Neutral Citation No: [2025] NICA 55 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **KEE12890** *ICOS No:* **24/108019/A01** *Delivered:* **12/11/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM 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/Appellant

and

GL

Defendant/Respondent

(Hague Convention: Article 13 acquiescence, grave risk, child's objections)

Melanie Rice KC with Niamh Devlin (instructed by Bernard Campbell & Co, Solicitors) for the Appellant
Suzanne Simpson KC with Victoria Ross (instructed by Harte Coyle Collins) for the Respondent
Sinead O'Flaherty KC with Anna McHugh (instructed by the Official Solicitor) representing the interests of the children

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Before: Keegan LCJ, Colton LJ and McAlinden J

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

All of the parties in this judgment have been anonymised to protect the identity of the children to whom the proceedings relate. Nothing must be disclosed or published which would identify the children, the adults or the family in any way.

[1] This is an appeal against an order of Mr Justice Humphreys ("the judge") dated 18 September 2025, wherein he refused an application for a return order under the Child Abduction and Custody Act 1985 which enacted the Hague Convention on the Civil Aspects of International Child Abduction 1980, ("the Convention") into domestic law. The application is dated 5 December 2024.

Factual background

[2] The appellant is the father of the three subject children; the respondent is their mother. At the time of hearing, the children were aged nine, seven and five years of age. Both the appellant and the respondent are Sudanese nationals. They left Sudan some years ago and travelled to various countries before coming to the Republic of Ireland. The appellant has claimed asylum in the Republic of Ireland whilst the respondent has claimed asylum in Northern Ireland (United Kingdom) for herself and the children. We were told that the respondent is likely to be successful in her and the children's asylum application.

[3] The respondent admits having unlawfully taken the children to the United Kingdom in October 2024 from the Republic of Ireland. However, she resists the making of a return order based on the exceptions provided for by article 13 of the Convention namely the acquiescence of the appellant, grave risk of physical, psychological harm or otherwise intolerable situation on return and the objections of the two elder children. The respondent's case is that she and the children have been the victims of sustained domestic violence and coercive control perpetrated by the appellant and that the children do not want to return to the Republic of Ireland.

[4] At the lower court it was accepted on behalf of the respondent that at the relevant time, the appellant had been exercising custody rights, that he had not consented to children's move to Northern Ireland in October 2024 making this an unlawful removal and that the children's habitual residence at the relevant time was the Republic of Ireland.

The proceedings

[5] Proceedings for a return order were issued on 5 December 2024 by the appellant. This application was not heard until September 2025, nine months later, falling outside of the expectation that cases will be heard and determined within the six-week period referred to in article 11 of the Convention.

[6] At the hearing, the judge considered several inter-related and disputed issues and found that the respondent had made out three exceptions to return pursuant to article 13(1)(a) and article 13(b) of the Convention namely:

(i) The appellant acquiesced to the children remaining in Northern Ireland;

(ii) There was a grave risk of physical or psychological harm to the children if they were the subject of a return order and in the alternative analysis, a return to the Republic of Ireland would create a situation which the children ought not to be exposed to tolerate;

(iii) The protective measures offered by the appellant were not accepted as efficacious in terms of ameliorating any concerns arising;

(iv) The children objected to a proposed return to the Republic of Ireland.

[7] No dispute arose regarding the following legal requirements under the Convention:

(a) The children are under the age of 16 (article 4);

(b) The children were habitually resident in the Republic of Ireland immediately prior to removal (article 4);

(c) The appellant was exercising rights of custody (as defined by article 5) at the relevant time (article 3(b); and

(d) Less than one year had elapsed (article 12).

Grounds of appeal

[8] The appellant filed a Notice of Appeal dated 3 October 2025 which advances the case that the judge fell into error and was wrong in the following respects:

(a) In finding that an article 13(1)(a) exception had been established by the respondent (acquiescence).

(b) In finding that an article 13(1)(b) grave risk had been established by the respondent.

(c) In holding that the undertakings offered by the respondent as protective measures were insufficient in all the circumstances of the case.

(d) In holding that an objection to return by the children had been made out; and

(e) In refusing to order the return of the children under article 12.

[9] These are summary proceedings designed to establish the jurisdiction where child welfare issues will be heard. Cases usually proceed on submissions without oral evidence (although application can be made for oral evidence) as in this case. Therefore, unlike a welfare hearing, the court does not conduct a detailed fact-finding exercise. The burden of proof is on the party seeking to resist the return order. Furthermore, the standard of proof, as in any civil proceedings, is on the balance of probabilities.

[10] On appeal, the appellant must satisfy the Court of Appeal that the judge's decision was wrong. The establishment of just one of the exceptions to return is sufficient for the appellant's case to fail. At the conclusion of the oral hearing, we indicated to the parties that we were satisfied that acquiescence was made out which meant that the appeal would be dismissed. What follows is our reasons for reaching this outcome in relation to acquiescence. For the sake of completeness we also deal with the other two exceptions that were raised.

The evidence in this case

[11] We have considered the affidavit evidence which was before the judge. The appellant's evidence was as follows. He married the respondent 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 appellant left and moved to the Republic of Ireland in March 2022 and claimed asylum. This was successful and, having been granted refugee status, he was able to obtain full time employment. 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.

[12] In May 2023, the respondent took the children to Northern Ireland without the appellant's knowledge or consent. They secured accommodation and the older children enrolled in school, despite the appellant's objection. A number of months later the

respondent and children returned to the Republic of Ireland and the appellant was able to secure a family home. The children enrolled in new schools. In order to maintain her asylum allowance, the respondent and children split their time between the family home and asylum accommodation.

[13] On 24 October 2024, the respondent again removed the children to Northern Ireland. It is the respondent's case that she has been subjected to domestic violence and that the appellant has been controlling and abusive to the children. The respondent's evidence is that she was the plaintiff's second wife and that 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 appellant controlled the family by limiting finances and restricting access to food.

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

[15] The respondent's evidence also reveals that there were proceedings between the parties in Malta which resulted in a court order dated 6 May 2021. This prohibited the appellant from removing the children from her care or from that country. The respondent goes on to say that the couple had become estranged, but she agreed to travel with the children to the Republic of Ireland because she believed the appellant to be gravely ill, a claim which turned out to be false. On arrival she states that they were placed in accommodation in a church hall and a sports centre which she describes as "horrendous." Her daughters were subjected to sexual harassment and assault in this accommodation.

[16] In her affidavit the respondent maintains that the first trip to Northern Ireland was with the full knowledge and consent of the appellant. During this time, the respondent alleges that the appellant hacked her phone and spied on her online, a matter which she reported to the police.

[17] The respondent asserts that she returned to the Republic of Ireland in March 2024 following conversations with the appellant 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 appellant for about two months until, on the

respondent's evidence, he became abusive to her. She believes that the respondent had installed listening devices in the house and tracking apps on her phone. Also, that the appellant limited their food and insisted the children remained in their rooms. For these reasons, the respondent and children moved out into asylum accommodation and only returned to the home at weekends to use the cooking facilities.

[18] The respondent explains that she left to go to Northern Ireland in October 2024 when the appellant told her his first wife and two of their children were travelling to Ireland in November. It is claimed that the appellant sent an email from the respondent's account to the International Organisation for Migration in Dublin stating that she wished to return to her native Sudan. The respondent was able to secure accommodation and enrol the children in school. She cut off all contact with the appellant for a period, although she facilitated video contact with the children once she was served with these proceedings. We note that the appellant secured a seek and find order to locate the respondent's whereabouts in Northern Ireland.

[19] On 30 March 2025, the appellant arrived at the respondent's accommodation unannounced and discussed the ongoing court proceedings. On 4 April 2025 she phoned the appellant to indicate that she wanted a divorce. The appellant returned on 5 April 2025 around 21:00 hours. The respondent says that he subjected her to a brutal sexual assault, including an instance of non-fatal strangulation. The respondent was able to make a report to a charitable organisation, and the police were then contacted. They removed the appellant from the property.

[20] Following from this event the respondent has provided an ABE interview, and a criminal complaint is being pursued including an allegation of rape. We were told that the appellant is due to be interviewed in relation to these matters imminently.

[21] The respondent also sought and obtained an *ex parte* injunction on 11 April 2025 restraining the appellant from harassing, threatening or making any communication with her. No application has been made to discharge this order.

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

[23] The appellant's evidence disputes much of what the respondent says. He denies ever having subjected the respondent or children to any form of domestic abuse. He accuses the respondent 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. 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 that he continued to

send money to the family. The respondent states that upon their arrival in the Republic of Ireland, the couple did not live together due to a lack of suitable accommodation but, nonetheless, their lives were comfortable, and all financial needs were met. On the appellant's case the complaints made by the respondent are false.

[24] Following the first stay in Northern Ireland, the appellant 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.

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

[26] The following day, on the appellant's account, the respondent behaved perfectly normally until a police officer arrived at the door, asked questions and requested that the appellant leave the house. All the allegations of physical abuse or controlling behaviour in respect of the children are also denied. He states that the injury to the eldest child'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 respondent as a brazen lie. The appellant is also of the opinion that the fabrication of stories by the respondent is indicative of mental health problems on behalf of the respondent.

Further evidence

[27] By agreement we also received two updated affidavits (one from each party) on the question of acquiescence. This was because the appellant's skeleton argument for this appeal suggested at para 22, that the 26 December 2024 as the email sent to the court office was signed by the respondent and not him, the "the contents of this document are not accepted by the appellant."

[28] The email of 26 December 2024 reads 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 respondent, 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."

[29] Following this email, the appellant's legal representatives filed a position paper, signed by counsel and dated 23 January 2025. This was in advance of the hearing of the case on 30 January 2025. Para [3] of the position paper unequivocally states that: "The parties have reached consensus regarding all matters relating to their children …"

[30] Appended to the position paper was a draft order in the following terms:

> "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."

[31] It might be thought that this would be the end of the matter. However, the case was adjourned on 30 January 2025 by agreement given a dispute which arose between the parties as to the ancillary terms of the draft order principally as to passports and port alerts.

[32] It was only by email correspondence of 17 April 2025, from the appellant's solicitor that the appellant indicated any more substantial change in position as follows:

> "We refer to the above matter and write to confirm that our client's position has changed and he is seeking the return of the children to Ireland. Our client is extremely concerned that he has not been able to have any form of contact with his children since the 6th April 2025. Furthermore, he has significant concerns regarding the welfare of the children as the wife is spending a significant number of hours each day livestreaming on TikTok. Our client has spoken to the wife's family and has shared his concerns regarding same.
>
> We require urgent confirmation from your client that contact will be resumed as the children and the father have a close

> bond and it is not in the best interests of these children that contact has been stopped so abruptly by your client."

[33] Notwithstanding this change of position, the appellant did little to pursue a summary return given that the case was adjourned on numerous other occasions until it was finally heard in September 2025.

[34] The respondent's updated affidavit for this appeal clarified the position and introduced a WhatsApp message of 27 December 2024 as follows:

> "I confirm that the appellant sent a WhatsApp message to me in English on 26 December 2024 at 9:53pm. In that message he set out the content of an email that I subsequently sent to the court office. The appellant then sent me a voicemail at 9:57pm on the 26 December 2024 giving explicit instructions about how I was to cut and paste the WhatsApp message into an email for the court. I attach screenshots of the WhatsApp message on my phone taken by my solicitor, Ms Collins of Harte Coyle Collins, on the 4th of November 2025 and a translation by the Language Room of both the messages and the voicemail, prepared on 5th November 2025 marked with my initials '[XX1].'
>
> Subsequent to this, I did as the appellant instructed and sent an email to Claire Clements at the court office at 10:06pm on the 26th of December 2024. I attach a copy of this email that I forwarded to my solicitor on the 4th of November 2025 marked with my initials [XX]2. The date and time of that email are in Arabic at the top of the email. The appellant sent me a message at 10:05pm asking if I had sent it and I replied, "yes I did."
>
> On 27 December 2024, the appellant sent me a screenshot of a document which looks like an email to the court with my electronic signature at the bottom. The appellant has my electronic signature on his phone. I believe that this screenshot is contained in the trial bundle at page 384.
>
> He told me to keep it and show it to my solicitor. I attach a copy of the screenshot sent to me by the appellant on 27 December 2024, taken by my solicitor at court on 5 November 2025, marked with my initials '[XX]3.'"

[35] The appellant replied as follows:

> "I confirm there was communication between myself and GL via telephone call and WhatsApp messaging on 26 December 2024. We discussed several different topics, some relating to the children and others to personal matters.
>
> On 26 December, the defendant telephoned me and told me, in Arabic, what she wanted to send in an email to the court and asked me for my help. My input at that time was of a linguistic and technical nature, provided at the defendant's request, and did not constitute instructions to me. I drafted that and sent it to her via WhatsApp.
>
> She told me that she would send it to the court and asked me for help how to send it and I sent her a voice note with instructions how to do that. I did not believe she was going to send it to the court straightaway as there were still matters we had to discuss and agree on – not to move the children away without my consent etc. She called me for a second time and said she was going to send it to the court. Over the phone I told her I did not agree with it. I followed this up with a message – did you send it?
>
> The screenshots exhibited to her affidavit were, I recall, followed by two deleted messages from her, which were part of further discussion; if available, they may clarify the position as outlined above.
>
> I confirm the electronic signature is on the defendant's phone, and I do not have her electronic signature on my phone. I cannot recall if I sent that email to her on 27 December."

[36] Further messages were translated and provided to the court after the hearing which were not included in the bundle and which we allowed the appellant to comment on. We have considered all of this evidence in reaching our conclusions.

Overarching legal principles

[37] The Hague Convention was adopted into our domestic legislation by the Child Abduction and Custody Act 1985. This was to accord proper recognition to the principle that a child's interests must be protected in international disputes between estranged

parents. In particular, the purpose of the Convention is to protect children "from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence as well as to secure protection for rights of access." The Convention is a forum treaty and provides for summary return to the courts of the habitual residence of the child.

[38] In *Re E (Children Abduction: Custody Appeal)* [2011] UKSC 27, the Supreme Court reiterated the fact that whilst the best interests of the child or children concerned is a primary consideration this does not mean that the welfare of the child or children must be propelled to a level where it becomes the court's paramount consideration in Hague Convention proceedings. The court stressed the point that these are summary proceedings. The policy of dealing with cases with expedition is reflected in the fact that the court hearing a Hague Convention case does not conduct a welfare hearing.

[39] Article 3 of the Convention provides:

> "The removal or the retention of a child is to be considered wrongful where –
>
> (a) It is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
>
> (b) At the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

[40] Article 12 of the Convention provides the mechanism for return. It reads as follows:

> "Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or

retention, the authority concerned shall order the return of the child forthwith."

[41] The Court has a discretion not to make a return order if the defendant is successful in establishing one of the article 13 exceptions to summary return. Article 13(1) reads as follows:

> "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."

Consideration of the grounds of appeal

(i) Acquiescence

[42] The leading authority on acquiescence remains the House of Lords decision in *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 172. The relevant legal principles can be summarised as:

(i) Acquiescence depends upon the plaintiff's actual state of mind. The court is not concerned with the question of the defendant's perception of the plaintiff's conduct but with the question of whether the plaintiff acquiesced in fact.

(ii) The subjective intention of the plaintiff is a question of fact for the judge to determine in all the circumstances of the case, but the burden of proof remains with the defendant.

(iii) In reaching a decision on the question of fact, the judge will be more inclined to attach more weight to contemporaneous words and actions of the plaintiff than to his bare assertions in evidence of his intentions, but that is a question of the weight to be attached to the evidence and is not a question of law.

(iv) The only exception is where the words/actions of the plaintiff clearly and unequivocally show and have led to the defendant believing that the plaintiff is not asserting or going to assert his right to the summary return of the children and are inconsistent with such return. In such circumstances, justice requires that the plaintiff be held to have acquiesced.

[43] As per *Re A (Minors)(Abduction: Custody Rights)* [1992] Fam 106, acquiescence is not a continuing state of mind and acceptance, once made known to the other party, it cannot be withdrawn. The appellant relies on the case *P v P (Abduction: Acquiescence)* [1998] 1 FLR 630, in support of his contention that the respondent cannot establish acquiescence to the requisite standard. In this regard it is useful to remind ourselves of the facts of *P v P*.

[44] In *P v P*, a proposal for settlement was sent to the respondent by the appellant titled "without prejudice" and it put forward a proposal along the lines that it was agreed by the parties that the respondent would have custody of D for the next two years and, thereafter, as it may be agreed at a later stage between the two parties, provided that in the meantime the appellant and/or his family would be entitled to have phone access to or direct access when he is over in England or whenever the baby may be with the respondent. The respondent contended that during a telephone call, the appellant asked her to send the document back signed, and, if she wanted to add anything more to it he would agree. The respondent stated that she asked for the appellant's lawyer's contact details, however, the appellant refused to give the same over. The appellant's case was that there was a conversation in which he declined to give the respondent the name of his lawyers because they were in the course of issuing proceedings on his behalf, but he did not deny such a conversation took place between him and the respondent. The respondent argued that the 'without prejudice' communication which was not only presented in great detail but persisted in for some time after the respondent had moved to the UK, was evidence that the judge should take into account in deciding what the

appellant really wanted or was sufficient to fall within the exception category in *Re H*. The question for Hale J was whether this evidence was sufficient to amount to acquiescence.

[45] The judge deals with acquiescence at paras [48]– [55] of the judgment. At para [52] and [55] of the judgment, he identifies what he has considered as the key evidence regarding acquiescence, namely:

(i) an email from the respondent dated 26 December 2024 to the court office,

(ii) a position paper filed on behalf of the appellant dated 23 January 2025; and

(iii) a draft order.

We have recited the contents of these sources above.

[46] The appellant contends that the judge misdirected himself as to what constituted acquiescence when he determined that a concluded agreement was arrived at reflected in the email to the court on 26 December 2024, and in doing so, the judge misapplied the legal principles emanating from *Re H (Minors) (Abduction: Acquiescence*) and *P v P*. Ms Rice therefore submitted that acquiescence cannot be held to have been made out to the civil standard of proof as there was no concluded agreement arrived at by the parties. In reply, Ms Simpson submitted that on the facts of this case a concluded agreement was reached.

[47] *P v P* is a relevant authority. In that case the parties were still at a negotiating stage regarding a potential agreement. Thus, the respondent maintains that *P v P* is distinguishable from the facts of this case given that the parties in this case reached a clear agreement in December 2024 which was communicated to the court office.

[48] We have considered the competing arguments. Having done so, we are entirely satisfied that the judge was right to make his factual finding that acquiescence was established in this case. This court has not seen such a clear example of an agreement with an accompanying draft order in any other case that has come before it on this point. The appellant's claim that he did not agree to allow the children to remain in Northern Ireland is unconvincing for obvious reasons. We are entirely satisfied that he engaged with the respondent on reaching this agreement. He provided her with the court's email. There was minor disagreement on ancillary matters which did not invalidate the agreement to remain in Northern Ireland. Thereafter, the appellant only changed position in April 2025 after the alleged sexual assault. Even then he did not act swiftly to try to achieve return given the court adjournments that were agreed. Finally, we note that he did not issue any proceedings in the Republic of Ireland and still has not

done so. In addition, we have the respondent's updated affidavit enclosing a screenshot of the email which bolsters her case that the appellant was well aware of the agreement to allow the children to stay in Northern Ireland. Taken together these factors ground a strong instance of acquiescence.

[49] Thus, for all of the reasons provided above, this aspect of the appeal fails. Notwithstanding the valid concerns that have been raised by Ms Simpson we are not minded to engage in a further forensic exercise to determine whether the appellant hid some WhatsApp messages from the court that did not suit him. Suffice to say we uphold the judge's ruling that a return order should be refused on the basis of acquiescence.

(ii) Grave risk

[50] The judge deals with the grave risk exception at paras [56]–[71] of his judgment. The law was agreed and so may be briefly stated. In *Re E (Abduction: Custody Appeal)* [2011] UKSC 27 and adopted in *F and M (Hague Convention: Grave Risk)* [2024] NICA 38, for the article 13(b) exception to be established, the risk to the child must be grave. The case of *ZA and BY* [2020] NIFam 9, also highlighted the fact that the article 13(b) exception requires a high level of proof and that the burden lies on the person opposing return to substantiate the defence.

[51] The judge was well aware of the legal principles summarised above. He reminded himself that "… the risk to the child must be grave… 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)

[52] In addition, the judge was aware as para [20] of the judgment makes plain, that in determining this question, the 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])

[53] The judge was faced with a conflict in evidence which is not unusual in cases of this nature. The respondent's case is that there is a grave risk of the children being exposed to physical or emotional harm on their return. The appellant's case is that the respondent's allegations are entirely fabricated, presumably for the purpose of defeating his claim under the Convention and otherwise restricting his parental rights.

[54] Ms Rice makes several points in relation to this aspect of the appeal. She contended that the judge erred in law by creating a lower threshold for establishing this defence than that set out in *Re E* and adopted in this jurisdiction in *F and M*. Also, that there is limited objective evidence to substantiate the respondent's allegations of abuse. It was also argued that the respondent had legal representation in both Malta and the Republic of Ireland in relation to her asylum applications but did not make any explicit case of being a victim of domestic violence or coercive control. Furthermore, the argument was advanced that in 2023, the respondent made a complaint to the police in relation to her phone being hacked but did not allege any other form of criminal conduct on the part of her husband. Therefore, Ms Rice said that undue weight was placed upon the respondent's allegations which were not objectively substantiated. One other criticism raised in relation to this aspect of the judge's ruling is that the judge was unduly influenced by the concerns raised by Ms Liddy's report.

[55] In assessing these arguments we acknowledge the high threshold required to establish the article 13(1)(b) exception. The appellate court must apply restraint when adjudicating upon the factual findings of a first instance judge albeit on affidavit evidence. The question is whether the judge was wrong to find the article 13(1)(b) defence was made out. We find as follows.

[56] Although the appellant's case centres heavily on the unsubstantiated nature of the allegations, there is some independent support for her assertions in the form of the complaints made to the police in 2023 in Malta and in 2025 in Northern Ireland. Thus, while other cases may have more evidence there is sufficient evidence to corroborate the respondent's case and no evidence which undermines her credibility.

[57] We are satisfied that on an overall view of all of the evidence and applying the applicable legal test, the risk of harm to the children, if the allegations are true, is high. That is because the allegations made by the respondent are serious and multilayered involving alleged physical violence against her and the children and sexual violence including rape against her and a range of controlling behaviours. We accept some vulnerabilities on the part of the respondent save that we think that her command of English is greater than made out. Also, notwithstanding the appellant's denial of the allegations the judge was right to make his factual finding that grave risk of physical, psychological harm or otherwise intolerable situation could be established based on the

respondent's account. Para [30] of the respondent's affidavit of 11 June 2025 summarises her position in stark terms as follows:

> "I am in fear of the plaintiff and the children are also in fear of him. I feel that he has played a game with our lives, picking us up and tossing us aside when he no longer wants us all the while treating us with cruelty and contempt. He abandoned the children and me in Malta, he left us to fend for ourselves and to live in dreadful conditions when we arrived in Dublin. He agreed to our move to NI and then I believe tricked or manipulated me into leaving Derry and returning to Ireland at a time when the children had established habitual residence in NI. I do not know what the plaintiff really wants as his stance has shifted significantly during these proceedings. I think he feels he is losing control of me and the children and that is why he is now finally seeking a return order after having agreed to us remaining here in NI."

[58] In addition, the children themselves referred to concerning aspects of home life to the Official Solicitor of 8 July 2005. Ms Rice accepted that the judge could take this into account and weigh it in the balance. Specifically, the children recounted abuse directed against them such as - "he flung her across the wall," and "he pushed me, and I broke my arm. He didn't take me to hospital." The children also recounted abuse against their mother. The interview with the children led the Official Solicitor to state at para [15] of her report that:

> "I am compelled to express grave concern for the subject children ... and that 'their recent disclosures paint a deeply disturbing picture of their lived experience' and 'may amount to significant harm.'"

[59] This is strong language from an experienced professional which cannot be ignored. The Official Solicitor also concludes her report at para [16] in what we consider is a balanced way by stating that "while this is not the forum to determine the veracity of each and every allegation, the consistency, clarity and emotional intensity with which the children spoke must be taken seriously."

[60] Allied to the respondent's own accounts of abuse, the Official Solicitor's report satisfies us that the grave risk exception can be established in this case on the balance of probabilities. The Official Solicitor's assessment chimes with our court's appreciation that the effects of domestic violence on children must be taken seriously and properly assessed. Finally, we mention the new evidence which is the WhatsApp messages which

were not in the trial bundle which while disputed by the appellant appear to validate the respondent's case that she complained to the appellant about abuse ending with a message to the appellant on 14 March 2025 as follows:

> "Whether it is sorcery, deliberate or contrived, you got into something bad and there is no getting out. At this point, if the relationship stops, and people focus on the children and keep what remains of respect, that would be better than continuing with something harmful. The next stage will be a higher level of harm, one will hurt the other, and it will end in disaster or prison."

[61] However, this is not the end of the matter, as in deciding whether to refuse return based on grave risk, a judge must consider the efficacy of protective measures which are available to guard against the risk posed to the children if they are returned. This obligation arises post EU withdrawal under the auspices of the Convention itself as opposed to the Brussels II regime which previously applied.

[62] Protective measures are not defined in the Convention. However, the recently published protective measures factsheet for England & Wales is helpful in this regard and we recommend it to practitioners. It refers to the fact that where the grave risk exception set out in article 13(1)(b) of the Convention is relied on in opposing a return, the guide to good practice on article 13(1)(b) published by the International Network of Hague Judges suggests that the court should undertake a step-by-step analysis to decide whether adequate measures of protection are available or might need to be put in place to protect the child from a grave risk of harm or intolerable situation when evaluating whether the grave risk exception has been established. *Hershman & McFarlane: The Children Act in Practice, Volume 2* at G242 also refers.

[63] The principle in play which applies equally in Northern Ireland was expressed in G *v D* [2020] EWGC 1476 (Fam), thus:

> "it is well established that courts should accept that, unless the contrary is provided, the administrative, judicial and social service authorities of the requesting State are equally adept in protecting children as they are in the requested State …' (para 39).

[64] This principle is acknowledged by the judge in para [67] of his judgment where he states that the Republic of Ireland has a 'developed system of family justice, social security and asylum.' More could clearly have been said as to what is available in the Republic of Ireland not just by way of "soft landing" arrangements on return but in terms

of actual protection for the children through civil and criminal remedies and state support. This is a gap in the judge's analysis. That said, we can see that the judge's focus was upon the undertakings that were offered by the appellant and so to those we turn.

[65] The appellant put forward the following proposed undertakings as part of a package of protective measures:

(i) The appellant would vacate his accommodation for a period of four months to permit the respondent 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 respondent; and

(vii) He will contact TUSLA and ensure there is a social worker identified to provide assistance to the family.

[66] The domestic abuse context is critical here. In *ZA and BY* [2020] NIFam 9, the court stressed that in cases where domestic violence features heavily, there is not only a need to trust that the appellant will commit to undertakings, as has traditionally been the approach in Hague Convention cases, but for those measures to be implemented prior to return (para 30).

[67] With the best wind it may be concluded that the appellant's proposed undertakings would, if complied with, be effective in mitigating against the risk of grave harm. The evidence was that the appellant had not breached any protective orders made against him. However, the respondent points to the appellant's history of abuse and coercive control, all of which it is suggested is indicative of his capacity to control her and the children. Moreover, the point is made that the potential for non-compliance is strengthened by the appellant's pattern of behaviour including his resiling from the agreement reached on residence and contact. Collectively these matters, it is said, raise a valid concern that the appellant will not honour his proposed undertakings.

[68] We consider that the arguments are finely balanced thus far. However, in truth, the accommodation issue was central to any effective package given how the children had suffered in previous asylum accommodation. The appellant's potential to secure appropriate accommodation was complicated by how he could fund two rental properties at the same time on a relatively modest salary. This was also the case in *Re L* [2023] EWHC 140, where the appellant ultimately failed to honour his undertaking to secure suitable accommodation for the respondent and child. In doing so, the court concluded in that case that the appellant failed 'to demonstrate an ability to deliver the essential features of the protective measures which he himself proposed.' (para 15).

[69] As the court stated in *G and T* [2023] EWCA Civ 1415, the Convention 'should not itself become an instrument of harm.' (para 76). Relying upon *Re D* [2006] UKHL 51, the court stated that "if effective protective measures are not in place at the point of return in a case where otherwise a grave risk exists, it is reasonable to infer that harm to the child may well follow." (para 76).

[70] Ultimately, there is no evidence that the appellant had taken steps to implement any of the proposed protective measures. However, there was also no judicial liaison or firming up of protective measures available in the Republic of Ireland or in relation to undertakings. As a matter of good practice, it would have been advisable to obtain further evidence of the specific protective measures in the Republic of Ireland and to allow the undertakings to be strengthened before finalising the case. We cannot say that the judge was wrong to place emphasis on the key question of accommodation. However, given what we have said above, his overall conclusion was precipitous. There is a missing link in the analysis in relation to protective measures and undertakings which technically means that the 13(1)(b) exception was not fully established.

[71] In reality, our conclusion makes no real difference to the outcome of this case given the fact that the foundational evidence was sufficient to satisfy the threshold for grave risk and given the fact that acquiescence was rightly found on the facts.

[72] Finally, dealing with Ms Rice's concern, we point out that even when grave risk of physical, psychological harm or otherwise intolerable situation is made out, this does not prevent a person in the position of the appellant from contesting specific allegations made against him at a welfare hearing which has the benefit of oral evidence and social services input and which can definitely establish facts.

(iii) The children's objections

[73] Article 13 provides that a return order may be refused if it is found that a 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. Paras [72]–[75] of the judgment set out the legal principles which apply. There is no criticism of the judge's legal analysis on this issue.

[74] To summarise the law, it is well established that there are three limbs to the child objections defence. It is necessary to show:

(a) The child objects to being returned; and

(b) The child has attained an age and degree of maturity at which it is appropriate to take account of his or her views,

If these two limbs are established:

(c) The court then has discretion about whether to order a summary return.

[75] The law in relation to child's objections was developed in the seminal case of *Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26 which was endorsed by the Court of Appeal in *Re F (Child's Objections)* [2015] EWCA Civ 1022. This was helpfully summarised in *Re Q and V (1980 Hague Convention and Inherent Jurisdiction Summary Return)* [2019] EWHC 490 (Fam) as follows [at para 50]:

> "(i) The gateway stage should be confined to 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 or her views.
>
> (ii) Whether a child objects is a question of fact. The child's views have to amount to an objection before *Article 13* will be satisfied. An objection in this context is to be contrasted with a preference or wish.
>
> (iii) The objections of the child are not determinative of the outcome but rather give rise to a discretion. Once that discretion arises, the discretion is at large. The child's views are one factor to take into account at the discretion stage.

(iv) There is a relatively low threshold requirement in relation to the objections defence, the obligation on the court is to 'take account' of the child's views, nothing more.

(v) At the discretion stage there is no exhaustive list of factors to be considered. The court should have regard to welfare considerations, in so far as it is possible to take a view about them on the limited evidence available. The court must give weight to Convention considerations and at all times bear in mind that the 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.

(vi) 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 the child's own or the product of the influence of the abducting parent, the extent to which they coincide or at odds with other considerations which are relevant to the child's welfare, as well as the general Convention considerations (*Re M* [2007] 1 AC 619)."

[76] In *Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal)* the court provided some illustrative examples of situations in which the gateway threshold of a child's objections might not be established as follows:

- Where it is apparent that the child is merely parroting the views of a parent and does not personally object at all.

- Where the objection is not an objection to the right thing.

- Where the asserted objection is not an objection at all, but rather a wish or a preference.

[77] The judge set out the need for the child's objection to be focused on a return to the country rather than to a particular person/circumstance. He noted the discretion stage as well as the importance of the voice of the child but also the need to consider their age and degree of maturity in terms of weight to be attached to their views.

[78] It is submitted, by the appellant, that the judge erred in fact when he determined that the children expressed "a clear and unequivocal objection to returning to Ireland." This argument is advanced on the basis that at paras [10] and [12] of Ms Liddy's report the objection is not focusing on the country but who they were living with at the time "we lived with our respondent; it was great as we didn't have the appellant there." It is also submitted that there is no actual objection to a return to the Republic of Ireland but rather a preference to remain in Northern Ireland, which would, therefore, not establish this exception to the civil standard.

[79] The appellant relied on the fact one child's response to why she would not like to return to the Republic of Ireland is based on the respondent deserving better as well as on Ms Liddy's report when finding no actual objection to a return to the Republic of Ireland but rather a preference to remain in Northern Ireland. The point was raised that Ms Liddy's report does not state that the children's views are authentic. The appellant relied on this to bolster his argument that this defence has not been made out and that the judge misdirected himself when he found the children's objections to be authentic without proper analysis as to whether those views are the product of undue maternal influence.

[80] In reply the respondent submitted that the judge correctly addressed the applicable legal framework. Furthermore, the respondent argued thar the judge was entitled to rely on the report provided by the Official Solicitor. The Official Solicitor conducted neutral interviews with the two eldest children. The Official Solicitor's report was not in any way determinative of factual findings and did not advance the case of either parent. As such, the Official Solicitor fulfilled their duties with propriety.

[81] We have considered the competing arguments. We do so, mindful that recent authority has warned against an overly technical approach to this issue. We are also adjudicating at a time where the wishes and feelings of children have become more prominent a consideration across the family law jurisdiction and when the complexion of abduction cases has changed in that it is usually primary care givers who are the defendants. *Hershman & McFarlane: The Children Law & Practice* refers at Volume 2 G244to the fact that the Hague jurisprudence has moved on from the time when the Convention was first drafted when it was envisaged that the child's objections defence would be applied extremely restrictively "as an escape route for mature adolescents just under the age of 16." It also goes without saying that the child's objections must be viewed in the context of a particular case.

[82] The first question is whether the judge was right to find a valid objection. The judge conducted a factual analysis in which the Official Solicitor's report features strongly. At para [10] of the Official Solicitor's report, the children are asked about living

in Dublin, Dundalk and Derry and to provide a score out of 10 regarding each place. When considering Dublin, AB said "0 out of 10, negative, 100 for Dublin!" AA said, "Dundalk was equally bad." Both girls then go on to particularise their reasons for preferring Belfast to include "Belfast is our home, there are lots of stores near our house, my school is very nice with nice teachers, nice friends and a nice Principal … we enjoy staying here, I don't like how other places in the UK look, I really like it here." Therefore, in our view the judge has made a reasonable assessment when finding an objection made out. both children objected to returning to the Republic of Ireland which surpasses the parameters of a preference, amounting to an objection.

[83] There is no evidence to suggest coaching. We understand that the reference to "gaslighting" raises a concern as this is adult language. However, read in the round this word does not negativise the children's overall account of where they want to be. It is correct that the children refer to what they say happened to the respondent, but this is understandable given that they will have witnessed the appellant's abusive behaviour towards her and her resulting unhappiness. Similarly, a tenable view is that such references do not amount to undue maternal influence but underscore the genuineness of the children's experiential assessment provided in response to the Official Solicitor's questioning.

[84] Having found a sincere, factual objection made by the children in relation to the prospect of a return to the Republic of Ireland, the assessment turns to focus on the second limb: the children's age and maturity. The eldest child was nine years and eight months old. The other child was seven years and five months old at the date of interview. At para [3] of her report, the Official Solicitor noted that the children were "extremely well presented" and were "happy and relaxed and were content to come with (her)." In the subsequent paragraph, it is noted that the "girls were inquisitive and they confidently, but politely, asked some questions about the court process."

[85] Plainly these children engaged with the Official Solicitor's questions and displayed understanding and insight into their circumstances. They were able to provide clear views on why they found the Republic of Ireland intolerable, objecting to their return, and why they wanted to remain in Northern Ireland.

[86] We take the point that these children are at the lower end of the range where wishes were traditionally relied upon. However, there are now no bright lines in this area. Given that the children, especially the elder child could recount their experiences and objection genuinely the judge was adequately equipped to take account of the views of the children in exercising his discretion. The court's exercise of discretion in relation to return will also be guided by its factual findings on the acquiescence exception and as to the grave risk of harm. If child's objections had been the only exception raised the outcome may have been different. However, viewed in the round we can see the logic of

the judge's analysis. Thus, we conclude that the judge has not fallen into error in relying on the children's objections as part of his consideration in the exercise of discretion.

Conclusion

[87] Applying the appellate test, whilst we may have approached some aspects of the analysis differently, we cannot say that the judge was wrong to refuse a return order. In particular, we consider that acquiescence was a strong defence in this case. Therefore, for the reasons we have given, the appeal will be dismissed.

[88] Given the delay occasioned we also take this opportunity to remind practitioners that Hague Convention proceedings are summary proceedings which should be dealt with expeditiously as articles 2 and 11 of the Convention require.

[89] Finally, the welfare aspect of this case, which will now be conducted in Northern Ireland, should be progressed immediately. To that end, we have directed position papers and ask the parties to issue an appropriate application forthwith in order to achieve some much-needed certainty for this family.