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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**FAMILY DIVISION
OFFICE OF CARE AND PROTECTION**

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Between:

OP

Plaintiff

and

GL

Defendant

(Hague Convention: Article 13)

**Melanie Rice KC & Niamh Devlin (instructed by Bernard Campbell & Co) for the
Plaintiff**

**Suzanne Simpson KC & Victoria Ross (instructed by Harte Coyle Collins) for the
Defendant**

**Sinéad O’Flaherty KC & Anna McHugh (instructed by the Official Solicitor) representing
the interests of the children**

HUMPHREYS J

Introduction

This judgment has been anonymised as it involves three children. The ciphers given to the parents and children are not their initials. Nothing must be published which would identify the children or their parents.

[1] The plaintiff in these proceedings is the father of three children, namely AA (aged 9), AB (aged 7) and AC (aged 5). He seeks an order, pursuant to article 12 of the Hague Convention on the Civil Aspects of International Child Abduction 1980 (‘the

Convention') which was incorporated into United Kingdom domestic law by the Child Abduction and Custody Act 1985.

[2] The defendant is the mother of the three children who admits having unlawfully taken them from Ireland to the United Kingdom in October 2024. However, she resists the making of a return order on the basis of the exceptional defences provided for by article 13 of the Convention.

The proceedings

[3] The plaintiff issued proceedings for a return order on 5 December 2024. It is striking that this application was not heard until 12 September 2025, some nine months later. This is, of course, well outside the expectation that cases will be heard and determined within the six week period referred to in article 11 of the Convention.

[4] On 17 December 2024 the court gave directions for the filing of evidence and submission of skeleton arguments towards a hearing on 30 January 2025. At this time the mother was not legally represented. However, discussions took place directly between the parties.

[5] The mother deposes:

"I was relieved when the plaintiff indicated he was agreeable to the children and I remaining in Northern Ireland. The plaintiff told me this himself. He then proceeded to file an agreement with the court which he said he and I had negotiated. I did not agree to the terms as set out in this document. I simply agreed to the broad plan which was for me and the children to stay in NI and for contact with the children and the plaintiff to occur."

[6] Reliance is placed on an email sent to the Office of Care and Protection on 26 December 2024. It appears to be from the mother but the court was told it was drafted by the father since her English is limited. It stated as follows:

"Communication between my husband, the father of my children ... and I took place via video call during the Christmas holiday. We discussed and reached an understanding regarding our dispute ... we have reached a complete agreement regarding the best interests of the children ...

My children's father and I agreed that their current stay in Northern Ireland is the best option for them, considering they are enrolled in school, the housing is comfortable and

close to their school and I, as their mother, am content and settled in Northern Ireland in all respects.

We, as the parents of the children, have agreed that I and the children will continue to reside in Northern Ireland. Their father will maintain regular communication with both me and the children and check on their well-being whenever he wishes. He will also visit them whenever possible, and he has confirmed and agreed to this arrangement.

The father assured me that he will notify the court of his consent for the children to continue residing in Northern Ireland and that he will withdraw the case he filed for their return to Republic of Ireland.

Based on the aforementioned facts, I hereby request that the case file be closed."

[7] The father says that the parties "reached an understanding about her staying with the children in Northern Ireland and other arrangements about their care." However, he explains that this "initial agreement" was based on the mother agreeing to several conditions including not taking the children outside Northern Ireland, not issuing them any travel documents without consent and not changing residence or school without his approval. He further says that the mother later rejected these conditions and stated a desire to move out of Northern Ireland.

[8] The father's legal representatives produced a position paper, signed by counsel and dated 23 January 2025, in advance of the hearing of the case on 30 January. It stated explicitly at para 3:

"The parties have reached consensus regarding all matters relating to their children ..."

[9] The particulars of the agreement are set out at paragraph 6:

- (i) The children shall continue to reside with their mother in Northern Ireland to ensure their stability, as they are already enrolled in school and have adapted well;
- (ii) Any decisions concerning their children will require consent from both parties, and neither party shall take unilateral steps or decisions;
- (iii) The defendant shall not travel with the children outside of Northern Ireland without the plaintiff's consent;

- (iv) There shall be open communication between the parties; and
- (v) The plaintiff can have unrestricted contact with the children (both direct and indirect) on dates and time agreed between the parties.

[10] Annexed to that position paper was a draft consent order which the court was to be invited to make at the hearing on 30 January. Its terms were as follows:

“1. As of the 30th January 2025, the habitual residence of the subject children ... is Northern Ireland and Northern Ireland shall forthwith have jurisdiction in respect of all proceedings concerning the subject children.

2. Leave is granted to the plaintiff to withdraw the proceedings under the Child Abduction and Custody Act 1985.

3. There shall be a Prohibited Steps Order under Article 8 of the Children (Northern Ireland) Order 1995 in respect of each subject child as follows:

- (a) The subject children shall not be taken out of the jurisdiction of Northern Ireland or otherwise leave the jurisdiction of Northern Ireland without the written consent of the plaintiff or court order;
- (b) The subject children’s current home address, GP and school in Northern Ireland shall not be changed without the written consent of the plaintiff or court order;
- (c) The defendant is prohibited from applying for any passport, identity card or travel documentation in the name(s) of the subject child(ren) without the written consent of the plaintiff or court order;

4. This Order shall remain in place until each subject child reaches the age of 16 years.

5. A copy of this Order shall be served on Belfast International Airport and Belfast City Airport Police, Belfast Harbour Police, the Embassy of Ireland, the UK passport authority and the Embassy of the Republic of Sudan.”

[11] It will be evident therefore that the draft order produced by counsel contained a number of provisions not referred to in either the email of 26 December 2024 or the position paper dated 23 January 2025.

[12] The court had the benefit of the translated transcripts of WhatsApp messages which passed between the parties. On 27 January 2025 at 10:29, the father messaged stating that the solicitor had sought the mother's email and would be sending documents to her. The mother then had sight of the documents and sent a series of replies at 10:44 and 10:45:

"Why to the borders and airports?"

"Every time tell the solicitor to write beyond that."

"And then, how can I change my address by a written consent from you if my address is within the state houses me and moves me."

"Does not agree."

[13] Two days later, the mother sent the father the details of the solicitor's firm which she had instructed. It is clear that the mother did not agree with the terms of the draft order which had been presented to her. Her solicitors appeared for the first time on 30 January at which stage the hearing was adjourned by consent to enable them to seek legal aid and take instructions. The case was again adjourned on 3 March 2025 to facilitate discussions and again on 1 April 2025.

[14] Following the events of 5 April 2025 and the serious allegations arising, the court then directed the involvement of the Official Solicitor on behalf of the children on 16 May 2025. At a review hearing two weeks later, the court made directions towards a hearing of the application on 12 September.

The evidence of the parties

[15] The father's evidence was that the couple married in 2014 in their native Sudan and all three children were born in that country. Due to the situation in Sudan, the family moved to Malta in 2021 where they lived for a period of months. The father left and moved to Ireland in March 2022 and claimed asylum. This was successful and, having been granted refugee status, he was able to obtain full time employment.

[16] Six months later, in September 2022, he was joined by his wife and children who made an asylum application which is yet to be determined.

[17] In May 2023 the mother took the children to Northern Ireland without the father's knowledge or consent. They secured accommodation and the older children enrolled in school, despite the father's objection.

[18] A number of months later the mother and children returned to Ireland and the father was able to secure a family home. The children enrolled in new schools. In order to maintain her asylum allowance, the mother and children split their time between the family home and asylum accommodation.

[19] On 24 October 2024, the mother again removed the children to Northern Ireland.

[20] It is the mother's case that she has been subjected to domestic violence and that the father has been controlling and abusive to the children. She states that she was the plaintiff's second wife and he kept both her and the children a secret from his first wife. She recounts a history of physical violence and threats made to her and the children. Her evidence is that the father controlled the family by limiting finances and restricting access to food.

[21] The mother details an incident which occurred in Malta involving the eldest child, AA, when she was aged around three. She was hungry and asking for food when the father grabbed her by the wrist, lifted her up and threw her to the ground outside a restaurant in public view. AA had hurt herself and the mother wished to take her to hospital but the father refused as this would have been expensive. The following morning the mother took her to hospital and used a false name. She was told by a doctor that her joint had been damaged, and she was bandaged and given pain relief. The mother was too frightened to tell the doctor the truth so said that her daughter had fallen down the stairs.

[22] The mother's evidence reveals that there were proceedings between the parties in Malta which resulted in a court order dated 6 May 2021 prohibiting him from removing the children from her care or from that country. The couple had become estranged but she agreed to travel with the children to Ireland because she believed the father to be gravely ill, a claim which transpired to be false. On arrival they were placed in accommodation in a church hall and a sports centre which she describes as "horrendous." The daughters were subjected to sexual harassment and assault. The mother says the first trip to Northern Ireland was with the full knowledge and consent of the father.

[23] During this time the mother alleges that the father hacked her phone and spied on her online, a matter which she reported to the police.

[24] The mother returned to Ireland in March 2024 following conversations with the father in which he stated that social services would remove the children from her unless she did so. They lived together in the family home which had been acquired by the father for about two months until, on the mother's evidence, he became abusive to her. She believes that he had installed listening devices in the house and tracking apps on her phone. The father limited their food and insisted the children remained

in their rooms. For these reasons, the mother and children moved out into asylum accommodation but did return to the home at weekends to use the cooking facilities.

[25] The mother explains that she left to go to Northern Ireland in October 2024 when the father told her his first wife and two of their children were travelling to Ireland in November. It is claimed that he sent an email from the wife's account to the International Organisation for Migration in Dublin stating that she wished to return to her native Sudan.

[26] The mother was able to secure accommodation and enrol the children in school. She cut off all contact with the father for a period, although she facilitated video contact with the children once she was served with these proceedings.

[27] On 30 March 2025 the father arrived at the mother's accommodation unannounced and discussed the ongoing court proceedings. On 4 April she phoned her husband to indicate that she wanted a divorce.

[28] The father returned on 5 April 2025 around 21:00. The mother says that he subjected her to a brutal sexual assault, including an instance of non-fatal strangulation. The mother was able to make a report to a charitable organisation and the police were then contacted. They removed the father from the property. The mother has provided an ABE interview and the criminal complaint is being pursued. The mother sought and obtained an ex parte injunction on 11 April 2025 restraining the father from harassing, threatening or making any communication with her.

[29] The mother says that she and the children are in fear of her husband who has treated them with cruelty and contempt.

[30] The father, in his rejoinder, denies ever having subjected the mother or children to any form of domestic abuse. He accuses the mother of having lied throughout their marriage, to the immigration authorities and to the court. He denies that their marriage was a secret and says that they lived a comfortable and privileged lifestyle in Sudan.

[31] He states that the decision that he would leave Malta first was one consensually arrived at and was not prompted by any separation. His case is that they remained in regular contact and he continued to send money to the family. On their arrival in Ireland they did not live together due to a lack of suitable accommodation but nonetheless he stresses that their lives were comfortable and all financial needs were met. The complaints made by the mother are, on his case, false.

[32] Following the first venture to Northern Ireland, the father says the decision to return was entirely voluntary. He denies ever having spied on his wife, hacked her emails, installed tracking devices or changed passwords. He did not say that his first wife and family were coming to Ireland in November 2024.

[33] In relation to the events of 30 March and 5 April 2025, the father admits travelling to Northern Ireland on both these occasions but says these were with the mother's full knowledge and consent. He states that they shared a bed "as a married couple" and she sent him romantic messages thereafter. He denies any form of assault and claims that they spent the evening of 5 April together in bed discussing the children. The mother mentioned moving to Manchester or Edinburgh, an idea rejected by the father who stated that they ought to return to Ireland and co-parent the children together.

[34] The following day, on the father's account, the mother behaved perfectly normally until a police officer arrived at the door, asked questions and requested that the father leave the house.

[35] All the allegations of physical abuse or controlling behaviour in respect of the children are also denied. He states that the injury to AA's wrist was minor and caused by her moving her hand towards a dog in an awkward fashion, thereby sustaining a sprain. He wholly rejects the account of the incident given by the mother as a brazen lie. Indeed, the father is of the opinion that the fabrication of stories by the mother is indicative of mental health issues and gives rise to concerns around her capacity to look after the children.

The Official Solicitor's Report

[36] Ms Emma Liddy of the Official Solicitor's office met with the two eldest children, AA and AB, on 2 July 2025. AA recounted her father physically assaulting her mother which had caused her to be very scared. She was also able to recall breaking her arm when she was aged two or three having been denied food by her father and being pushed over. She was able to state that her father did not take her to hospital.

[37] When asked about how she felt at not having spoken to her father for a long period of time, AA said that it felt great because "he would find a way to gaslight me." She was unable to explain what that term meant.

[38] AA told Ms Liddy that her father was mean to her mother and caused her to cry so much she had to stay in bed. AB said that she never wished to see her father again.

[39] When asked about the respective places to live, each of the girls expressed a clear preference for Northern Ireland and objected to a return to Ireland. They regard it as their home, enjoy their school and have made friends.

[40] Having heard these and other remarks made by the daughters in relation to their parents, Ms Liddy expresses grave concern for their emotional and psychological wellbeing. The disclosures made to her in relation to the father:

“... raise serious safeguarding concerns...[they] include descriptions of physical and emotional mistreatment and incidents which, if substantiated, may amount to significant harm ... these children are emotionally vulnerable and carry a significant psychological burden in relation to the parental separation and conflict.”

[41] Ms Liddy concludes that the children have made it explicitly clear that they wish to remain in Northern Ireland, where they have found safety, structure and a sense of belonging. She urges the father to give very serious and sustained consideration to the children’s expressed wishes and feelings.

The Hague Convention

[42] Article 1 of the Convention sets out its twin aims:

- (i) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (ii) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

[43] As Lady Hale stated in *Re D (Abduction: Rights of Custody)* [2007] 1 AC 619:

“The whole object of the Convention is to secure the swift return of children wrongfully removed from their home country, not only so that they can return to the place which is properly their ‘home’, but also so that any dispute about where they should live in the future can be decided in the courts of their home country, according to the laws of their home country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed ...”

[44] By article 4, the Convention applies to any child who was habitually resident in a Contracting State immediately before the breach of any custody rights. It is not in dispute that it applies to the children AA, AB and AC. Article 12 mandates the return of any child wrongfully removed from a Contracting State.

[45] Article 13 of the Convention states:

“Notwithstanding the provisions of the preceding Article, 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 –

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; 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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

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."

[46] All three of the exceptions set out in article 13 are relied upon by the mother in this case, namely:

- (i) Acquiescence;
- (ii) Grave risk; and
- (iii) The children's objections.

[47] In each instance, the burden of proof is on the defendant to establish the exception to the civil standard of the balance of probabilities.

(i) *Acquiescence*

[48] In *H v H (Abduction: Acquiescence)* [1998] AC 2, the House of Lords identified the following principles applicable to the 'defence' of acquiescence:

"(1) For the purposes of article 13 of the Convention, the question whether the wronged parent has 'acquiesced' in the removal or retention of the child depends upon his actual state of mind. As Neill L.J. said in *In re S (Minors) (Abduction: Acquiescence)* [1994] 1 F.L.R. 819, 838:

‘the court is primarily concerned, not with the question of the other parent's perception of the applicant's conduct, but with the question whether the applicant acquiesced in fact.’;

(2) The subjective intention of the wronged parent is a question of fact for the trial judge to determine in all the circumstances of the case, the burden of proof being on the abducting parent.

(3) The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law.

(4) There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced.”

[49] Lord Browne-Wilkinson commented, in relation to the exception:

“Such clear and unequivocal conduct is not normally to be found in passing remarks or letters written by a parent who has recently suffered the trauma of the removal of his children.” (at 89H)

[50] In *P v P (Abduction: Acquiescence)* [1998] 1 FLR 630, Hale J considered an application for a return order made by a father, living in Cyprus, from where the mother had taken their child to England. Following their departure, and prior to issuing proceedings, the father had attempted to negotiate a settlement which involved the mother and child remaining in the UK but with the father enjoying extensive contact. When these failed, Hague Convention proceedings followed and the mother sought to resist a return order on the grounds of acquiescence.

[51] Hale J applied *Re H* and held that the negotiations did not amount to the clear and unequivocal conduct required to satisfy the article 13 test. The court was concerned to ensure that parties were not deterred from entering into sensible discussions by such a finding. She held that, in such cases, a concluded agreement would be required to establish clear and unequivocal conduct.

[52] The question in the instant case is whether a concluded agreement was arrived at between the parties following the issue of the Convention proceedings. The email of 26 December references a “complete agreement” arrived at between the parties as to residence and contact, as a result of which the father would be withdrawing his application to the court.

[53] In their affidavit evidence, each of the parties also alludes to the fact of an agreement having been reached. The mother states that she agreed to the plan whereby she and the children would remain in Northern Ireland and the father would be afforded contact. The father calls this an “initial agreement” but says that it was subject to conditions.

[54] The position paper filed by the father’s counsel is unequivocal in its terms that a consensus had been reached between the parties prior to 23 January 2025. However, the draft order sought to introduce a Prohibited Steps Order and notification requirements in respect of the airports and borders. The WhatsApp messages clearly demonstrate that the mother objected to these additional conditions.

[55] I have determined, on the evidence, that a concluded agreement was arrived at and is reflected in the email to the court on 26 December 2024. The attempts by the father to introduce additional conditions post-dated that agreement. This concluded agreement is, on the authorities, sufficient to establish the clear and unequivocal conduct required to demonstrate that the father is not asserting or going to assert his right to the summary return of the children. In such circumstances, justice requires that the father be held to have acquiesced.

(ii) Grave risk

[56] In *F and M (Hague Convention: Grave Risk)* [2024] NICA 38, the Lady Chief Justice adopted the statement of the law from the Supreme Court decision in *Re E (Abduction: Custody Appeal)* [2011] UKSC 27:

“... the risk to the child must be grave. It is not enough, as it is in other contexts such as asylum, that the risk be real. It must have reached such a level of seriousness as to be characterised as grave. Although grave characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus, a relatively low risk of death or really serious injury might properly be qualified as grave while a higher level of risk might be required for other less serious forms of harm.” (para [19])

[57] The court went on to explain:

“... a court must undertake a two-stage exercise. First, it must decide whether there is a grave risk of physical or psychological harm or otherwise intolerable situation on the facts; and secondly, whether protective measures in the country to which a child or children would be returned can offer adequate protection to the risk. In many cases a court when faced with this balancing exercise will have to consider evidence of allegations which are unproven between parties upon which to assess risk.” (para [20])

[58] As the LCJ recognised, a court tasked with determining the question of whether there is a grave risk of harm is placed in a difficult position. In many cases, as in this one, very serious allegations of abuse and violence are presented and met with outright denial. The court acts within the confines of a summary process, without the benefit of oral evidence and a detailed fact-finding exercise. The burden of proof remains on the party seeking to resist the return order.

[59] The father’s case is that all of the mother’s allegations are completely fabricated, presumably for the purpose of defeating his claim under the Convention and otherwise restricting his parental rights. He contends that there is no evidence to substantiate the mother’s allegations of abuse. It is pointed out that the mother had legal representation in both Malta and Ireland in relation to her asylum applications but did not make any case, at that stage, of being a victim of domestic violence or coercive control. Furthermore, in 2023, the mother did make a complaint to the police in relation to her phone being hacked but again did not allege any other form of criminal conduct on the part of her husband.

[60] However, the court must be cognisant of the well-established fact that not all domestic abuse is reported contemporaneously, if indeed it is reported at all. Victims of domestic violence are frequently too scared of the consequences for them and their children of making such complaints or are living under the control of abusive partners.

[61] In this case, the mother did make a complaint to the police about the father’s controlling behaviour in relation to tracking devices and the hacking of her phone. She also made a complaint to a charitable organisation the day after she says she was the victim of a serious sexual assault which led to the police becoming involved and she obtained an injunction in the civil courts.

[62] The evidence contained in the report of the Official Solicitor is of some significance. Recent guidance, including the LCJ’s Guidance for the Judiciary on Domestic Abuse published in June 2025, has stressed the impact of domestic abuse upon children in terms of physical and psychological harm. This is reflected in Ms Liddy’s report in which she expresses her grave concern and raises serious safeguarding issues.

[63] The father argues that the evidence of children as expressed to Ms Liddy echoes and repeats what the mother has said, not because the claims are true but because they have been coached or influenced by her. This does not accord with the views of the author of the report. I have no doubt that if Ms Liddy believed the children's evidence to be confabulated, she would have said so expressly.

[64] In light of the nature of the allegations, and the totality of the evidence, I have concluded that there is a grave risk of physical or psychological harm to the children if they are the subject of a return order. In the alternative analysis, a return to Ireland would create a situation which the children ought not be expected to tolerate.

[65] The court must therefore consider whether there are protective measures which can offer adequate protection to the risk which has been found.

[66] In the course of submissions, albeit not in sworn evidence, the father has put forward the following proposed undertakings as a package of protective measures:

- (i) The father would vacate his accommodation for a period of four months to permit the mother and children to reside there;
- (ii) In the alternative, he would attempt to source other rental accommodation for the family whilst he remains in his current property;
- (iii) He will pay the rent and provide financial assistance of €50 per week;
- (iv) He will pay the cost of travel from Northern Ireland;
- (v) He will commence proceedings in the Irish courts in relation to the issues of residence and contact;
- (vi) He will have no contact with the mother;
- (vii) He will contact TUSLA and ensure there is a social worker identified to provide assistance to the family.

[67] The court also recognises that Ireland has a developed system of family justice, social security and asylum.

[68] The mother has no confidence that the father will adhere to his proposed undertakings. She references the agreement previously reached between them in relation to residence and contact which, she asserts, was reneged upon by the father. She also points to the history of abuse and coercive control, such as accessing her phone and emails and installing tracking devices, as being indicative of an individual who will use covert means to continue to control her and the children. Furthermore, she stresses that the father has still not made himself amenable to interview by the PSNI in relation to the sexual assault allegation.

[69] The mother has a specific objection to the idea she would reside in the property where she was the victim of a serious sexual assault. The proposed alternative accommodation has not been identified nor has the court been made aware of how the father could fund two rental properties at the same time on a relatively modest salary.

[70] I have concluded, in all the circumstances, that the proposed protective measures do not offer adequate protection around the risks which are presented. In particular, the history given in evidence of coercive and covert conduct, and the controlling of the family by financial means, give rise to very real doubts as to whether the father would comply with the undertakings which he proposes to offer. No evidence has been given as to how he could afford to provide decent living accommodation to the family in light of the justified objection of the mother in returning to the former family home. I am also influenced in this conclusion by the very grave concerns expressed by Ms Liddy.

[71] During the course of the proceedings, evidence was presented and submissions made in relation to the asylum status of the mother and children. The position was, at best, inconclusive and I make no finding in this regard. The potential outcome of any asylum application in either jurisdiction has played no part in this decision.

(iii) *Children's objections*

[72] In *Re M (Republic of Ireland) (Child's Objections)* [2015] EWCA Civ 26 the Court of Appeal in England & Wales held that there are two stages to the inquiry in relation to the objections expressed by children, a gateway stage followed by the exercise of discretion. The gateway stage entails:

“a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his/her views.” (para 69)

[73] The child's views must amount to an objection, nothing short of that will suffice:

“... the child's views have to amount to objections before they can give rise to an article 13 exception ... Anything less than an objection will therefore not do. This idea has sometimes been expressed by contrasting 'objections' with 'preferences.' (para 38)

[74] The objections must be to returning to the country of habitual residence, as opposed to returning to a particular person or to particular circumstances in that

country, although it has been recognised that it can be difficult to draw this distinction, both for the child and the court.

[75] In relation to the discretion stage, Black LJ held (at para [63]) that the child's views are not determinative of the application, they are but one factor to be considered in the exercise of discretion. There is no requirement of exceptionality, and the court is entitled to take into account the various aspects of Convention policy which gave the court discretion in the first place, and wider consideration of the child's rights and welfare.

[76] In this case, I have reflected carefully on the report of the Official Solicitor. It is correct that the children express objection to returning to their father, but they also express clear and unequivocal objections to returning to Ireland. This is done by reference to their own lived experiences and how these have impacted upon their emotions.

[77] In evaluating the evidence emanating from the report, I have considered how this may have been influenced by the mother's clear antipathy towards the father. The children are relatively young and have undergone trauma. The use of vocabulary such as "gaslighting" does seem age inappropriate. However, Ms Liddy, an experienced officer of the court, regards the children's views as authentic and does not analyse these as being the product of undue maternal influence. I also recognise that, as a result of the delay which has occurred in these proceedings, the children have laid down strong roots in this jurisdiction which may have caused their opinions to be stronger than they would have been around the initial time of their removal. However, the court must only act on the available evidence in carrying out the evaluative exercise.

[78] In recent times, the courts have emphasised the importance of the voice of the child in Hague Convention proceedings, as in other cases involving the welfare of children. In *Re D*, Baroness Hale commented:

"But there is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right." (para [57])

[79] I have therefore determined that the children do object to the proposed return to Ireland and I have evaluated their evidence as being a genuine expression of their established position. I consider that, in relation to AA in particular, the children have attained an age and degree of maturity at which it is appropriate to take account of their views.

Discretion

[80] In light of these findings, it would be entirely inappropriate for the court to exercise its discretion to nonetheless order the return of the children to Ireland.

Conclusion

[81] For all these reasons, the exceptions in article 13 relied upon by the mother are established and the application for a return order is refused.