



Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the children who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the children or of any member of their family in connection with these proceedings.

9 September 2026

In the Petition of DM

[2026] UKSC 32

On appeal from: [2026] CSIH 9

Justices: Lord Reed (President), Lord Stephens, Lady Simler, Lord Doherty and Lord Snowden

Background to the Appeal

This appeal concerns a question in relation to international child abduction: can a court take into account a child's views as to whether there is a grave risk that the child's return would expose the child to psychological harm or otherwise place the child in an intolerable situation?

The appeal concerns a father ("F", also referred to as "DM"), mother ("M"), and their child, a 14-year-old adolescent ("H"). They are British citizens and Green Card holders who have lived in Florida, USA for some years. In July 2025 the family travelled from the USA to the UK on holiday. Whilst in Scotland, M told F that she intended to remain in Scotland with H and his 8-year-old brother ("B"). F did not consent.

F brought a petition under the Hague Convention on the Civil Aspects of International Child Abduction 1980 ("the Hague Convention") to return the children to the USA from Scotland under article 12. The Hague Convention is incorporated into domestic law by the Child Abduction and Custody Act 1985. Article 12 provides that where a child has been wrongfully removed or retained, the authority concerned shall order the return of the child.

M opposes the application for the return of H under article 13(b) of the Hague Convention. Article 13(b) provides that the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" ("the article 13(b) defence"). M alleges, amongst other matters, that her mental ill-health gives rise to such a grave risk, namely that, given her history of mental health problems: (a) there is a real risk of her committing suicide if the children were returned to the USA without her; and (b) if

she did commit suicide this would cause the children extreme psychological harm which they could not reasonably be expected to tolerate.

In the Outer House the Lord Ordinary factored H's views into the equation along with other factors. He concluded that H would not be placed in an intolerable situation were he to be returned, nor would there be a grave risk of his suffering psychological harm. Even if the article 13(b) defence had been established, the Lord Ordinary would have used his discretion to order H's return. The Outer House ordered that H be returned to the USA.

M appealed to the Inner House. In an Opinion delivered by Lady Carmichael (Lord Armstrong and Lord Ericht agreeing), an Extra Division of the Inner House allowed M's appeal. It held that the Lord Ordinary erred in law in taking H's views into account in assessing whether the situation to which he would be returning would be intolerable for him. Once H's views were left out of account, the combination of circumstances to which H would be exposed on return is one which he should not reasonably be expected to tolerate. There was a grave risk that H's return to the USA would place him in an intolerable situation. The Extra Division considered whether it should nevertheless exercise its discretion to order H's return to the USA despite the article 13(b) defence having been made out and declined to do so.

F and H now appeal to the Supreme Court. The issues are as follows:

- (1) Should H's views be taken into account in assessing whether the article 13(b) defence is established?
- (2) Even if the article 13(b) defence is established, was the Lord Ordinary entitled to exercise his discretion to nevertheless order H's return?
- (3) If H's views ought to be taken into account, in attributing weight to those views, should the Lord Ordinary have answered whether those views reflected F's manipulation of H?
- (4) If H's views ought to be taken into account and were incorrectly excluded by the Inner House, is the article 13(b) defence nevertheless established?

Judgment

The Supreme Court unanimously dismisses the appeal, for reasons different to those given by the Inner House. The order of the Inner House that refused to order the return of H to the USA is affirmed. Lord Stephens and Lord Snowden deliver the Judgment, with which Lord Reed, Lady Simler, and Lord Doherty agree.

Reasons for the Judgment

General legal principles in relation to article 13(b)

The effect of article 13(b) of the Hague Convention is well-established, as set out in *In re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27 ("*In re E*") [72].

The burden of proof is plainly on whoever opposes the child's return [74]. They must establish a risk within the meaning of article 13(b) which must have reached such a level of seriousness as to be characterised as grave [75]. The court must consider whether it is reasonable for the particular child in the child's particular circumstances to tolerate the situation on return [76]. The more serious or significant the character of the risk, the lower the level of the risk which might properly be qualified as grave, and vice versa [77].

In re E commended a staged approach. The court first asks whether, if the allegations are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If yes, the court must ask how the child can be protected against the risk. If there are no effective protective measures, then the court may have no option but to do the best it can to resolve the disputed issues [79]-[81].

Whilst the staged approach is not confined to allegations of domestic abuse which concerned *In re E*, it should not be used for an allegation of a risk that the mother would commit suicide. If the court were obliged to take such an allegation as true, there would be an obvious risk that the effective operation of the Hague Convention would be hindered [79]-[83].

An allegation of a risk of suicide must be examined with great care. If a real risk of suicide is established, it is likely that a parent's suicide will cause extreme psychological harm to the child. Given the gravity of the consequences, even a small risk would amount to a grave risk that return would expose the child to psychological harm or otherwise place the child in an intolerable situation [83]-[84].

(1) Should H's views be taken into account?

Yes [109]. In Hague Convention proceedings the views of a child can be taken into account in assessing whether the article 13(b) defence is made out [108].

Case law establishes that the child can be heard and the child's views ought to be taken into account in Hague Convention cases [86]. There is no obligation on the child to express views. Rather, there is a presumption that the child will be given an opportunity to be heard, unless it is inappropriate to do so having regard to the child's age or degree of maturity. This is not limited to any particular aspect of article 12 or article 13. The opportunity to be heard is not to be confused with giving effect to the child's views [91]-[95]. The practice that the views of a child can be taken into account in assessing the article 13(b) defence is consistent with authority from the European Court of Human Rights [103]-[107].

H's views therefore ought to have been taken into account in assessing whether the article 13(b) defence is made out. The Inner House fell into error in holding that the Lord Ordinary erred in law by doing so. Yet, H's views are not determinative and it is for the court to determine what, if any, weight to attach to them [109].

(2) Was the Lord Ordinary entitled to exercise his discretion to order H's return, even if such a grave risk had been established?

No [115]. The Inner House was right to interfere with the Lord Ordinary's exercise of discretion to order H's return even if the article 13(b) defence had been established [111], [113]-[114].

First, the Lord Ordinary was wrong to say that the defence would have been "borderline". The decision as to whether a grave risk identified in article 13(b) has been established is binary: either it has or it has not. That is so irrespective of difficulties in arriving at the assessment or if the finding is relatively evenly balanced. Second, the Lord Ordinary should have given, but did not give, the most anxious consideration as to why he should nevertheless expose H to a grave risk of extreme psychological harm which he could not reasonably be expected to tolerate [112]-[113].

(3) In attributing weight to H's views, should the Lord Ordinary have answered whether those views reflected F's manipulation of H?

Not necessarily [119]. It is central to a decision as to what if any weight to place on a child's views to determine the extent to which they are authentically their own. The Lord Ordinary recognised that there was competing evidence as to whether H had been manipulated by F, recognised that he could not resolve the issue, and therefore left it out of account. The question is whether the Lord Ordinary was wrong to do so [116]-[117].

Although other judges might have felt able to arrive at some conclusion on the evidence, the Lord Ordinary was entitled to decide that he could not resolve the issue and therefore leave it out of account [119].

(4) Although the Inner House incorrectly excluded H's views, is the article 13(b) defence nevertheless established?

Yes [126]. The only reasonable conclusion to draw from the Lord Ordinary's findings on the evidence was that there was a grave risk that H's return to the USA would expose him to psychological harm which he could not reasonably be expected to tolerate. This was a paradigm case of a low risk of really serious psychological harm qualifying as grave. Such a conclusion alone suffices to establish the article 13(b) defence [122]-[123].

Whilst the Lord Ordinary was correct to take H's views into account in his article 13(b) determination (the holding on Issue 1), the evidence of those views did not bear the weight that the Lord Ordinary placed upon it. First, the weight to be attached to H's views depended on the extent to which the views were authentically his own, as to which the Lord Ordinary had come to no conclusion (as discussed under Issue 3). Secondly, the evidence of H's views did not address the critical risk that had been identified. H did not contemplate, nor address, and (appropriately) was not asked to contemplate his likely reaction to M committing suicide. There was nothing for the Lord Ordinary to take into account in assessing whether H would be placed in a situation he could reasonably be expected to tolerate if M did commit suicide [124].

H's stated views did not negate or mitigate the real risk of extreme psychological harm which he could not reasonably be expected to tolerate. The only reasonable conclusion to draw from the Lord Ordinary's findings on the evidence was that there was a grave risk that H's return to the USA would expose him to psychological harm which he could not reasonably be expected to tolerate. The Lord Ordinary's decision cannot stand [124]-[125].

The Court considers it appropriate to decide for itself that the article 13(b) defence is clearly established in relation to H [127]-[130]. The refusal to order the return of H is affirmed [131].

Conclusions

- (1) H's views should be taken into account in assessing whether the article 13(b) defence is established.
- (2) The Lord Ordinary was not entitled to exercise his discretion to order H's return even if the article 13(b) defence had been established.
- (3) Whilst H's views ought to be taken into account, the Lord Ordinary was entitled to not resolve the question as to whether those views reflected F's manipulation of H.
- (4) The article 13(b) defence is established. The order not to return H should be upheld.

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)