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Case No: CA-2026-000402
CA-2026-000405

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
MR JUSTICE HAYDEN
[2026] EWHC 400 (Fam)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 April 2026

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE NEWEY
and
LORD JUSTICE DOVE

Re- X (A Child)

**Michael Gration KC and Amean Elgadhy (instructed by Creighton & Partners Solicitors
LLP) for the 1st Appellant**

The 2nd Appellant appeared in person

Mark Jarman KC (instructed by Hughes Fowler Carruthers LLP) for the Respondent

Hearing date: 1 April 2026

Approved Judgment

This judgment was handed down remotely at 14.30 on 30 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Moylan:

1. The father and the child, X (as he was called in the judgment below), appeal from the order made on 24 February 2026 by Hayden J (“the judge”) by which he ordered the summary return of X, aged 14, to South Africa under the 1980 Hague Child Abduction Convention (“the 1980 Convention”).
2. X was living with his mother in South Africa, the mother having been granted permission to relocate there by Recorder Ullstein QC in 2018. In January 2025 the father commenced proceedings in South Africa seeking an order that X live with him in England. On 15 October 2025, X, then aged 13, travelled to England to visit his father during the school half-term holiday. He was due to return to South Africa on 20 October 2025 but did not do so. Shortly before the flight, the father wrote a letter to the mother informing her that X would not be returning. On 21 October 2025, the father withdrew his application in South Africa.
3. The mother made her application under the 1980 Convention on 23 October 2025. The father opposed the making of a return order relying on X’s objections and on Article 13(b), the latter being based broadly on security concerns and the alleged risk of crime in South Africa. X was joined as a party to the proceedings on 14 November 2025 and a Cafcass guardian was appointed.
4. It was not in dispute between the parties that X objected to returning to South Africa and that he was of an age and degree of maturity at which it is appropriate to take account of his views (as provided for by Article 13 of the 1980 Convention). The judge rejected the Article 13(b) defence and decided, in the exercise of his discretion, that he would make a return order. It is from that decision that the father and X appeal.
5. The mother was represented on this appeal by Mr Jarman KC. X, no longer represented by the Cafcass guardian, was represented by Mr Gratton KC and Mr Elgadhly. Mr Jarman and Mr Elgadhly also appeared below. The father, who has been acting in person for most of the proceedings, appeared in person at the hearing below and on this appeal. I am grateful to all of them for their respective submissions.
6. The father and X each initially advanced seven grounds of appeal. Cobb LJ granted permission to appeal in respect of five of X’s grounds (grounds 3 to 7) and three of the father’s grounds (grounds 1 to 3).
7. X’s overarching case (ground 5) is that, when deciding how to exercise his discretion, the judge undertook a flawed, one-sided analysis rather than the required “holistic balancing exercise” including because he failed to consider the impact on X of returning to South Africa having regard to his strong objections. Ground 3 challenges a case management decision made by the judge during the hearing. Ground 4 contends that it was wrong for the judge to rely, in the manner in which he did, on a report from a psychologist prepared for the South African proceedings because it was “untested”. Ground 6 challenges the judge’s decision that Article 13(b) was not established and contends that it was wrong because it “solely [focused] on the grave risk of harm being rooted in the risks of crime in South Africa” and failed to analyse other risks of harm to X. Ground 7 is a “catch all” ground that the judge’s decision was wrong.

8. The three grounds on which the father was given permission to appeal are: (1) the judge failed to give proper weight to X's objections and wrongly concluded that X's objections were not authentically his own but the product of paternal influence; (2) the judge's approach to the evidence relating to alleged parental influence and alienation was wrong including by relying on the untested report from the South African psychologist, failing to give proper weight to the guardian's evidence and recommendation, and preferring the evidence of the mother's witnesses and rejecting the evidence relied on by the father without adequate reasoning or proper analysis of credibility; and (3) the judge gave insufficient consideration to X's welfare, including by failing adequately to evaluate the risk of psychological and/or physical harm "inherent in compelling a return against X's wishes and against a background of prior violence and safety concerns".

Background

9. The mother and the father met in 2005, when the mother was in her twenties and the father in his late forties. They were both born in Southern Africa and are both nationals of South Africa. The father has other, adult, children from two previous relationships. X is the mother's only child.
10. In 2007, the father suffered a serious accident as a result of which he is quadriplegic.
11. The mother and the father married in 2009 and X was born in 2011. They initially lived in South Africa before moving to England in 2013. The marriage broke down in 2015 and the parties subsequently divorced. The mother has since remarried.
12. There have been various proceedings between the parties concerning financial matters and child arrangements. The mother applied to relocate with X to South Africa in 2017. As referred to above, she obtained an order giving her permission to do so in 2018 and they have lived there since then. The father and X had regular contact both in South Africa and England.
13. In November 2024, the father proposed in a letter to the mother that X should move to England to live with him and attend a private boarding school here, initially as a day pupil. The letter made clear that X and the father had, in fact, already visited the proposed school and that the father had well advanced plans for X if he moved to England. These included X taking the entrance exam for the proposed school in November and also involved activities related to, what is described as, X's particular, "uncanny", ability in a specific sporting activity which was advanced as a powerful factor supporting X moving to England. The letter painted a very bleak picture of South Africa and X's future prospects there against an extraordinarily rosy picture of England and his prospects here. I also note that the father said that X was "aware of everything in" the letter either, it was said, because he already knew it or because he could work out almost all the information for himself. The mother replied indicating that she did not agree to the father's proposal.
14. As referred to above, the father started proceedings in South Africa in January 2025 seeking an order providing for X to move to England. For the purposes of those proceedings, a psychological assessment of the family was obtained from a South African clinical psychologist. The report is dated 23 June 2025 and extends to 159 pages ("the June 2025 report"). The psychologist had undertaken extensive inquiries,

including travelling to England and had interviewed a significant number of people. The report contained a detailed analysis and reached a number of conclusions which are reflected in the judgment below.

15. The father criticised the report and filed a number of documents in the proceedings in South Africa. These included witness statements from some of those (seven) whom the psychologist had interviewed and who said that she had misrepresented or inaccurately recorded what they had said and a report from a clinical psychologist which comprised a paper analysis or evaluation of the June 2025 report and contained a number of criticisms of and concerns about that report.
16. X travelled to England on 15 October 2025 for an agreed period of five days. As referred to above, he did not return as planned. In his letter of 20 October 2025, the father said that X had “decided that he will not board the flight ... tonight”. He wanted “to be allowed to return “home to England permanently” – his words”. This was said to be based on a number of factors including so as to “finish his education [here] and pursue his obvious talents in the sporting arena”, “to feel that he is in a safe environment, both physically, and psychologically, and that his views at the age of nearly 14 are being taken into account”. The father also said that he had told X that he (the father) had chosen the route, of not “pursuing matters through attorneys but instead focusing on proper psychological evaluation”, “because I no longer have faith in the South African legal system to reach a timely or just outcome”. In addition, he said that “the fact that X was denied his own legal representation [in the proceedings in South Africa] has only deepened his sense of frustration and powerlessness”.
17. As referred to above, the father withdrew his application in South Africa immediately following his retention of X in England. During the course of his submissions in this court, he said this had occurred because “we (meaning he and X) became disillusioned” about those proceedings, which reflected his comments in the letter of 20 October 2025.

Proceedings

18. The mother’s application under the 1980 Convention regrettably progressed slowly. The reasons for this are various and one reason might well be that the court ordered the preparation of a report under s.37 of the Children Act 1989. This provides that the court can order a local authority to prepare a report when “it appears to the court that it may be appropriate for a care or supervision order to be made with respect to” any child. This is an extremely rare step in proceedings under the 1980 Convention. The local authority concluded that the threshold for their involvement had not been met. The obtaining of this report delayed the completion of the Cafcass report which had been ordered on 29 October 2025. It was not completed until 12 February 2026. I should make clear that I am not criticising the time either report took. I would, however, just emphasise that an application under the 1980 Convention by its very nature needs to be determined expeditiously and that this is an important factor when the court is determining case management issues.
19. There were a number of interlocutory hearings because of difficulties, in particular in respect of contact between X and his mother. I do not propose to set out the details of these.

20. The final hearing took place on 16 and 17 February 2026. Both parties had filed statements and a range of other documents including from the South African proceedings. The court also had the Cafcass report referred to above. The judge heard oral evidence from the guardian and brief oral evidence from the father and X's uncle, the mother's brother, on one particular issue (the nature of a telephone call as referred to further below).
21. The mother's case before the judge below was, in brief, as follows. She relied on the June 2025 report which identified "a very difficult, enmeshed and troubled relationship as between [X] and his father". It was submitted that the father had "orchestrated" X's retention in England "during ongoing proceedings in South Africa" and that X had been influenced by his father and that "his voice is not authentically his own where he is given very clear instructions and direction by his father". The mother relied on exchanges between the father and X during which, among other things, the father responded to X asking "Do we have to sue mum?" by saying "We have to sue, yeah, because she is the one stopping you from ... going to the school of your choice". He also said that "You are going to unfortunately learn that mum has done some terrible, terrible things to me, to you". The mother also relied on statements from two former carers of the father.
22. The mother challenged the father's position that South Africa was not safe and would expose X to grave harm and submitted that the father's assertions "fall very far short of the required threshold for Art 13(b)".
23. In respect of X's objections, it was submitted that the court would have "little trouble in determining" that X objected to returning to South Africa. As to the court's discretion, the mother submitted that remaining in England "under the malign influence and control of his father, would continue to cause emotional harm to [X] and the real prospect that his relationship with his mother will be forever lost". Reference was also made to "*convention considerations*" and it was submitted that the father was "effectively forum shopping where he now hopes to achieve a better outcome".
24. The father's case, as set out in various statements and in his position statement for the hearing below, was that X's return should not be ordered having regard to X's clearly and strongly expressed wishes to remain in England and the risk of harm arising from high crime levels in South Africa. The father pointed to the advantages for X of staying in England, in particular in relation to X's sporting prowess. The father challenged the admission of the June 2025 report on the basis that it was untested and the findings disputed or, alternatively, if it was admitted, that "fairness and balance" required the court to consider the "critique" of it (referred to above) and the seven statements which challenged and discredited the psychologist's conclusions. He pointed to the breakdown in X's relationship with his mother, attributing it to the mother's approach to X's sporting aspirations and schooling decisions. The father challenged the statements from his former carers which were relied on by the mother, alleging that they were unreliable and inaccurate accounts from disgruntled employees.
25. The guardian's view was set out in her final report. The guardian had met with X (in person and remotely) on six occasions. She described him as "an intelligent, articulate young person, who is polite and engages well in conversation". He "was able to consider different perspectives and views". She recorded that X "maintained that it was his decision to remain in England and not to return to South Africa and not his father's",

his main reason being that “he has more opportunities for [sporting] success” in England than in South Africa. He “has also spoken of England being a safer country” and that his “chances of getting into a good university in England would be higher”. X had “not wavered from that decision” and had been “very consistent and forceful in expressing that he does not want to return to South Africa”. He had “talked of his mother lying to him regarding [relevant sporting facilities] and crime rates in South Africa”. At their first meeting, X had asked if he could refer to notes he had made but “subsequently my conversations with him did not involve any pre-prepared notes”.

26. The guardian accepted that X “has been subjected to influence by his father” but she considered the extent of that influence was unclear “as it relates to living in England”. The guardian considered that X’s views “should [not] be completely discounted”. Her ultimate conclusion appeared to be that X is “an intelligent and strong-willed young person and whilst I accept the concerns that have been raised about manipulation and influence, I am of the view that it has to be recognised that X does have his own views and aspirations for his future”; and that X had not been “so influenced and pressured by his father that his voice should not carry some weight”.
27. The guardian was “deeply concerned at what I consider to be the impact that these proceedings were having on X and the possible impact on his relationships with both of his parents when they are concluded”. She also expressed concern about X’s emotional state and about the potential impact on X of a return order being made against his wishes. This included, if a return order was made, “that ... his emotional state will adversely affect his education and his relationship with his mother and maternal extended family”, to the extent that his relationship with his mother might be “permanently damaged”. She also considered that X was unlikely to engage in therapy. X was “likely to feel angry and emotionally distressed” and to feel “that his views are considered irrelevant”.
28. The judge met with X twice, after court on the first day of the hearing and on the day judgment was handed down. At the first meeting, the judge asked X questions touching on X’s interests and the interim arrangements for contact and schooling. At the second, the judge explained his decision to X.
29. The judge also had a large volume of other documents (statements and other material) including a significant number from the proceedings in South Africa.

Judgment

30. Early in his judgment, the judge set out his conclusion that the matters raised in support of the father’s case under Article 13(b) fell “a long way short of the threshold test required” under that Article. Accordingly, “the real focus of this case lies in evaluating the strength and authenticity of X’s strongly expressed objections to return”.
31. The relevant legal principles were summarised in the judgment, including by reference to *In re M and others (Children) (Abduction: Child’s Objections)* [2015] EWCA Civ 26, [2016] Fam 1 (“*Re M (2015)*”) and *In re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619 (“*Re D*”). There is no criticism of this summary.
32. The judgment then set out some of the background and referred to findings made by Recorder Ullstein QC in 2018 including as to aspects of X and the father’s relationship.

The judge noted that the Recorder had also been “extremely critical of [the father’s] behaviour more generally”. He considered that the findings made by the Recorder provided “a secure factual matrix from which to consider the issues raised in this application, which are strikingly similar”.

33. The judge went on to consider X’s “full and active” life in South Africa and his close relationships with the maternal family. He considered that this contrasted starkly with X’s life in London since October 2025. He also expressed serious concerns about the nature of the father and X’s relationship, which he described as “toxic”, based on his assessment of “the overwhelming [effect of the] evidence”. He also observed that it was “plain that X has read a great [deal] of the papers in this case, or at least had their contents extensively revealed to him by his father”. He considered that there was “abundant evidence ... that [the father] has embroiled X in these proceedings to an alarming degree”.
34. The judge addressed the South African proceedings which, as referred to above, had been commenced by the father in January 2025. He considered that the June 2025 report was “a thorough and detailed piece of work” and was “clear and cogently reasoned”. It contained, what the judge described as, a “blistering critique of [the father’s] parenting style and behaviour” which echoed “much of the analysis in Recorder Ullstein’s judgment”. He set out some of the psychologist’s conclusions.
35. The judge’s assessment of the father was based in part on his assessment of the father’s questioning of the guardian which led the judge to conclude that “he appeared to regard it is his role to decide all X’s significant choices and in every sphere of his life”. Adding that this “resonates entirely with [the psychologist’s] assessment”.
36. The judge also referred to two witness statements from former carers of the father. The father refuted “the accuracy and honesty of both statements” and the judge cautioned himself “that they may be tainted by the perspective of a disgruntled employee”. He rejected the father’s suggestion that one of them had “been paid by [the mother] to give false evidence” and considered that they “chime[d] with much of the [other] evidence”.
37. The judge then went on to consider an issue that had arisen during the hearing, namely regarding a phone call between X and his father that took place when X was having dinner with the maternal uncle. During the course of that dinner X had been “exchanging messages with the father on his smartphone”. The “tenor of the exchanges is that of a young man absolutely desperate to see his father and to stay with him overnight. F, on the face of it, appears to be discouraging him, though the focus is all on the litigation and not on the child”. There was then a telephone call between the father and X. A dispute arose about this call and the judge heard short oral evidence from the uncle and the father. The judge rejected the father’s evidence and accepted the uncle’s evidence about what had occurred, namely that the father had called X and had said “come home”. The judge considered that this represented a “deliberate sabotage of X’s contact with M and a calculated breach of my Order”. He agreed with Mr Jarman’s characterisation, namely that the father had been “crafting the typed messages to generate a false evidential picture that he was supporting the contact when in truth, he was not. He had assumed that the phone call would be private, but he was effectively caught out”.

38. The judge then turned to consider the guardian's position. She opposed the making of a return order. As explained in his judgment, the judge rejected this recommendation.
39. The judge noted that it was unusual for a guardian to meet with a child so frequently. He then quoted from the guardian's report:

“Both of his parents are proud of [X]’s achievements, and he is a credit to them both. As well as recognising his intelligence and sporting abilities, his father was able to accept that [X] has a caring side to his nature, which [F] admits is likely to come more from his mother. It is unfortunate that at age fourteen, a stage of development when [X] is wishing to become more independent and to have his views taken seriously, that he is feeling angry and is convinced that his mother wants to deny him opportunities that he believes are available to him. Whilst I fully accept the concerns raised by [M], based on her experiences of his behaviour, I do not agree that it is in [X]’s best interest for her to sacrifice her relationship with [X] by forcing his return to South Africa.”

The judge then commented:

“[41] With respect to the Guardian and having regard to the evidence, I am not sure what she can mean by referring to M sacrificing “*her relationship with X by forcing his return to South Africa*”. In the light of the evidence that I have analysed, it strikes me that X’s relationship with his mother has been comprehensively dismantled. Further, when she talks of M “*forcing*” X’s return, it implies that his objections are authentically his own rather than ones indoctrinated by F. The evidence does not permit of that possibility.”

40. The judge quoted further passages from the report including paragraph 77:

“The potential consequences of a decision being made that is against [X]’s wishes is the risk that he will be left totally despondent, feeling that his views are considered irrelevant due to him being immature and as him having been so influenced by his father that he is unable to have any control over his own life. This could have a detrimental impact on [X]’s self-esteem. I am mindful that [the father] has likely convinced [X] that if he has the opportunity to have his voice heard, that it would be taken seriously by the court. [X] is therefore unable to contemplate any decision other than him being able to remain in England.”

The judge did not consider that this, and another passage in the guardian’s report, had engaged with “the compelling evidence that X’s capacity to make independent decisions has been suborned by F’s manipulating behaviour over much of his childhood and adolescence” nor with the disturbing nature of the father’s and X’s relationship. As a result, he decided that the guardian’s conclusion reflected the fact that “she could not have balanced her own discussions with X alongside the broad canvas of the evidence”.

41. The judge was “driven to reject [the guardian’s] recommendation”. He preferred the analysis of the South African psychologist as to the extent to which “X’s voice has become a conduit for F’s views”.

42. The judge was clearly very concerned about, what he considered to be, the impact on X of what had been happening. He referred to “the toll on X’s mental health” and to his “mounting emotional distress” following his retention in England in October 2025. He set out a number of factors, which I consider further below, when deciding to make a return order. In essence, these balanced the potential consequences of X remaining in England and the potential consequences of him returning to South Africa. The judge recognised that X strongly objected to returning to South Africa but his ultimate conclusion was that an *expeditious* return should be ordered.

Submissions

43. I have taken all the parties’ respective submissions into account but I propose to summarise them briefly in this judgment.
44. Mr Gration submitted that the judge’s exercise of discretion under Article 13 was flawed as he undertook a skewed, limited and inadequate analysis. The judge had omitted important factors from his analysis, in particular the likely negative impact on X of returning to South Africa, including in respect of his relationship with his mother and wider maternal family. This was, he submitted, a critical part of the analysis which did not feature in the judgment. The judge had focused “almost entirely” on the father’s behaviour and its impact on X and he gave insufficient consideration to the weight and nature of X’s views. Mr Gration emphasised that it was X’s firmly expressed position that it was *he* who had made the decision to remain in England and not his father’s.
45. The judge had failed properly to engage with, to address or to analyse the guardian’s evidence, in particular her “substantive concerns” about the consequences for X of returning to South Africa including as set out in paragraph 77 of her report (see above). Her report contained a “detailed and thorough evaluation of what X said and how he might have come to form those views” and of the “possible consequences of different orders being made which were contrary to his expressed views”. The guardian was “plainly aware of the evidence that X had been subjected to influence by the father” and had reflected this in her report. She had not said, as the judge seemed to indicate (in paragraph 41 of the judgment), that X’s views were “authentically his own”. Her assessment was more nuanced. Her analysis “was likely to be correct and the judge was wrong to dismiss it on the basis that he did”.
46. Mr Gration also submitted that the judge dealt too cursorily with Article 13(b). He did not seek to suggest that the judge was wrong to reject the case advanced below based on security concerns and the risk of crime in South Africa but submitted that the judge should have undertaken a broader analysis to determine whether a return to South Africa would place X at a grave risk of psychological harm or in an otherwise intolerable situation. Mr Gration relied on the reference in the judgment to threats by X to harm himself and on the “various concerns raised by the Guardian about the impact upon X (both generally and specifically with regards to his future relationship with his mother / the impact upon his relationship with his father) of summary return”. There was, he submitted, “a great deal of material” which should have been included in the judge’s analysis and which was sufficient to surmount the Article 13(b) threshold. Further, there were no protective measures which would be effective to ameliorate the risks.

47. Grounds 3 and 4 raised issues which, Mr Gratton acknowledged, were subordinate to his substantive challenge, in particular, to the manner in which the judge exercised his discretion.
48. The former concerned the judge's case management decision to prevent counsel for X (or the guardian) from contacting X during the hearing to seek instructions about the telephone conversation between X and the father about which the father and X's uncle were to give oral evidence and about which the judge subsequently made findings. Mr Gratton submitted that these were "significant finding[s] about the father's influence on" X and that the judge's decision was contrary to X's rights and was unfair.
49. The latter challenged the judge's reliance on the June 2025 report. The judge had been wrong to "accept [the] evidence from" that report when its contents and analysis were disputed by the father and it had not been tested. He was, therefore, "wrong to prefer [the psychologist's] analysis of the situation to the Guardian's in the particular context of these proceedings". He had also been wrong to place any weight on the psychologist's conclusions that the father had alienated X from his mother having regard to the approach taken in England and Wales to this issue as set out in *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38 and the Family Justice Council's Guidance.
50. The father filed a comprehensive Skeleton Argument and made oral submissions. He also provided the court with a number of additional documents which included transcripts of screen shots included in the bundles; photographs; a comparative analysis of the witness statements from former carers referred to in the judgment; a transcript of, with a commentary on, text exchanges between the father and X before and after the voice call referred to by the judge (see paragraph 37 above); and various other documents. The combined effect of the father's case was to advance a detailed, critical analysis of what were said to be the many flaws and errors in the judgment, only some of which I address below.
51. The father challenged the "evidential foundation" on which the judge's analysis was based. The judge had been wrong to rely on the untested June 2025 report and the statements from the former carers and, further, he had failed to undertake a balanced analysis of the evidence or the relevant history. A balanced analysis would have included express consideration of the substantial material relied on by the father, in particular the statements from those who said that the psychologist had misrepresented or inaccurately recorded what they had said; the evaluation, or critique, by another psychologist of the June 2025 report which had identified flaws and errors in that report; contemporaneous WhatsApp exchanges; other statements evidencing the positive nature of the father's and X's relationship; and X's own conduct. The judge did not engage with or explain why he rejected the evidence relied on by the father which contradicted the material relied on by the mother and gave a fundamentally different picture.
52. This lack of a proper, balanced analysis undermined the judge's approach to X's objections to returning to South Africa and his conclusion as to the extent to which they were "authentically his own". The judge had wrongly concluded that X's views were the product of his (the father's) influence and resulted from "an enmeshed relationship" when they reflected X's own clearly and consistently expressed objections. Having regard to the history, in particular the fact that X had been living in South Africa with

the mother and her family since 2018, the father submitted that an enmeshed relationship was “highly improbable”. Further, the judge’s conclusions significantly ignored the evidence from the father’s witnesses – “some very unique evidence” about X’s sporting talents and potential – which explained the background to X’s views and contradicted their having been caused by the father’s “supposed influence”.

53. The father explained part of this background in the course of his oral submissions. As referred to above, he said that “we became disillusioned” with the South African proceedings. X had been “very disillusioned when he was not granted the right to his own legal counsel”. This was coupled with a more general “dissatisfaction” with what was happening in South Africa and was also based on the view (I took it by both the father and X) that the “correct findings” would not be reached or “arrived at”.
54. The judge’s flawed analysis of the evidence included that he had failed to give proper weight to the evidence and recommendation of the guardian. Her analysis supported the conclusion that X had the maturity and capacity to form and articulate his own, independent, views. The effect of these errors was that the judge failed to give proper weight to X’s objections.
55. The father submitted that the judge’s analysis of the evidence relating to the telephone call referred to above was also flawed and wrong. The call had been initiated by X, not the father, and had only lasted a very brief period of under 30 seconds. It was, the father submitted, improbable that he would have said something during this call which contradicted the position reflected in the surrounding written messages. He had had “no time to orchestrate anything”. The father relied on the transcript of the messages leading up to the call and submitted that a “careful reading of the WhatsApp exchanges together with the surrounding circumstances does not support” the judge’s conclusion. The judge had also failed to take into account the “repeated occasions on which X [had] returned to the father’s home” which demonstrated that he “had previously acted independently in returning to the father notwithstanding court orders and significant legal pressure”.
56. The father’s other substantive ground of appeal was that the judge had given insufficient consideration to X’s welfare. This related, in particular, to the benefits for X of living in England as against the risk of harm if he was returned to South Africa. The judge had failed to consider the consequences for X of going against his wishes and of depriving him of the opportunities living in England offered.
57. In respect of X’s appeal, Mr Jarman challenged the submission that the judge had failed to carry out a holistic balancing exercise when exercising his discretion and submitted that there was no proper basis for interfering with his decision. It had been accepted that X objected to returning and that this should be taken into account. The only issue was the manner in which the judge should exercise his discretion and the whole of the judgment was dealing with this issue. This inevitably included considering the weight which should be given to X’s objections having regard to their nature and strength and the extent to which there were his own views and/or the product of influence. There were also wider welfare and policy considerations.
58. Mr Jarman took the court through various pieces of evidence in support of his submission that the judge had sufficiently considered the evidence. He submitted that the judge clearly had in mind the broad evidential canvas, relying not only on the June

2025 report, but also on the findings of Recorder Ullstein in 2018, the letters from the father, the statements from the father's carers and other statements filed in the South African proceedings. The judge was well placed to assess the guardian's evidence and had been entitled to reject her recommendation as explained in the judgment.

59. The judge was well aware of the history, including the history of the proceedings. He was also, Mr Jarman submitted, well aware of the concerns expressed by the guardian about the impact for X of returning to South Africa which were reflected in passages from her report quoted in the judgment. The judge did not ignore these factors, or X's mental health to which the judge had expressly referred.
60. Mr Jarman also relied on the fact that this was, he submitted, a "highly planned abduction". The father had involved X as could be seen from his email to the mother of August 2025 in which he had said that "X is aware of this letter"; from his communicating directly with X in September 2025 about proposed competitions in England "without any regard to his schooling or more importantly any consultation with" the mother; and from text messages in which it was said the father told X what he should say to the social worker and to Cafcass. He had also told X that "it will be your fault" if the case was lost. The father had written directly to X's school in South Africa saying that he would not be returning and would be starting school in England in November 2025. The letter had referred to the 1980 Convention and said that "in the United Kingdom, the views of a 14 year old are given, significant decisive, weight".
61. In summary, Mr Jarman submitted that the judge was entitled to exercise his discretion by making a return order as explained in the judgment. In part this was based on the court being "driven to the conclusion that X's immediate welfare could only be ameliorated by being placed in M's care and having limited contact with F".
62. As to ground 3, Mr Jarman submitted that this was a case management decision which the judge had been entitled to make. He did not want X to be yet further embroiled in the proceedings. Further, it did not undermine the judge's finding about the content of the telephone call.
63. As to ground 4, the judge had been entitled to rely on the June 2025 report. The fact that it was "untested" did not mean that the judge was not entitled to attach weight to it.
64. In relation to Article 13(b), the case advanced below had been based on the father's assertions as to the political situation and high crime in South Africa and, Mr Jarman submitted, the judge had been right to reject this ground of opposition. The matters now relied on were not such as to fall within Article 13(b) and had been sufficiently reflected in the judge's analysis when determining how to exercise his discretion having regard to X's objections.
65. In respect of the father's appeal, Mr Jarman relied largely on the matters set out above. The judge had provided a detailed judgment in which he had carefully considered X's objections and had "holistically considered all the available evidence". He had been entitled to rely on the June 2025 report and reject the guardian's recommendation. In summary, the matters relied on by the father did not undermine the judgment.

The Law

66. I first propose to deal briefly with the approach adopted by the Court of Appeal when determining appeals from discretionary or evaluative decisions. This was touched on during the hearing when, in answer to a question from Newey LJ, Mr Gratton rightly accepted that the normal approach to appellate decision making applied to the appeal in this case.
67. The court adopts the same general approach when determining appeals from discretionary and evaluative determinations. This can be seen, for example, from the following. In *Re R (Children) (Reunite International Child Abduction Centre intervening)* [2015] UKSC 35, [2016] AC 76, Lord Reed said, at [18], in respect of the multi-factorial evaluation of habitual residence:

“Finally, it is relevant to note the limited function of an appellate court in relation to a lower court's finding as to habitual residence. Where the lower court has applied the correct legal principles to the relevant facts, its evaluation is not generally open to challenge unless the conclusion which it reached was not one which was reasonably open to it.”

In *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 Lewison LJ said, at [114]:

“Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. *This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them.*” (emphasis added)

This passage was expressly approved by the Supreme Court in *Lifestyle Equities CV and another v Amazon UK Services Ltd* [2024] UKSC 8, [2024] 3 All ER 93 (“*Lifestyle Equities*”), at [48], before adding, at [49]:

“That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031, at paras 72–76. There, in a judgment to which all members of the court (McCombe LJ, Leggatt LJ and Rose LJ) contributed, the court concluded, at para 76, in terms with which we agree, that *on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the*

question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.”
(emphasis added)

68. It is also relevant to refer to what Lewison LJ said in *Volpi and another v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48:

“[2] the following principles are well-settled:

(i) An appeal court should not interfere with the trial judge’s conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb “plainly” does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) *An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). *The weight which he gives to it is however pre-eminently a matter for him.*

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge’s conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”
(emphasis added)

Child Objections

69. It is important, having regard in particular to Mr Gratton’s submissions and some observations in the guardian’s report, that I make clear that X’s views are a critical part of the court’s analysis. If X were to feel that his views are “irrelevant”, as the guardian

suggested might happen, he would be mistaken. I am putting it in these, I hope not too, direct terms because I accept that he is intelligent and thoughtful as set out in the guardian's report. I would add that, as his legal representatives will be very well aware, judges are frequently required to take a child's views into account when deciding what orders to make. I have used the expression, take into account, because a judge is required to consider a number of factors when deciding what orders to make of which a child's views is one. It is the judge's role, indeed his obligation, to balance those factors when deciding what order to make. The *legal* position is that a child's views are not determinative (contrary to what the father seemed to assume). As it was described by Lady Hale in *Re D*, at [58], "Hearing the child is ... not to be confused with giving effect to his views". Accordingly, when the court makes an order which does not accord with a child's views, that is not because those views are irrelevant, but because the court has decided, having regard to all the relevant factors, that a different outcome is justified.

70. It is well established that, when a child objects to returning, a wide range of factors can be relevant when the court is deciding how to exercise its discretion. This can be seen from *Re M and another (Children) (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 AC 1288, in which Lady Hale said:

"[43] My Lords, in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. *The court is entitled to take into account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare*"; and

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

71. This was also addressed in *Re M (2015)* in which Black LJ (as she then was) made the following observations:

"[46] I referred earlier to the House of Lords decision in *In re D* [2007] 1 AC 619. One of the things which it and *In re M* [2008] AC 1288 together made quite clear was that the fact that a child objects to being returned does not determine the application."

And, at [71]:

“It would be unwise of me to attempt to expand or improve on the list in *In re M* [2008] AC 1288, para 46 of the sort of factors that are relevant at that stage, although I would emphasise that I would not view that list as exhaustive because it is difficult to predict what will weigh in the balance in a particular case. The factors do not revolve only around the child’s objections, as is apparent. The court has to have regard to other welfare considerations, in so far as it is possible to take a view about summary proceedings. *And importantly, it must give weight to the 1980 Convention considerations. It must at all times be borne in mind that the 1980 Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned and returned promptly. To reiterate what Baroness Hale said in In re M, at para 42, “[the] message should go out to potential abductors that there are no safe havens among contracting states”.*” (my emphasis)

Article 13(b)

72. It is well established that Article 13(b) has a high threshold: see, for example, *In re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27, [2012] 1 AC 144, in which Lady Hale and Lord Wilson said at [31]:

“there is no need for the article to be “narrowly construed”. By its very terms, it is of restricted application. The words of article 13 are quite plain and need no further elaboration or “gloss”.”

They also emphasised, at [33], that, as expressly stated in the Article, the “risk to the child must be “grave”. It is not enough, as it is in other contexts such as asylum, that the risk be “real”. It must have reached such a level of seriousness as to be characterised as “grave””.

Determination

73. In my view, for the reasons summarised below, both appeals should be dismissed. The judge’s decision was one that he was entitled to make in the exercise of his discretion, and he was not wrong to dismiss Article 13(b).
74. I do not accept Mr Gration’s submission that the judge undertook a skewed or one-sided analysis. I would first emphasise that the judge took X’s views into account. He did not, as Mr Gration submitted during the hearing, “discard” them. In the very first paragraph of the judgment, the judge referred to X’s “strongly expressed objections” and he referred to them again in more detail later in the judgment (paragraph 46). He also recognised that X is “intelligent and articulate” and found, from meeting him, that he has “far greater quality and potential” than some of his behaviour might suggest. The question the judge had to decide, and which he addressed at considerable length in his judgment, was the weight he should give to those views when deciding how to exercise his discretion. I return to this below.
75. In deciding how to exercise his discretion, the judge was entitled to rely on the June 2025 report. The fact that it was untested because there had been no trial in South Africa did not mean that the judge could not rely on it. Indeed, in most decisions under

the 1980 Convention, the evidence is not tested in this sense. The judge considered that the psychologist's analysis corresponded with other elements of the evidence, including findings made by Recorder Ullstein. The father submitted that the judge should not have given these findings the weight which he did because they had been made when he was acting in person because he lacked the financial resources to secure legal representation and at a time when he was in a "severely distressed emotional state". These matters do not undermine the judge's reliance on those findings.

76. Returning to the report, the judge has explained why he decided to place weight on it. There were a number of reasons which included the following. The previous findings, as referred to above, which the judge was entitled to use as "a secure factual matrix from which to consider the issues raised in this application, which are strikingly familiar" and were echoed in the psychologist's analysis. The judge's assessment that the report was "a thorough and detailed piece of work" and was "clear and cogently reasoned". The questioning of the Cafcass Officer by the father which the judge considered "resonates entirely with [the psychologist's] assessment" (paragraph 35 above). The "abundant evidence that F has embroiled X in these proceedings to an alarming degree". An aspect of this was the evidence from the father's former carers. The judge considered the father's criticisms of these statements and has explained why he rejected them. It was for him, as the trial judge, to decide what weight to attach to them (*Volpi v Volpi*, at [2(iv)]). The judge also noted that the father "had been involved in writing and correcting [X's] statements for the Court" and that the father accepted that he had "slightly amended" a message X had sent the guardian "following the recent incident at dinner with his uncle".
77. The judge has also explained why, after "great thought", he did not accept the guardian's recommendation including because he did not accept her analysis. The judge decided that the guardian had not engaged with significant aspects of the evidence including "compelling evidence" as to the effect of the father's behaviour on "X's capacity to make independent decisions" (paragraph 40 above). He rejected the suggestion that the father "might support the relationship of X with M in the future if X stays with him" as not being "rooted anywhere in the evidence". Adding, "[i]ndeed, considering the history, the reverse is more likely".
78. The judge has comprehensively explained his approach to the views being expressed by X. He has placed them in the broader context and carefully explained why he decided that they had been significantly influenced by the father. This again, was a conclusion which was clearly open to the judge on the evidence and which the judge has both explained and justified.
79. Contrary to Mr Gration's submission, I do not accept that the judge failed to engage with broader aspects of the guardian's evidence. In particular, it is clear from the judgment as a whole that the judge had well in mind the potential consequences for X of returning to South Africa. For example, in paragraphs 42 and 43 he quoted what the guardian had said in her report about the "potential consequences of a decision being made that is against [X's] wishes" (which included paragraph 77 in the guardian's report as referred to by Mr Gration). He also referred to the need for therapy. Accordingly, I reject the submission, on which a significant part of Mr Gration's case was based, that the judge failed to consider these consequences and the potential impact for X.

80. In this context, the judge plainly balanced the consequences of making a return order and of not making a return order. He decided that there were powerful welfare reasons in support of making a return order. These included his assessment of the relationship between the father and X as being “mutually unhealthy and interdependent” and as being “toxic”; that X’s “capacity to make independent decisions [had] been suborned by F’s manipulating behaviour”; that the father’s behaviour had inflicted “emotional harm” on X; and that living with the father had resulted in “X’s mental health plainly being under strain”. A return to South Africa would be to return X to “M and the wider family [who] have only X’s best interests at heart”; “[d]ecompression from the emotional turmoil of his London life into the heart of his South African family has every real prospect of revealing their sincere and unconditional love for him”; and “[f]ar more important” than remaining in England was “protecting and promoting X’s right to a relationship with M and his wider family” which the judge considered was not a “forlorn objective” as suggested by the guardian.
81. I would also refer to the judge’s assessment that the prospects of X engaging in therapy were better in South Africa than in England. Here the “environment that I have described with F is inimical to therapeutic engagement”. By contrast, “[p]erhaps, supported by his family in South Africa and back amongst his friends, X might review his position on this” and in “any event, the availability of his grandparents, his uncle and his family, his mother and the familiarity of what is ultimately his home may itself deliver some therapeutic benefit”.
82. I accept that it would have been better if the judge had expressly referred to the evidence relied on by the father. However, it is clear from the judgment that the judge was immersed in the evidence. There is nothing to suggest, applying the approach referred to in *Volpi v Volpi*, at [2(iii)], that the judge has not taken the whole evidence into consideration. Nor, as it was phrased in *Lifestyle Equities*, has it been shown that the judge failed to take into account some material factor which undermines the cogency of his conclusion. The statements and the evaluative report relied on by the father do not undermine the judge’s reliance on the psychologist’s report in the manner explained above nor the cogency of his determination.
83. I would add, for the avoidance of doubt, that there is no merit in the criticisms of the judge’s approach to the evidence concerning the telephone call. The judge was entitled to make the case management decision which he did and that decision does not undermine his approach to the evidence or his conclusion as to the content of that call.
84. In conclusion, in respect of the exercise by the judge of his discretion, none of the matters advanced by Mr Gratton and the father have persuaded me that the judge’s exercise of his discretion was flawed or that his decision to make a return order was wrong. Indeed, in my view, his powerful analysis fully explains and supports his decision.
85. I would, finally, add that, although not expressly mentioned by the judge, this is a case in which, in my view, 1980 Convention policy considerations are particularly powerful. There is convincing evidence that this was a carefully and long planned abduction. In late 2024, the father had shown X an English boarding school and had organised for him to take the entrance exam without consulting the mother. Although the father then issued proceedings in South Africa to seek to obtain an order that X move to England, he candidly accepted that he had decided no longer to pursue those proceedings because

he was not confident in the outcome. One of the principal objectives of the 1980 Convention is to deter just such behaviour and to discourage parents from taking matters into their own hands in such a way.

86. In relation to Article 13(b), the case is now being advanced on a basis which was not advanced before the judge. However, in any event I see no merit in the matters now relied on. There is no cogent evidence which would support the conclusion that X would be at risk of psychological harm or otherwise placed in an intolerable situation if he returned to South Africa. Further, the matters relied on overlapped considerably with the case being advanced in respect of the discretionary exercise, which I have rejected.

Conclusion

87. For the reasons set out above, I have concluded that X's appeal and the father's appeal should be dismissed.

Lord Justice Newey:

88. I agree.

Lord Justice Dove:

89. I also agree.