

Neutral Citation No: [2026] NIFam 1	Ref: HUM12938
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	Delivered: 09/01/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Between:

HT

Plaintiff

and

AT

Defendant

(Hague Convention: Article 13 - grave risk, children's objections)

**Suzanne Simpson KC & Bláithin Cleland (instructed by The Elliott Trainor Partnership)
for the Plaintiff**

**Louise Murphy KC & Jessica McCaffrey (instructed by Fisher & Fisher) for the Defendant
Sinéad O'Flaherty KC & Gráinne Brady (instructed by the Official Solicitor) representing
the interests of the children**

HUMPHREYS J

Introduction

This judgment has been anonymised as it involves children. The ciphers given to the parents and the child 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 JT, aged 12, MT, aged 8, and BT, aged 7. He seeks a return 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 who took the subject children from Portugal to the United Kingdom on 15 July 2025 for a holiday but by 27 July 2025 had evinced an intention not to return. She resists the making of a return order on the basis of the exceptional defences provided for by article 13 of the Convention.

[3] The plaintiff and the defendant began a relationship in 2007 and had a son, CT, who is not the subject of this application, in 2009. In 2013 they moved from Northern Ireland to Portugal and have lived there since, save for a year in 2016 when they returned to Northern Ireland. They married that year but separated in 2019 and divorced in 2022. The plaintiff commenced a new relationship and had a child with this partner in 2024. Since the date of separation, the plaintiff has remained in the matrimonial home and the defendant lived in rental accommodation a short distance away.

[4] The following facts are not in dispute:

- (i) The subject children have been retained in Northern Ireland since the 27 July 2025;
- (ii) They are all aged under 16 years;
- (iii) They were habitually resident in Portugal immediately before their retention in Northern Ireland;
- (iv) The plaintiff has rights of custody in respect of the children which were being exercised jointly with the defendant immediately prior to the children remaining in the jurisdiction of Northern Ireland; and
- (v) A period of less than one year has elapsed since the wrongful retention of the children in Northern Ireland.

Delay

[5] There is an express obligation imposed by article 11 of the Convention on judicial and administrative authorities to act expeditiously in proceedings for the return of children. Such proceedings ought to be concluded within six weeks of the date of issue.

[6] In this case, the plaintiff acted swiftly in reporting the wrongful retention of the children in Northern Ireland to the Central Authority in Portugal on 28 July 2025. Papers were forward to Northern Irish solicitors on 27 August 2025 and the instant proceedings were issued on 9 September 2025.

[7] A first directions hearing was fixed for 26 September 2025 but adjourned and relisted for 1 October 2025, at which stage the proceedings had not been served since

the plaintiff was unaware of the whereabouts of the defendant and the children. The assistance was directed from the Education Authority since the children had been enrolled in schools in Northern Ireland and an address for service was obtained by this means. This was provided on 17 October 2025.

[8] Ultimately service was effected on 21 October 2025 and at a hearing on the following day, directions were given through to a hearing of 16 December 2025. It was necessary to list the issue of interim contact for hearing on 10 November 2025 albeit the parties were able to agree defined contact for the plaintiff on certain dates in November.

[9] Regrettably, the hearing scheduled for 16 December 2025 could not proceed due to the introduction of late evidence. Further affidavits were filed by the defendant on 16 and 19 December 2025, and a response from the plaintiff on 22 December 2025. The hearing reconvened on 5 and 6 January 2026, with judgment being handed down on 9 January 2026.

The divorce proceedings

[10] The parties have been involved in litigation before the courts in Portugal. I had the benefit of certified translation of various statements, minutes, directions and orders issued by these courts.

[11] In the divorce proceedings, the parties entered into an agreement regarding the exercise of parental responsibilities on the 24 March 2022, which became final on the granting of the divorce on the 5 September 2022. It provided that:

- (i) Custody was to be shared between both parents, with the children residing one week with their mother and one week with their father alternately, in Portugal, at each parent's residence;
- (ii) Parental responsibility for matters of particular importance in the children's lives was to be exercised jointly;
- (iii) The father was to be responsible for the children's education;
- (iv) The children were to spend half of their school holidays with each parent and alternate Christmas and Easter holidays;
- (v) Neither parent was permitted to change their residence to a location more than 50 km from the current area of residence without the consent of the other parent;
- (vi) The children could travel abroad in the company of either parent, provided that the parent obtained the respective written and recognised travel authorisation from the other parent, and if authorised, they must inform the other parent of

the date of departure, return, expected length of stay, place of residence, and contact details of the children;

- (vii) The father would pay €1,900.00 per month in child support.

The May 2024 proceedings

[12] On 6 May 2024, the defendant made an application to the Portuguese court seeking alteration of the exercise of parental responsibility on the basis that:

- (i) The change in the plaintiff's employment arrangements meant that the days he was available to care for the children were reduced to Friday, Saturday and Sunday;
- (ii) The children had described to her a series of events which were affecting their emotional and psychological stability, and which had been reported by her to the Commission for the Protection of Children and Young Persons ('CPCJ');
- (iii) The plaintiff's property was in the course of refurbishment and was therefore unsuitable for the children.

[13] On these grounds, the defendant sought an order awarding exclusive parental responsibility to her, which was accompanied by a request that the court hear the evidence of her and the children out of the presence of the father, and for psychological assessment of the children and the parents.

[14] This application also stated that the CPCJ investigation had been closed on 19 March 2024 as it had been referred to the Public Prosecutor's Office. The particulars given were as follows:

- (i) The children had witnessed countless intense arguments between their father and his partner, including physical and verbal violence and the breaking of objects;
- (ii) As a result, the children lived in a climate of fear, tension and insecurity and did not want to be with their father;
- (iii) On 25 March 2024, one such argument occurred and the father's partner attempted to leave by car but he stood in front of the car, shouting and hitting it, preventing her from leaving, this being witnessed by all three children;
- (iv) The plaintiff then drove the children to school at high speed, shouting at them, and telling them not to inform their mother else they would not be able to see him again;

- (v) As a result, the defendant made to report to the local police ('GNR') who referred the matter to the Public Prosecutor's Office;
- (vi) Following the attendance by the GNR officer at the property, the plaintiff addressed JT in an aggressive manner saying he would be arrested, and making her feel bad for telling the truth;
- (vii) The plaintiff engaged in name calling of the children and assaulted both CT and JT physically;
- (viii) JT had recently confided in her mother that the plaintiff pointed a pair of scissors at her, about two years previously;
- (ix) On one recent weekend JT was put outside of the house as a punishment;
- (x) On 22 April 2024, JT told her mother that the plaintiff had found out about a chat JT had had with the partner and she was again put outside as a punishment and when she was permitted to return inside, the plaintiff told her he was "going to kill the whole family"; and
- (xi) As a result of this behaviour, the children were presenting as irritable, frustrated, anxious and aggressive.

[15] The defendant therefore claimed that there was an urgent need to alter the determination of the exercise of parental responsibility, which would entail the award of exclusive custody to her.

[16] On 9 May 2024, a further ex parte application was made to the court on the basis of telephone contact which had been received by the defendant from the plaintiff, which was threatening and insulting. It was claimed that the plaintiff was furious as a result of the court application which had been filed and the defendant was fearful in relation to the retaliation which may result to the children that weekend. She therefore sought measures appropriate to prevent the handing over of the children to the plaintiff the following day, Friday 10 May 2024.

[17] An ex parte hearing took place on 9 May 2024. At this time, the presiding judge considered the case files of the CPCJ and noted that CT said that things were going well and there were no problems in relation to his father's home. He did, however, refer to an incident when his father's partner threw a stone and caused an injury to his father's foot during an argument.

[18] It was noted that JT presented as anxious and expressed a preference for spending time with her mother. She described some situations that occurred at her father's home, saying that there are discussions between her father and his girlfriend, including one incident where the partner threw a glass on the floor. She stated a wish to return to the UK.

[19] It was concluded that:

“the environment at the respondent’s home is one of conflict between him and his partner, not providing his children with the required wellbeing and tranquillity that they need to grow up in an emotionally balanced manner.”

[20] It was directed that the children should remain with the mother pending an inter parties hearing scheduled for 13 May 2024.

[21] At the hearing on the 13 May 2024 the older children gave evidence. CT expressed a preference to stay with his father in the event that his mother returned to Ireland. He said there were some arguments between his father and partner, but not every day, and they are not always arguments; most of the time they have disagreements, which were normal in a relationship. He stated that he was only aware of one more serious incident, which she threw a stone at his father's foot. Otherwise relations were good and the younger siblings enjoy spending time with their father. CT also said that JT thinks these normal discussions are very bad and was being influenced by their mother who was putting ideas into her head and exercising a degree of parental alienation over her.

[22] JT said that every weekend she spends at her father’s house, he and his partner have arguments, and she does not wish to go as a result. These arguments make her feel uncomfortable and there is a lack of affection from her father towards her. She stated her belief that her father is ‘brainwashing’ her brother, which is why he has dismissed the discussions.

[23] The father told the court that the family environment was good and the arguments no longer occur. He said that he lives in fear because his behaviour and the way he deals with everyday situations were always being analysed in detail by the mother. He stated his belief that this was all to do with her dissatisfaction with their divorce because she feels she was wronged. He stated that he knew that the mother intended to return to Ireland.

[24] The mother said that her children had told her what is going on at their father's house, the arguments, and that she knows there is domestic violence between him and his partner. Her expressed wish was for her children to live permanently with her, in order to ensure their well-being and safety, without exposure to the violence they have experienced to date. She stated that she lived with the father for 11 years and he was constantly angry.

[25] The judge ruled as follows:

“From the combined analysis of the elements already included in the case file and the statements made here, all

the facts described point to a conflict between the parents, so much so that they focus their discourse on constant mutual attacks, which indicates a troubled past relationship, contrary to the best interests of the minors, who equally need both their father and mother in order to grow up in a balanced and healthy way.

In this context, taking into account the facts described - even though everything leads us to believe that both the father and mother are sufficiently capable of providing the necessary stability and ensuring the daily routines of the minors, without losing sight of the fact that they need both parents in order to grow up in a balanced and healthy way - it is certain that some issues have been raised here by the mother and the minor [JT] that need to be better clarified and explained (alleged arguments between the father and his partner), so that the continuation of the shared residence arrangement for the minors can be considered."

[26] The court directed that the arrangements for the children were provisionally amended so that they spend Friday until Monday morning with the father. Otherwise the arrangements remained unchanged. The proceedings were adjourned for two months pending further investigation, which involved referring the parties to a specialised technical hearing in order to achieve a consensual solution in the best interests of the children.

The further investigations

[27] The Public Prosecutor's Office found that there was insufficient evidence to support the allegation of domestic violence and archived the investigation on 11 November 2024. Its report details the investigative steps which were taken and the conclusions of that relevant authority.

[28] The specialised technical hearing led to a report dated 20 January 2025, based on interviews with both parents, home visits and a review of the papers. It had not proven possible to reach an agreement between them. The mother was proposing that the children live with her, with fortnightly weekend contact with their father and shared holiday arrangements. The father's expressed wish was for the provisional arrangement to become permanent. He said that the mother intended to return to Ireland with the children. The mother alleged that the father's relationship with his partner was marked by domestic violence whilst the father accepted there were arguments, he denied any violence and said the couple had been through a difficult period following the loss of a pregnancy. Both accused the other of controlling and manipulative behaviour. However, it was concluded that:

“both parents appear to be capable of supervising and protecting their children's education and health, demonstrating a responsible attitude and concern for the children's well-being and development.”

The psychological assessments

[29] The report recommended that psychological assessments should be carried out of the parents and the children. On 25 March 2025, the court directed these assessments.

[30] The assessments were carried out by Dr Marco Moniz and reports produced dated 6 June 2025. He interviewed the subjects, carried out clinical observations, reviewed the relevant documents and used a range of assessment tools.

[31] In relation to the plaintiff, Dr Moniz identified no indicators in his personality, psychopathology or parenting skills that could represent a serious impediment to the proper exercise of parental responsibilities. No manipulative traits were identified and no intervention was deemed required.

[32] In the mother's report, it is recorded:

“The mother was very clear: she just wants to return to Ireland, where she has social and family support, something she does not have in Portugal. She does not understand why the children's father does not allow them to return to Ireland, since, given his professional occupation, it would make no difference whether they are in Portugal or Ireland. She is currently financially dependent on the father, something that makes her uncomfortable, believing that if she were in Ireland she would have more professional opportunities to become independent.”

[33] Again, no indicators were identified which would constitute an impediment to the exercise of parental responsibility. The mother did not demonstrate any traits of manipulative personality and no intervention was found to be required.

[34] Both the father and mother described the other's parenting skills as adequate.

[35] JT presented as having an easy temperament, good self-esteem and was well adjusted. She referred to the arguments between her father and his partner which made her feel uncomfortable. When asked about moving to Ireland, she said:

“I like Portugal, but I would like to visit Ireland more often. It's the same to me, to stay or to go.”

[36] JT was found to be well adjusted and asymptomatic. There was no evidence of any physical, psychological or social impairment, and no symptoms of post-traumatic stress related to abuse were identified. No follow up was required.

[37] In relation to BT, it is recorded:

“The child was very spontaneous throughout the assessment process and in the individual interview stated that she likes being in both households and has no problem living either in Portugal or Ireland. She just wants to be able to continue living with both her parents.”

[38] BT was also found to be well adjusted and there was no evidence of any physical, psychological or social impairment, and no symptoms of post-traumatic stress related to abuse were identified. No follow up was required.

[39] In relation to MT, Dr Moniz notes:

“The minor denies any kind of violence on the part of his parents, states that he has a good relationship with both families, and that he would like to go and live in Ireland, as she *[sic]* does not feel comfortable in Portugal and currently has few friends.”

[40] It was recorded that MT has a diagnosis of Attention Deficit Hyperactivity Disorder and symptoms of difficulty in controlling impulses and concentration were noted. No symptoms of post-traumatic stress reactive to any episode of abuse were observed. It was recommended that existing treatment be continued.

The October 2025 proceedings

[41] On 14 October 2025, a hearing took place before the Portuguese court to consider the claim by the plaintiff of the failure by the defendant to fulfil her parental responsibilities by reason of the unlawful retention in Northern Ireland.

[42] In her evidence to the court, by way of a statement dated 15 September 2025, the defendant made the case that she was forced to move the residence of herself and the children to Northern Ireland in order to obtain better living conditions. She also referred to the fact that she had been unable to obtain suitable employment in Portugal. The decision was made in the best interests of the children who had expressed a desire to return to their country of origin where they enjoyed a large support network of family and services.

[43] JT gave evidence remotely at this hearing and informed the court that, initially, they had thought they were going on holiday to Ireland but when they arrived, they

would be living there permanently. This made her happy as Ireland would be the place she would choose to live. She stated that she did not miss her father and prefers not to talk to him.

[44] The court ruled:

“Therefore, by unilaterally deciding to move the children's residence to Ireland, the mother grossly violated what was stipulated.

Furthermore, by deciding to move the children to another country, she also failed to comply with the established visitation/contact arrangements preventing the children from spending time with their father.

In view of the above, there is no doubt that the respondent, in a culpable and serious manner, gave rise to the violation of the established regime, since she failed to comply with the visiting regime in force and decided by the court, preventing the children from spending time with their father, as well as unilaterally changing the children's residence without any prior information to the applicant, presenting this decision as a *fait accompli*.

In view of the above, non-fulfilment must be deemed to have occurred.”

[45] The plaintiff's claim for alteration of parental responsibility was suspended pending determination of this claim for a return order under the Convention.

The events post 27 July 2025

[46] During their time in Northern Ireland, the plaintiff maintained telephone contact with the family until 23 July 2025 when he states that the defendant ceased taking his calls. On 27 July 2025, he received a phone call from CT asking him to come and collect him from a friend's house in Portugal. CT had returned from Northern Ireland and informed his father that the defendant had sent an email. This email stated:

“I want to let you know that I will not be returning to Portugal with the younger children as planned today. After careful thought and consideration of their wellbeing and our current circumstances, I've made the decision to remain here in Ireland with them for now.

[CT] has gone back as agreed, but the younger children and I do not wish to return at this time. I understand this may not be what you wanted to hear, but I believe it is in their best interests.

We can discuss arrangements going forward if you would like, but I hope you can understand that this is not a decision made lightly.”

[47] The plaintiff replied on the same date:

“I’ve tried repeatedly to contact you, but it appears I’ve been blocked everywhere. Your message stating that you are not returning the children as agreed is unacceptable.

This was a temporary holiday, and you do not have my consent to change the plan. You know I have holidays starting tomorrow and plans with the kids. I am requesting the immediate return of the children to Portugal, as originally agreed.

Anything further will have to be handled properly.”

[48] On 28 July 2025, the plaintiff contacted the Portuguese Central Authority to commence the process to seek a return order and also made a criminal complaint of child abduction.

[49] In her affidavit sworn on 7 November 2025, the defendant confirms that the children all commenced school in Northern Ireland in September 2025 and have settled in well. She terminated her tenancy in Portugal and asked the landlord to dispose of the family’s remaining belongings. On arrival in Northern Ireland the family stayed with two separate sets of relatives, followed by hostel accommodation before securing a property through the Northern Ireland Housing Executive.

The defendant’s allegations of domestic violence

[50] In her affidavit, the defendant makes a number of specific allegations of domestic abuse:

- (i) During her first pregnancy, when she was aged 21, the plaintiff shouted, punched walls and prevented her from leaving rooms by standing in the doorway. She was frightened by him and he used money to control her;
- (ii) She was subjected to several serious incidents of domestic violence, including three strangulations, two of which were witnessed by the children;

- (iii) The plaintiff drove dangerously fast when angry and he hit and kicked cars, smashed and damaged furniture, terrifying her and the children;
- (iv) On one such occasion, the plaintiff threw rocks at the defendant's car when the children and her were in it;
- (v) The plaintiff continually criticised and belittled her, often calling her fat;
- (vi) On one occasion, the plaintiff actually chased her from the family home with a stick whilst she had a baby in her arms and then subsequently tried to run her over with his car, with the children in the house screaming and crying.

[51] In her evidence, the defendant makes the bare assertion:

“I first made allegations of abuse to the relevant authorities in 2021.”

This rather begs the obvious questions:

- (i) What allegations were reported?
- (ii) To whom were they reported?
- (iii) Was there an investigation by the ‘relevant authorities’?
- (iv) If so, what was the outcome of the investigation?
- (v) In particular, were these allegations pleaded or relied upon in the divorce proceedings?

[52] The lack of any particularity around this assertion, in a case concerning grave risk and article 13 of the Convention, is baffling.

[53] The defendant relies on an incident which occurred on 25 March 2016, just prior to the wedding. A social worker observed redness on the defendant's chest but no marks. She made no complaint of any assault. The plaintiff stated there had been an argument and the defendant had scratched him with her nails and tripped him up. He denied any assault. The children, who were aged seven and two at the time, were unaware of what had happened. Both the plaintiff and the defendant made it clear that domestic violence was not a feature of their relationship. In a follow up meeting on 31 March 2016, the plaintiff admitted that each had pushed the other, that they were genuinely remorseful and had talked matters through. The wedding took place later that week. Subsequently, the defendant is recorded as saying to the social worker that the redness to her chest was a nervous rash caused by the row.

The disclosures made after 27 July 2025

[54] The children were registered with a General Practitioner in Northern Ireland on 21 July 2025 which casts doubt on the defendant's evidence that the decision to remain in Northern Ireland was only made after their arrival in this jurisdiction.

[55] On or about 17 August 2025 (the letter is wrongly dated 17 July) Ms Biggerstaff, Women's Aid support worker, made a referral to social services in which the following allegations appear:

- (i) The father withheld their passports and birth certificates for over seven years whilst they were living as a family in Portugal;
- (ii) It was only when the defendant's mother was diagnosed with illness that he permitted them to return for a period of time;
- (iii) The children are all scared of their father and they are victims of constant emotional abuse;
- (iv) The father previously killed a family pet in front of the children, traumatising them.
- (v) MT told his mother that the father had hit him with a metal pole.

[56] On 19 August 2025 the defendant and the children met with a social worker, Ms Durkan, in the company of the support worker Ms Biggerstaff. At this time, MT made the following disclosures:

- (i) His father hit him with a metal pole about two years ago;
- (ii) His father and partner were arguing and the partner threw a rock at him, resulting in a broken bone in his father's foot;
- (iii) On another occasion, the partner was holding two knives which his father took off her and asked the children to hide all the knives;
- (iv) The children were outside when the partner hit a golf ball and broke the windscreen of their father's car.

[57] BT reported being scared as a result of the arguing between her father and his partner.

[58] JT reported seeing the injury to her brother's neck after he was hit with the pole but she did not report it to anyone at the time. She also referenced emotional abuse and name calling by her father and expressed her wish not to return to Portugal.

[59] The defendant deposes to a phone call which took place on 28 August 2025 between the children and their father which was witnessed by Ms Biggerstaff. She later wrote a letter, describing her observations and the levels of distress undergone by the children. The following day the defendant blocked the plaintiff from contacting her.

[60] The defendant contacted the GP surgery in early September in relation to ongoing concerns about the impact of exposure to domestic violence and the children's overall mental health and wellbeing. JT was referred to CAMHS and the other children to the Family Trauma Centre.

[61] On 10 October 2025 an assessment took place with social services at which the defendant made the following disclosures:

- (i) She had been the victim of physical abuse, including being grabbed by the neck by the plaintiff the week before they got married;
- (ii) The plaintiff strangled her on three occasions;
- (iii) The plaintiff tried to run her over in his car;
- (iv) The plaintiff was emotionally abusive and controlled her financially;
- (v) MT told her that the plaintiff hit him with a pole;
- (vi) The plaintiff was emotionally abusive to JT, calling her names.

[62] The defendant stated that all of this was reported to social services and the courts in Portugal but they were never listened to and did not get any help. She told the social worker that she "had been trying to go to Northern Ireland for a long time."

[63] In the initial CAMHS assessment on 21 October 2025, the notes reveal that JT alleged her father had been emotionally abusive towards her and her siblings and as being physically abusive to CT. Reference was made to one incident of self-harm which occurred when JT was aged 9 or 10 years when, following an argument, she used the cutter on a Sellotape dispenser to cause injury to her hand. It was stated that a friend who had suffered physical abuse had self-harmed and it made her feel better so JT wanted to try it. No such incident had taken place since and no intention to self-harm was expressed.

[64] At that meeting, the defendant reported a history of domestic violence perpetrated by her ex-husband towards herself.

[65] The children attended a series of counselling sessions with Valerie Hillen of New Solutions Therapy in September and October 2025. The notes from these sessions show that MT recalled rows between his father and partner and that he had been hit

by his father with a bar. He also referred to the incident when his father's foot was hit by a rock thrown by the partner. He was afraid of a return to Portugal.

[66] BT described her memories of violence and fights between her father and his partner and said she was very afraid that her dad would come and take her back to Portugal.

[67] JT said she did not want to return to Portugal and was also scared her father would come for her. She recalled rows including one where the partner threatened to burn the house holding matches to her father's clothes and then firing matches at her. She also stated that her step mum threw a rock at her dad through the window and threw one at his foot injuring him. JT also said that her elder brother lied in court but she forgave him. She did not forgive her father for alleging that she was a liar in court.

[68] The letter from Ms Biggerstaff was dated 5 October 2025 and addressed "to whom it may concern." It stated:

"My intention is to raise serious concerns about the emotional well-being of the children following a recent telephone call with their father, a call I attended at [AT's] request.

On August 28th, 2025, [AT] asked me to be present during a scheduled phone call between her children and [HT], who currently resides in Portugal. [AT] expressed concern that [HT] may attempt to use allegations of "parental alienation" under the Hague Convention, despite the children having consistently and clearly stated that they do not wish to speak with him or return to Portugal.

During the call, the children, [MT], [BT] and [JT] were visibly uncomfortable and distressed. While their verbal responses to [HT's] questions were technically affirmative, their body language conveyed the opposite: All three children shook their heads while speaking, clearly indicating emotional conflict and discomfort.

Following the call, all three children were visibly upset. [JT] said she no longer wanted to speak to her father and wished he wasn't her dad. Shortly after, [BT] entered the room in tears and asked [AT],

"Why did you make me talk to him? Why did you marry him? Why does he have to be our dad?"

She then returned to play with her siblings. [AT] herself was deeply distressed after the call. She expressed feeling helpless and questioned why she is being required to facilitate contact that appears to be emotionally harmful to the children. She also shared concerns that [HT], even from another country, continues to exert a negative influence on the children's mental and emotional well-being.

Each of them has disclosed experiences of domestic and physical abuse, not only towards [AT] but also towards themselves.

They clearly do not wish to maintain contact with their father at this time and forcing them to do so may be causing them significant emotional harm."

[69] A letter from a social worker connected to the GP surgery, dated 24 October 2025 and addressed "to whom it may concern", was also produced to the court. This letter had been requested by the defendant in order to assist with this case:

"As you will be aware all members of this family have been exposed to years of domestic abuse and the main priority over the past number of weeks has been making the necessary referrals to services and organisations in order to assess and support each family member."

[70] The defendant outlines that the children have been clear and vocal in their opposition to returning to Portugal and to the care of the plaintiff. These views have been expressed both to the defendant and to professionals. All three children have received support through various agencies including Women's Aid, Social Services, their GP and the Trauma Centre.

[71] The defendant states that her actions in remaining in Northern Ireland have been in an effort to protect the children from harm and in accordance with their wishes and feelings.

[72] The plaintiff denies that domestic violence was ever a feature of his relationship with the defendant. He points to the fact that the allegations of non-fatal strangulation had never previously been made in any forum prior to October and November 2025. The defendant has never sought the protection of the Portuguese courts in relation to domestic violence nor does this purported serious abuse form any part of the reasons offered to the court for refusing a return order to Portugal.

[73] The plaintiff also denied chasing the defendant with a stick whilst she was holding a baby or trying to run over her with a car. Similarly, these allegations have never been made prior to the evidence being filed in these proceedings.

[74] There were domestic violence allegations which were the subject of the May 2024 hearing in the Portuguese court. However, the allegations made by MT in the report to the social worker formed no part of these. The plaintiff denies that he ever hit MT with a pole.

[75] The plaintiff accepts that, on one occasion, he was having an argument with his partner in the garden of their home when she threw a stone at his foot. He accepts that the children would have witnessed this and it would have been frightening for them.

[76] The plaintiff denies that there was an incident involving his partner and knives.

[77] It is accepted that there was an incident when the plaintiff's partner hit a golf ball and broke the windscreen of the car which led to an argument.

[78] The court was provided with a recording of an argument between the plaintiff and his partner, made around November 2023 by JT. A translated transcript of this recording was also made available. The partner, in particular, can be heard shouting and swearing, which was very upsetting for JT. There can be no doubt that this level of conflict went beyond what would normally be heard and expected in domestic life.

[79] The plaintiff, in evidence, has expressed his bitter regret at the incident and recognises that it was entirely inappropriate behaviour in the presence of the child. The recording was sent by JT to her mother at the time but the plaintiff points out that, despite this, the children spent the period from 20 December 2023 to 9 January 2024 exclusively with him while the defendant was in Northern Ireland.

[80] The court received a letter from the children's GP, dated 23 December 2025, in relation to an episode of self-harm by JT. This letter asserts that:

"She witnessed her mother being the victim of domestic abuse at the hands of her father."

This allegation has never previously been made.

[81] The letter explains that, following contact with her father, JT had cut her hand and arm using glass. She told the doctor that she was anxious about the prospect of returning to Portugal and felt everything was out of control.

[82] The plaintiff states that he believes that the defendant has invented a narrative of domestic abuse perpetrated upon her and the children in order to achieve her goal of relocation to Northern Ireland. He expresses grave concerns that the children were being used as pawns to advance this narrative.

[83] Notably, on his analysis, domestic violence against the children, or domestic abuse witnessed by the children, formed no part of the reasons offered to the Portuguese court for deciding not to return from Northern Ireland in July 2025.

The mother's intention not to return to Portugal

[84] In the skeleton argument filed for the adjourned hearing, counsel on behalf of the defendant stated:

“Looking to the future, as Article 13(b) must do, the Defendant instructs that she wishes to remain in Northern Ireland (the Court will have noted from the papers the cancer diagnosis that her own mother has received). That leads to the conclusion that any return of the children to Portugal is a return to their father’s care.”

[85] It was entirely inappropriate that this important averment appeared for the first time in a skeleton argument. Any reference to this intention to remain in Northern Ireland was strikingly absent from the defendant’s replying affidavit. It was therefore directed that a supplemental affidavit be filed. In it, the mother deposes:

“I know that if I was to return to Portugal, even with the various protective measures which have been suggested, my life would be as it was and my health and well-being would be very negatively affected, such that I could not face a return to Portugal.”

[86] The court directed this affidavit in order that there was a proper evidential basis for this important assertion. It remains at best ambiguous, there is no unequivocal statement of intention on the part of the defendant not to return. Indeed, it is noteworthy that the only reason offered in the skeleton argument for remaining in Northern Ireland was the defendant’s mother’s ill health, not any risks posed by domestic abuse or violence.

The Official Solicitor’s Reports

[87] Ms McGrath of the Official Solicitor’s office has provided two reports to the court, the first following a meeting with the subject children on 20 November and the second after a request from JT for a further meeting.

[88] In the first meeting, JT said, “My dad decided to have a baby with a random woman” and referred to the constant yelling and hitting her elder brother. She did not want to see her father at all.

[89] In Ms McGrath’s opinion, JT knew that the trip to Northern Ireland in July 2025 was not for the purposes of a holiday.

[90] When asked about her preference, JT stated clearly that she would prefer not to return to Portugal. When asked how she would feel about a return JT said:

“I’d kill myself. I don’t want to go back.”

[91] Ms McGrath, in her exercise of judgement, did not regard this comment as warranting any referral or further safeguarding step. JT did not exhibit any signs of distress or any plan to self-harm.

[92] MT told Ms McGrath of an incident three to four years ago when his father struck him with a pole and stated that this had been witnessed by his uncle. He has also referred to his father’s partner having knives, and these being taken off her by CT, and how scared this had made him. He stated that Northern Ireland was much better than Portugal. He did not wish to return to his father’s care and said that he had been repeatedly hit by him.

[93] BT said to Ms McGrath:

“I don’t like this human, my dad. I hate him.”

“Dad and Mum got married. Dad got another girl – he married her. She’s brown. Mum got another house – Dad also.”

[94] In relation to her preference, she stated:

“Here – happy. Portugal – cry all day.”

[95] Ms McGrath expressed her concern that the accounts given to her presented a “deeply concerning narrative” of harm, exposure to conflict and adult issues. It was evident that there had been an absence of appropriate care and a failure to protect the children. She implored the parents to take steps to de-escalate their conflict and provide for safe and appropriate relationships with both of them.

[96] Ms McGrath did not identify any signs of coaching or rehearsed narratives.

[97] A second meeting took place between Ms McGrath and JT on 15 December 2025 at JT’s request. She took the precaution of seeking professional advice in relation to any disclosures which may be made at that meeting.

[98] At that meeting, JT wished to discuss some of the things her father had done and referred to the following:

- (i) Her father’s partner throwing matches at her and threatening to set fire to her father’s clothes;

- (ii) Her father's partner hitting her father with wooden clothes hangers, which may relate to the November 2023 recorded argument;
- (iii) Her father hitting a cat with a golf ball in 2021;
- (iv) The father's partner throwing a rock at her father's foot, causing injury;
- (v) The father kicking and slapping CT during a fight, when he was aged 14 or 15;
- (vi) The father calling her a 'psychopathical' liar in court;
- (vii) The father's partner hitting a golf ball onto the windscreen of the car, causing a massive argument.

[99] Ms McGrath asked JT what her views would be if her mother got a job in Portugal and returned there. She replied:

"I guess fine as long as there was a restraining order against my dad."

The Hague Convention

[100] 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.

[101] 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 ..."

[102] By article 3, the Convention defines wrongful removal of a child when it occurs:

- (i) In breach of rights of custody attributed to a person under the law of the state in which the child was habitually resident immediately before the removal; and
- (ii) At the time of removal, those rights were actually exercised.

[103] Article 4 states that the Convention applies to any child who was habitually resident in a Contracting State immediately before any breach of custody rights.

[104] Article 12 mandates the return of a child wrongfully removed from the state in which he was habitually resident:

“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.”

[105] Article 13 of the Convention provides:

“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."

Habitual residence and custody rights

[106] It is not in dispute in this case that the three children remain habitually resident in Portugal and that, prior to their removal from that jurisdiction, their father had, and exercised, custody rights, and that their removal from Portugal was wrongful. The court must therefore to make a return order unless one of the exceptional defences provided for in article 13 is made out.

Grave risk

[107] In *F and M* [2024] NICA 38, the Lady Chief Justice adopted the statement of the law from the Supreme Court decision in *Re E* [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])

[108] 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])

[109] In *ZA v BY* [2020] NIFam 9, Keegan J commented:

"In this case the exception referred to in Article 13(b) of the Convention was the critical point at issue. All counsel accepted that this exception requires a high level of proof as articulated in the various authorities and that the burden

lies on the person opposing return to substantiate the exception.”

[110] In relation to cases of alleged domestic abuse, it is well recognised in the authorities that to return a child to face physical or psychological abuse would be to place him or her in an intolerable situation. Equally, being returned to witness a parent being subject to abuse may lead to the same outcome. As Lady Hale stated in *Re E* [2011] UKSC 27:

“Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international co-operation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues.” (para [36])

[111] In *Re R (Child Abduction: Parent’s Refusal to Accompany)* [2024] EWCA Civ 1296, the Court of Appeal in England & Wales considered a case where the mother who had been the primary, if not sole, carer of the children had stated that she would not return to France, where the family had previously lived, under any circumstances. Peter Jackson LJ observed:

“Article 13(b) requires the parent opposing a child’s return to establish that there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Where that parent asserts that they will not accompany the child to return, the court will scrutinise the assertion closely, because it is an unusual one for a main carer of a young child to make. The court will therefore make a reasoned assessment of the degree of likelihood of the parent not returning. Relevant considerations will no doubt include the overall circumstances, the family history, any professional advice about the parent’s health, the reasons given for not returning, the possibility that the refusal is tactical, and the chance of the position changing after an order is made. The court will then factor its conclusion on this issue into its overall assessment of the refusing parent’s claim to have satisfied Article 13(b). By this means, it will seek to ensure that the operation of the Convention is

neither neutralised by tactical manoeuvring nor insufficiently responsive to genuine vulnerability.”

[112] The evaluation of evidence presented to a court on the issue of grave risk in a Convention case is rarely a straightforward exercise. The court in this case is required, in summary proceedings, to consider over 1,000 pages of documents consisting of affidavits, medical records, records of court proceedings, social services and professional engagement across two jurisdictions.

[113] I have had the considerable benefit, however, of the detailed analysis carried out by the Portuguese court and other agencies in that jurisdiction. This has given rise to two distinct advantages:

- (i) It gives an insight into the efficient and effective working of the Portuguese system of family justice; and
- (ii) It demonstrates how the specific allegations made in this case were addressed by the Portuguese court.

[114] The plaintiff and the defendant in this case entered into consensual arrangements, as part of the divorce proceedings, in 2022 which were formalised through the court in Portugal. This effectively provided for joint residence.

[115] On the defendant’s evidence, she entered into this agreement even though she had been the victim of serious and repeated domestic violence on the part of the plaintiff. Whilst a bare assertion is made that this violence was reported in 2021, there is not a single document amongst the papers to corroborate that claim. The defendant was legally represented throughout the divorce proceedings and it is apparent that, in Portuguese law, domestic violence may be a reason to modify or reduce parental contact.

[116] The defendant made a referral to CPCJ in 2023 and an application to the court in May 2024 to modify or revoke the existing parental responsibility arrangements. It is clear from the evidence that, insofar as these Portuguese proceedings were concerned, the domestic abuse and violence allegations were:

- (i) There were repeated arguments between the plaintiff and his partner which were witnessed by the children;
- (ii) This has caused a climate of tension, fear and insecurity such that the children did not want to be with their father;
- (iii) On 25 March 2024 one such argument occurred and the father’s partner attempted to leave by car but he stood in front of the car, shouting and hitting it, preventing her from leaving, this being witnessed by all three children;

- (iv) The plaintiff then drove the children to school at high speed, shouting at them, and telling them not to inform their mother else they would not be able to see him again;
- (v) The plaintiff's partner had thrown a rock injuring the plaintiff's foot;
- (vi) JT stated that following a conversation with the plaintiff's partner, her father told her that, if this kind of behaviour talking about him badly continued, he would kill the whole family;
- (vii) JT also alleged that during an argument between the father and his partner that he had grabbed a pair of scissors and while telling her to stop talking to his partner, made a gesture with the scissors in his hand, as if he wanted to stab her with them;
- (viii) JT had, on one occasion, self-harmed;
- (ix) It was alleged by the mother that in November 2023, the plaintiff kicked JT out of the house after an argument with her elder brother;
- (x) The mother alleged that JT told her that her father belittled her, pointed his finger at her and made her feel uncomfortable.

[117] Notably, there was no allegation made to the Portuguese court that:

- (i) The defendant was herself the victim of repeated and serious domestic violence, including strangulation and having a car driven at her whilst holding a baby;
- (ii) MT had been struck by his father with a metal pole;
- (iii) The plaintiff's partner had brandished knives which had to be taken off her by CT;
- (iv) The plaintiff had killed a family pet in front of the children;
- (v) JT had witnessed her mother being the victim of domestic abuse at the hands of her father.

[118] All of these allegations have emerged since 27 July 2025 when the children were wrongfully retained in Northern Ireland. They have been reported to a variety of professionals, and referred to in affidavit evidence, but have not been the subject of any investigation or scrutiny.

[119] This stands in contrast to the allegations which predated July 2025 and which were made to the Portuguese court. These were the subject of consideration not only

by judicial authorities but also by the police, the Public Prosecutor's Office, the CPCJ and social services. Each of the parents and the children were the subject of psychological assessment on the basis of the allegations and evidence put forward at that time.

[120] During the Portuguese proceedings, the defendant sought an order that she would have exclusive parental responsibility but was herself proposing unsupervised fortnightly overnight contact with extended periods of contact during the holidays. She was not seeking to contend that, by reason of domestic violence, contact should be denied or only take place on a supervised basis.

[121] The outcome of those proceedings was, on a provisional basis, that the children would continue to reside with their father at the weekends. The Public Prosecutor's Office determined that there was insufficient evidence to pursue any criminal charges.

[122] The psychological assessments identified no impediment to the exercise of parental responsibility by both parents and no signs of any symptoms of trauma secondary to abuse.

[123] The failure to bring forward the list of allegations which emerged post July 2025 to the Portuguese authorities can only be explained on one of two grounds, either:

- (i) The defendant and the children felt unable, in all the circumstances, to make these disclosures to the authorities in Portugal at the relevant time; or
- (ii) The allegations have been invented or exaggerated for the purposes of these proceedings in an effort to secure the refusal of a return order to Portugal.

[124] The defendant's counsel, in submissions, placed particular reliance on the instances where there is corroborating evidence, such as the November 2023 recording, and the admitted conduct, such as the throwing of the stone or rock.

[125] These were issues known to the relevant authorities in Portugal. Applying the principle of judicial comity across different states and recognising the limited ability a court has to scrutinise evidence in a Convention return order case, it would be entirely inappropriate to seek to subvert the orders of the court which has jurisdiction over these children's welfare. On the basis of the evidence presented, the Portuguese courts did not take any steps, in the best interests of the children, to substantially alter the parental responsibility arrangements.

[126] It is apparent that there has been significant disharmony between the plaintiff and his partner and that this has had an adverse impact on the children. The pre July 2025 allegations give rise to no discernible risk of physical harm. Insofar as there is an identifiable risk of psychological harm to the children, by virtue of witnessing the behaviour of the plaintiff and his partner, I take account of the findings of the Portuguese court, the continued unsupervised overnight contact with the father and

the outcomes of the psychological tests. The threshold of grave risk of psychological harm or otherwise being placed in an intolerable situation has not been satisfied by the defendant on the basis of these issues.

[127] Insofar as the post July 2025 allegations are concerned, I find it almost incomprehensible that these were not advanced to the Portuguese court. It is evident that the defendant had the benefit of legal advice and was well able to make her case to the court. No coherent explanation has been articulated as to why these serious and significant allegations were not brought forward at that time. In examining whether the grave risk defence under article 13(b) of the Convention is made out, the court is not carrying out a fact-finding exercise but is analysing the likelihood or risk of certain events occurring. In doing so, it must determine the level of weight to be attached to the allegations before it. In this case, the level of weight which can be given to the post July 2025 allegations must be significantly reduced.

[128] One particular allegation, for instance, that of hitting MT with a metal pole, appears in a number of different sources but stands in stark contrast to MT's denial to Dr Moniz in June 2025 of any violence on the part of his parents.

[129] It is instructive to consider the September 2025 statement made by the defendant in the context of the plaintiff's application to the Portuguese court. The reasons put forward by the defendant for the retention of the children in Northern Ireland related to better living conditions, family support and employment opportunities, as well as the children's wishes. No case was made that the retention came about as a result of the grave risk of harm faced by the children. There is also evidence, on the basis of statements made by the mother to professionals both in Portugal and Northern Ireland, that she simply wished to return to this jurisdiction. The statement made by the defendant to Dr Moriz on this issue is particularly stark.

[130] Equally, the email sent by the defendant to the plaintiff on 27 July 2025, informing him that she and the children would not be returning, makes no reference whatsoever to domestic abuse or violence being the reason or even a factor in the making of this decision.

[131] The post July 2025 allegations came about in an environment where the children had been denied any contact with their father, a far cry from spending every weekend with him. There is, at the very least, a serious risk that these have come about as a result of influence being brought to bear on the children by their mother.

[132] I must consider the position if I were to make a return order and the mother refused to travel back to Portugal with the children. I have already alluded to the unsatisfactory nature of the evidence on this issue with the defendant stating that she "could not face a return" rather than setting out her unequivocal intention. This was despite the fact that the court afforded her this opportunity.

[133] This must be read alongside the reasons given by the defendant to the Portuguese court and to Dr Moriz for wishing to remain in Northern Ireland, namely better living conditions, family support and employment opportunities. All of these may, in these particular circumstances, be true but, applying Peter Jackson LJ's close scrutiny, I am satisfied that it is unlikely that the mother would refuse to return to Portugal.

[134] In all the circumstances, I am not satisfied on the evidence, including the post July 2025 allegations, that the threshold of grave risk of harm has been met in this case. I therefore reject this defence.

[135] In case I am wrong about this, I propose in any event to consider the question of protective measures.

Protective measures

[136] The court had the benefit of the opinion of Herlander Gabriel Correia, advogado registered with the Portuguese Bar Association. He states:

"In Portugal, a person who alleges to be a victim of domestic violence may apply for a set of urgent protective measures aimed at safeguarding their personal safety and that of the children. Such measures include, inter alia, restraining orders against the aggressor, prohibition of contact by any means, removal from the family home, remote monitoring by technical means, as well as related civil protective measures, such as the suspension or limitation of the exercise of parental responsibilities, the provisional determination of the children's residence, and a prohibition on leaving the national territory. These measures may be ordered on an urgent and provisional basis, including without prior hearing of the other party, whenever this is necessary to prevent a current or imminent risk."

[137] A protection order issued by a court in Portugal has immediate binding effect and may be enforced through the criminal courts and by way of modification of parental responsibilities. It may be granted ex parte and hearings are convened at short notice. Proceedings may be initiated prior to the return of any party to the jurisdiction.

[138] In the event a return order is made and undertakings are given, the parties may request that these undertakings are incorporated into a Portuguese judicial decision and interim measures imposed to ensure compliance with the agreed conditions and immediate protection of the children. By this means, the undertakings become enforceable in the Portuguese courts.

[139] At all times, the best interests of the children are the paramount consideration in family proceedings before the Portuguese courts.

[140] The current position is that there are live proceedings before the court in Portugal which have been suspended pending the determination of this return order application. These ought to be capable of swiftly being brought back to court. It is evident from the May 2024 applications that this court is capable of dealing with child welfare issues in an admirably expeditious and effective manner.

[141] If grave risk of harm had been established, I would nonetheless have rejected this defence on the basis that there are in place in Portugal adequate protective measures, which can be bolstered by the requisite undertakings, to offer protection against such risk.

Children's Objections

[142] The Court of Appeal recently considered the law relating to children's objections under article 13 of the Convention in *OP v GM* [2025] NICA 55:

"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." (para [74])

[143] Keegan LCJ continued:

"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)." (para [75])

[144] Having reviewed the contents of all the various statements made by the children, and in particular the two reports of the Official Solicitor, I am satisfied, as a matter of fact, that the children object to being returned to Portugal. I am also satisfied, in light of the contents of the interviews and the psychological assessments of June 2025, that the children are of sufficient age and maturity at which it is appropriate to take their views into account.

[145] The court, therefore, has a discretion to consider whether to refuse a return order in light of these objections.

[146] The first issue which arises is the extent to which the children's views have altered since the psychological assessments of June 2025. At that time JT said it was the same whether she stayed in Portugal or left and BT had no problem living in either Portugal or Ireland. MT expressed a preference for Ireland but no outright objection to Portugal.

[147] It is striking, indeed shocking, that less than six months later, JT is telling Ms McGrath that she would kill herself if required to return to Portugal. The court has to consider why this sea change in attitude would have occurred during a period when the children had virtually no contact with their father.

[148] It must be recognised that this has been a period of considerable stress for the children. They were told that the family were going on a holiday to Ireland, only then to be informed that they would not be returning to the place they had lived, in two cases, for all their lives. They have been taken out of their schools and removed from their established friends and family environment. They have moved house four times, with some of the accommodation being entirely unsuitable for their needs. They have also had virtually no contact with their father over this period, save for court directed contact in November and December 2025.

[149] The children have also been referred to, examined and interviewed by an array of professionals, all of whom have expressed their concerns about them being victims of domestic violence. To be fair to those individuals, they have not had the benefit of the full evidential picture and it is clear that some of the conclusions arrived at by them must be seen in that light.

[150] Real and justified concerns were expressed by counsel for the Official Solicitor into some of the language used by the children, including "this human" in relation to the father, "random woman" in respect of the father's partner and the reference to the colour of her skin.

[151] Once again, the conclusion that these views are the product, at least to some extent, of maternal influence cannot be avoided. Such influence may not merely take the form of coached or rehearsed narratives. The court must consider this factor in the exercise of the discretion.

[152] It is also important to bear in mind that the views of children cannot usurp the fundamental principles of the Convention. They were wrongfully removed from Portugal and retained in Northern Ireland and this court ought to make a return order, unless, exceptionally, one of the defences applies.

[153] Having weighed up all the evidence set out in detail above, I am not satisfied that this is an appropriate case in which to exercise my discretion to refuse to make a return order.

Proposed Undertakings

[154] In the event a return order is made, the plaintiff has offered the following undertakings:

- (a) He will travel to Northern Ireland to collect the children to bring them back to Portugal and inform the parties and the court of the travel arrangements;
- (b) He will undertake to book and pay for the children's airfares for their return to Portugal;
- (c) Should the defendant wish to return with the children to Portugal, he will book and pay for the defendant's airfare also;
- (d) Should the defendant wish to return to Portugal, he will immediately recommence paying child maintenance in the previously agreed sum of €1900 per month;
- (e) Should the defendant wish to return to Portugal also upon a suitable return date being ordered, within 24 hours thereof, he will provide the defendant with a sum not exceeding €3000 to be used for a deposit and one month's rent on a house for the defendant and the children;
- (f) Should the defendant wish to return to Portugal also, he will immediately withdraw the criminal complaint relating to the abduction of the children;
- (g) Upon the children returning to Portugal, he will adhere to the terms of the previous court order dated 13 May 2024, which provides for the children residing with the defendant Monday to Friday and with him Friday to Monday morning, until such time as otherwise ordered by the Portuguese family court. In the event that the defendant chooses not to return to Portugal, he will retain the children in his care, until ordered otherwise by the Portuguese court;

- (h) He will not have any communication with the defendant upon her return to Portugal, save for such communications as may be essential to facilitate arrangements for the subject children to ensure their welfare is met; and
- (i) He will lodge a copy of these undertakings with the court in Portugal forthwith and instruct his Portuguese lawyers to take any necessary steps to register same.

[155] In light of the evident upset which has been caused to these children's lives, it would also be appropriate for the father to undertake that the children will be referred for appropriate therapeutic services on their return to Portugal.

[156] Furthermore, in the event that the mother elects not to return to Portugal, contact arrangements will have to be agreed between the parties, or fixed by the Portuguese courts.

[157] In any event, the Portuguese court retains jurisdiction in respect of the children's welfare and all issues can be addressed in that forum.

Conclusion

[158] For the reasons outlined, I reject the article 13 defences and find that the plaintiff is entitled to a return order pursuant to article 12 of the Convention.

[159] I make the return order sought in respect of all three children and this will be subject to the undertakings. I will hear the parties further as to the precise terms of this order.

[160] It remains only for me to echo the pleas of the Portuguese authorities, and the Official Solicitor in this case, for the parents to put aside their personal conflict and try to work together, in the interests of the welfare of the children, before they suffer further and possibly irreparable harm.