuses father of abuse, then it raises questions as to her probity and makes it difficult to evaluate her situation, although her long term mood disorder is a genuine condition, irrespective of father’s input’.

1. It seems to me that, insofar as I need to consider Dr Hallstrőm’s evidence through this particular lens, I am entitled to give due and proper weight to his expert opinion as it was expressed to me both in his report and during the course of his oral evidence. I have already recorded his views in paragraphs 77 and 87 of this judgment and will not repeat them here.
2. Dr Hallstrőm anticipates a catastrophic collapse in the mother’s mental health in the event of either an enforced return to Italy with R or in the event that he were to be separated from her care and placed in the care of the father and/or the paternal grandmother. Quite fairly, he did not seek to resolve the issue of whether or not the mother would actually refuse to leave Wales if R was ordered to return to return to Italy. He clearly had in mind the significant and fundamental attachment which clearly exists between this mother and her child. But he told me that even when she had recovered from the acute crisis which would be likely to follow a return to Italy (with a real possibility of the need for hospitalisation), she would thereafter do little better than maintain what he described as ‘a state of relative despondency and distress’.
3. Bearing in mind all that I have heard and read, I have been left in no doubt that in either event (separation of mother and child or a forced return on the mother’s part with R to Italy with all the increased anxiety it will bring), the impact upon this small child will be highly deleterious and inimical to his physical and emotional wellbeing.
4. I bear in mind that this child has never in over four years spent a night away from his mother. She is undoubtedly the point of his primary attachment at the present time in terms of both his physical and emotional needs. If he were to be separated from her, he would undoubtedly experience a high level of anxiety and emotional distress as he struggled to adjust to her loss as a day to day presence in his life. As I remarked to Mr Gration during the course of his closing submissions, the father would not simply be taking over the care of a small 4 year old child. He would be dealing with the demands of a child who was suffering significant emotional distress at being separated from his primary carer at an age when he would be too young to articulate his acute sense of loss or understand explanations given to him as to the reasons for that loss. I do not see that any arrangements for indirect contact with the mother (even on a daily basis) would adequately alleviate the distress flowing from this loss so as to persuade me that, in these circumstances, he would not inevitably be placed in an intolerable situation which goes far beyond the sort of ‘rough and tumble’ distress which it is reasonable to expect a child of his age to bear.
5. I do not know how the father and/or the grandmother might be equipped to deal with the demands of that situation. They are each an untried option as full-time carers even allowing for the assessments which have been undertaken in the Italian courts in terms of their day to day living arrangements. I am not persuaded that, even with the benefit of the best professional support in these circumstances, I can be satisfied that R’s position would be such that the grave risk of his exposure to psychological harm and/or being placed in an intolerable situation is neutralised.
6. Even if, contrary to her current position, the mother felt able to (or was persuaded to) return to Italy with R, all the evidence points to the likelihood of a mother languishing in a state of despondency where she would be without the capacity to function on anything other than a very basic day to day level. This would not equip her to provide R with the level of physical and emotional care which I am satisfied she is able to provide in what she perceives to be a safe, supported and protected environment at her parents’ home in Wales. There is no criticism of the level of care she is currently able to provide in these supported surroundings and Dr Hallstrőm accepts there are no concerns other than in the event of a future acute crisis. No concerns have been expressed on this front even from the father, save in relation to the difficulties presented by his geographical separation from his son and the difficulties this presents in terms of his ability to maintain a proper relationship with R. These are important considerations and they are matters which I have no doubt the Italian courts will wish to explore carefully in terms of R’s long term future.
7. Dr Hallstrőm’s expert view is that the prospects of a recovery in the mother’s health will be significantly enhanced in circumstances where she is permitted to remain in this jurisdiction. Her physical and emotional wellbeing are clearly essential to R’s own development and future happiness.
8. Thus, for all the reasons I have explained, in answer to the first of the questions formulated in *Re E*, my answer (and thus my finding) is :-

If the allegations of domestic abuse made by the mother against the father are true and she is forced to return against her will to Italy, there is a grave risk in the light of her mental ill health and the prognosis expressed to me by the court appointed and jointly nominated expert in this case (a) that R will be exposed to psychological harm, and (b) he will be placed in an intolerable situation if this court were to order his summary return to Italy.

For the avoidance of doubt, my answer to this question would be the same in terms of (a) and (b) if he were to return to Italy on the basis of a separation from his mother.

1. In terms of the second limb of the *Re E* test (which involves a consideration of the protective measures which come into play under Art 11(4)), I shall deal with this shortly.
2. As to the ‘critical question’ formulated in *Re S*, my answer (and thus my finding) is :-

If the mother is required to return to Italy with R, she will suffer such anxieties that the effect on her mental health will create a situation which is intolerable for R. Whilst it matters not whether her anxieties are reasonable or unreasonable, I find that the mother’s anxieties are not unreasonable in the context not only of her long standing mental health problems but also in the context of what she reasonably perceives to be the father’s treatment of her during their relationship and after its demise.

I make it clear that I am making no findings in relation to the truth or otherwise of the allegations of domestic abuse in reaching these conclusions.

1. To that extent, I find that the mother has on the balance of probabilities established a defence to a summary return pursuant to Article 13(b) of the Convention but I have now to consider the extent to which Article 11(4) is engaged. In this context, I must ask the question : can R be protected from that risk by putting in place for his benefit and the benefit of his mother the protective measures proposed by the father.

*Protective measures : Article 11(4)*

1. I agree with the submission made to me by Mr Gration in terms of the need to consider what has gone before in the context of Article 11(4). Even if I conclude (as I have) that an order for return is likely to result in the grave risk to R of physical or psychological harm or that he will otherwise be placed in an intolerable situation, I have nonetheless to consider what arrangements have been made, or might be made as a condition of return, in order to secure his protection. That involves a separate consideration of the adequacy of the proposed arrangements in terms of the protection they offer against the level of risk envisaged by Article 13(b). If I find those safeguards or protective measures are adequate, then I have no discretion under Article 13(b) to refuse a summary return.
2. In circumstances where the father was accepting that there should no separation of R from the full time primary care of his mother, he gave the court various undertakings which were recorded on the face of the order made on 29 November 2013 by Ms Russell QC. Those undertakings covered financial support for R when he was returned to Italy and the provision of airline tickets (including the cost of a ticket for the maternal grandmother or step-grandfather if the mother was unable to or chose not to return). He also undertook not to remove R from her care or to make any application arising out of her unlawful removal of R which might result in the same (including a removal of her parental rights) and not to instate any criminal proceedings. In terms of her personal protection, there was a raft of undertakings in fairly conventional terms which he gave in terms of non-molestation, not to use or threaten violence, not to communicate save by text over contact arrangements, and not to seek the removal of her passport.
3. By the time he came to prepare his third witness statement (dated 5 June 2014) and address in terms the matters which were the subject of paragraph 6 of the order made by Mostyn J on 10 April 2014, matters had moved on. By this stage, the mother was without employment, having resigned from her job as a teacher at the end of February this year in the context, as she contends, of the significant deterioration in her health. She was also without accommodation in Italy for herself and R having served notice on her landlord to terminate her tenancy in December 2013.
4. The father clearly believed when he made that statement that these were further demonstrations of the extent to which this mother would go in order to manipulate a situation where a return to Italy would be more difficult. He relies on a transcript which was made as a result of his taping telephone calls between them in 2013. During that conversation, he says that the mother had confirmed that she had plenty of options as a teacher and could also find work from home or on the internet. To that end, he contends that she would be able to support herself and he will continue to provide child maintenance. Whether he still believes that such employment opportunities remain open to this mother in Italy having heard the oral evidence of Dr Hallstrőm about the effect that such a return would be likely to have on her health, I know not. In his closing submissions, Mr Gration did not specifically address me on the likelihood or otherwise of her securing fresh employment.
5. The mother, in her statement of 9 April 2014, is clear. She says quite simply that she would be unable to hold down a job unless and until she has taken some significant steps towards a recovery in terms of her health. It is not in dispute in these proceedings that she has been unable to work for three of the last sixteen months because of her health problems. She took unpaid leave in June 2013 having been absent by then for some three months. At the end of February 2014, she received a letter from her employers requiring her resignation if she was unable to turn up for work on Monday, 3 March 2014. It was at this point that she had been referred on an emergency basis to the local community mental health team in Wales, as I have already set out in the time line of events I have described.
6. In terms of accommodation should she return with R, the father now proposes that she can and should obtain accommodation in T or R (some 30 minutes away). He says that there are non-profit organisations which can provide small apartments for mothers and children up to 8 years old at no cost. He says that there would be other services available ‘on site’ to assist with practicalities for R, such as canteens, education and child care. He accepts that the mother would need to liaise with the local social services to take these plans further. He provides, in the alternative, the names of two properties (with telephone numbers) where temporary (and, I assume, emergency) accommodation might be available.
7. The mother has described this type of accommodation as being typically reserved for single teenage mothers who are suffering from or recovering from alcohol and drug addiction and who are state dependent **[C250]**. I have no further information from which to work, save for the website address of two of the places which the father has suggested. Whether or not the outlook is as bleak as that described by the mother, I know not, but it does appear to me that these arrangements are far from ideal and do not in any event address anything other than a very short term solution in terms of providing accommodation for R and his mother, were she to return to Italy with him.
8. She explains the circumstances of relinquishing her tenancy as being a consequence of her inability to afford the monthly rental payments of 400 Euros. She is currently without any income from employment (and has been since May 2013) and is not yet in receipt of state benefits in this jurisdiction. She is wholly financially dependent upon her parents to provide the roof over her (and R’s) head and lives on the monthly sum of 350 Euros which the father continues to provide in child support. The father appears to be suggesting in his latest statement that there might have been some form of limited state subsidy available to her in Italy to assist with payment of rent had the mother not surrendered the apartment she had been living in proper to September 2013. I am not in a position to make findings about that aspect and I did not hear oral evidence from either of the parties. Suffice it to say that I am satisfied that there would be significant financial obstacles in the way of the mother securing suitable accommodation for herself and R in anything other than short term ‘crisis’ accommodation in the event of a return because of her lack of employment.
9. Further, I am by no means persuaded that she would have been able to contemplate a return to paid employment for the foreseeable future because of the evidence I heard from Dr Hallstrőm (which I accept) as to the likely deterioration in her health were she forced to return to Italy. He referred to this as a likelihood of ‘catastrophic collapse’. With or without appropriate medical intervention and support (which Dr Hallstrőm anticipated would include a period of hospitalisation), it seems to me that this mother would have been in no position whatsoever to pick up the threads of her former life in Italy and resume anything approaching a normal or satisfactory existence in terms of her domestic living and working arrangements.
10. Accordingly, I am not satisfied that the arrangements proposed by the father in terms of either the arrangements for accommodation or for the mother’s domestic economy were she to return to Italy with R would provide adequate protection against the risks which I have identified as arising under Article 13(b).
11. This leads me to the question of the mother’s ability to access appropriate medical treatment in the event of a return to Italy. Its relevance lies in her role as R’s primary carer and the consequent need for her to be able to function in that capacity and continue to receive the medical and therapeutic intervention which has been put in place for her in Wales and which Dr Hallstrőm has identified as being essential if she is to recover her health.
12. The father contends that she may be able to continue to see Dr VM without charge through the Consultorio Familiare in T. I have very little, if any, further information about this organisation save for its website details. It appears to be an entity which offers counselling services to individuals, couples and families with a view to assisting in personal or relationship difficulties. This, it seems to me, is a very far cry from the intensive input which the mother is currently receiving in terms of both her medication (which is kept under review by her general practitioner who is fully aware of her medical circumstances) and the specialist care she receives from her consultant, Dr QI and the local community health team. I do not know what services she might be able to access through the Italian national health service. What I do know is that Dr Hallstrőm’s clear professional view is that there is no effective treatment which can be provided for this mother (other than to continue to medicate the symptomology) if she is required to return to Italy. The only prospect of a sustained recovery of her health and well-being lies in removing her consuming fear of such a return.
13. In this respect, I reject the submission made on behalf of the father that I can attach any weight to the fact that the mother appears to have been coping prior to her removal of R to Wales in September 2013. I do so for the following reasons. First, the material change of circumstance relied on by the mother in securing the order made by Mostyn J setting aside the original (November 2013) order for return was the significant deterioration in her mental health in February this year when she learned that her appeal had been rejected. It is her presentation now which matters. Secondly, Dr Hallstrőm’s evidence is compelling in my view. In the event of a return, he anticipates a catastrophic collapse or an acute crisis in the mother’s mental state. It was suggested that her care of R was a protective factor which would neutralise both the risk to R and the risk to the mother (and thus to R) of a possible attempt at suicide. Whilst I accept that there is evidence to support the fact that the mother is able to derive pleasure from her care of R even in the midst of her present difficulties, I do not accept that the protection which her care of this child may provide in the situation which exists in the protective environment of her family home in Wales is likely to be replicated in the event of a return to Italy. It is not a risk which I am prepared to take because of the potential disastrous outcome for this young child were events to unfold in a different way.
14. In view of these fundamental issues, I have reached the clear conclusion that Mr Hames is right when he says to me that there is unlikely to be any effective treatment available to the mother in Italy, and this coincides with the view of Dr Hallstrőm who told me in unequivocal terms that unless the ‘stressor’ of Italy is removed, it will be impossible for her to make a full recovery. I accept that the only prospect of this mother making a recovery is for her to remain in Wales with R. Whilst it is not a matter for me, I would hope that the Italian courts would factor these conclusions into any future enquiry as to this small child’s long term future arrangements.
15. For these reasons, on 13 June 2014 I declined to order the return of R to Italy on the basis (i) that the mother has made out her defence to such return under Article 13(b) of the Convention, and (ii) that Article 11(4) is not engaged in circumstances where I have found that there are no adequate arrangements which can or have been made to secure the protection of R after his return.
16. Since the matter was before me on 13 June 2014, I have approved an order which records by way of recital the detailed proposals for direct and indirect contact which the mother has made in a letter sent by her solicitors to the father’s solicitors on 17 June 2014. It appears that the arrangements for indirect contact have been agreed.