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*Judgment: approved by the court for handing down (subject to editorial corrections)**		

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND (FAMILY DIVISION)

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Between:

SD

Plaintiff/Respondent

and

BC

Defendant/Appellant

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Lisa McKeown (instructed by Keenan Solicitors) for the Appellant
Sarah Ramsey KC with Deborah Harvey (instructed by Francis Hanna & Co Solicitors) for the Respondent
Moira Smyth KC with Emma Sloan (instructed by the Official Solicitor) representing the interests of the child

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Before: Keegan LCJ, O'Hara J and Smyth J

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

This judgment has been anonymised as it involves a child. The ciphers given to the parents and the child are those applied at the first instance court and are not their initials. Nothing must be published which would identify the children or their parents.

Introduction

[1] This is an appeal from a decision of Humphreys J ("the judge") delivered on 12 December 2025, wherein he ordered the return of a child who we will designate

as MC in these proceedings to the Republic of Ireland, pursuant to the Hague Convention on the civil aspects of International Child Abduction 1980 ("the Convention"). The Hague Convention was incorporated into the United Kingdom domestic law by the Child Abduction and Custody Act 1985.

[2] The appeal was lodged by the appellant as a personal litigant. She appeared at a case management hearing on 16 December 2025 when the court made various directions and stayed the return order for a short period over Christmas during which MC spent eight days with his father in the Republic of Ireland. The appellant was encouraged to obtain legal representation and did so in advance of this hearing.

[3] On 12 January 2026 we provided a summary of our ruling dismissing the appeal with written reasons to follow. These are the reasons.

Background facts and evidence

[4] MC was born in August 2016 and so he is nine coming ten. His interests in these proceedings are represented by the Official Solicitor. Following a request last week, we also asked the Official Solicitor to consider the wishes and feelings of his 13-year-old half-sibling sister who we will designate as KL. The Official Solicitor on short notice very helpfully met with KL and sent us a brief indication of her views which we have also considered and which we will explain in greater detail below.

[5] The evidence of the parties and background facts as set out by the trial judge from paras [3]-[20] of his judgment are not in dispute and we summarise this as follows.

[6] The father's evidence is that he was in a relationship with the mother from 2015 to 2020 and were living together when MC was born in 2016. He has two children from a previous marriage, and the mother has three children from a previous relationship. All MC's half siblings are older than him.

[7] At the time of the separation, MC lived with his mother but enjoyed frequent contact with his father, staying over at weekends and otherwise on an ad hoc basis.

[8] In April 2024, the appellant relocated to Northern Ireland to reside with her partner, taking MC (then aged 8) and one of his siblings KL (then aged 11). Both children were enrolled in a primary school in Northern Ireland and spent the summer term there. The mother returned with her children to Ireland in July 2024. She subsequently married her partner in December 2024.

[9] On 29 July 2025 the mother sent a text message stating that she intended to move MC to live with her at her husband's home in Northern Ireland. The father made it clear that he did not consent to this. We have seen since discovery of messages between the parties which confirms this. The mother informed him that it was not viable for her to remain in the Republic of Ireland since she would lose her

social housing property and it was not possible for her to obtain alternative accommodation.

[10] On 31 July 2025, the father's solicitors wrote to the mother stating that the proposed move was an unlawful removal under the terms of the Convention. Notwithstanding this, the mother moved with MC and KL, back to Northern Ireland on 2 August 2025 for the start of the new school term. The appellant maintains that it was always her intention to return to Northern Ireland.

[11] On 15 August 2025, the mother issued proceedings in the Naas District Court in the Republic of Ireland seeking leave to dispense with the father's consent. The respondent then applied to the Central Authority in Northern Ireland and issued the present proceedings seeking the return MC on 22 October 2025. Since the mother issued her application the father has also issued proceedings before the Naas court in relation to custody arrangements concerning MC.

[12] The affidavit evidence is relatively limited given the net issue in this case. It is unlike other cases where allegations are made of domestic abuse by one parent against the other. In fact, in her affidavit evidence the mother outlines that, following separation, the parties maintained a co-operative relationship, not requiring the court's intervention in relation to issues of residence and contact. The arrangement was that the mother would remain MC's primary carer whilst the father enjoyed regular contact. This enabled MC to spend three out of four weekends with his father together with some additional time during school holidays.

[13] However, the affidavit evidence refers to a criminal charge of violent disorder which is pending against the father. In August 2022, an altercation occurred outside a public house. A number of people have already been convicted of criminal offences in relation to this incident. On the mother's case there is a high risk of the father receiving a custodial sentence which would be very disruptive to MC if he were to be returned to the care of his father. The father's trial is listed in February 2026, and he intends to contest the charges. In relation to the pending criminal trial, the father denies any wrongdoing as he makes the case that he simply intervened as events occurred to help a friend.

[14] To complete the factual matrix the voice of MC has been heard and reported on by the Official Solicitor. The Official Solicitor met with MC on 24 November 2025. She notes that the child first attended primary school in Northern Ireland for a short period from April to June 2024, then returned to the Republic of Ireland and re-enrolled in the primary school which he had previously attended from infant class. During the period July 2024 to August 2025, he lived with his mother but enjoyed regular contact with his father. He was found to be a bright, mature and engaging boy who had considerable insight into his situation. The Official Solicitor records that MC expressed a clear preference to live in the Republic of Ireland where he has established a friendship group and loves his school. In her conclusion, the Official Solicitor states that MC

> "greatly misses his school, his other siblings, his football club and the close friendships that he has built through these institutions over his entire life."

[15] In addition, the Official Solicitor met KL on 9 January 2026 and reported to us on her wishes and feelings. KL indicated that she did not want to move back to the Republic of Ireland, when asked she said, "I don't talk to the girls down there, they were really mean to me last time." She also said that she had a good relationship with MC and she did not want to lose that. When the Official Solicitor asked if MC moved to the Republic of Ireland would she want to go with him, she said, "I don't know, yes and no." The Official Solicitor's view of this child's wishes and feelings are stated in the following terms:

> "It was clear when exploring options with KL that she was certain about wanting to remain living with MC in […] but all other possibilities caused her confusion. She said she does not know how she would feel at the time. I could see that she was feeling uneasy when trying to make sense of her feelings and I told her it was perfectly okay for her not to know because it is hard to know how one might feel until its happening. She also indicated that she goes every second weekend like MC to see her father in [the Republic of Ireland]."

Relevant legal principles

[16] The Hague Convention is an international treaty between contracting states which aims to secure the prompt return of children unlawfully removed from their place of habitual residence. The various provisions of the Convention are explained in the judgment from the lower court at paras [26]-[31]. In particular, it is important to remember that article 12 is framed in mandatory terms in that it states, "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."

[17] Article 13 of the Convention provides by way of exception that:

> "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 —
> …

(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."

[18] Article 16 of the Convention is also framed in mandatory terms which state that a court dealing with a Hague Convention application must not make a decision on the merits of welfare in the country seised of such an application unless a return order is refused. Our courts have consistently emphasised that the primary objective of the Convention is to ensure the summary return to the country of habitual residence of children wrongfully removed or retained.

[19] The applicability of the European Convention on Human Rights ("ECHR") has also been considered in Convention jurisprudence. *In Re E (Children) (Abduction: Custody of Appeal)* [2011] 2 FLR 758, the Supreme Court stated that while best interests is not the primary consideration in Hague Convention and Brussels IIR proceedings (the latter instrument now no longer applicable), both instruments have been devised for the benefit of children generally and with the aim of serving the best interests of the individual child. The general underlying assumption is that the best interests of children will be served by a prompt return to the country of habitual residence. Paras [13] and [14] refer as follows:

"[13] There is no provision expressly requiring the court hearing a Hague Convention case to make the best interests of the child its primary consideration; still less can we accept the argument of the Women's Aid Federation of England that s1(1) of the Children Act 1989 applies so as to make them the paramount consideration. These are not proceedings in which the upbringing of the child is in issue. They are proceedings about where the child should be when that issue is decided, whether by

> agreement or in legal proceedings, between the parents or in any other way.
>
> [14] On the other hand, the fact that the best interests of the child are not expressly made a primary consideration in Hague Convention proceedings, does not mean that they are not at the forefront of the whole exercise. The Preamble to the Convention declares that the signatory states are "Firmly convinced that the interests of children are of paramount importance in matters relating to their custody" and "Desiring to protect children internationally from the harmful effects of their wrongful removal or retention …" This objective is, of course, also for the benefit of children generally: the aim of the Convention is as much to deter people from wrongfully abducting children as it is to serve the best interests of the children who have been abducted. But it also aims to serve the best interests of the individual child. It does so by making certain rebuttable assumptions about what will best achieve this (see the Explanatory Report of Professor Pérez-Vera, at para 25)."

[20] At paras [19]–[28] of *Re E* the court specially deals with the relationship between the ECHR and the decision in *Neulinger and Shuruk v Switzerland* [2011] 2 FCR 110 which caused a ripple in Hague thinking at the time. Of particular significance is para [25] where the issue is dealt with as follows:

> "[25] As the President of the Strasbourg court has acknowledged extra-judicially (in a paper given at the Franco-British-Irish Colloque on family law on 14 May 2011), it is possible to read para 139 of *Neulinger* as requiring national courts to abandon the swift, summary approach that the Hague Convention envisages and to move away from a restrictive interpretation of the art 13 exceptions to a thorough, free-standing assessment of the overall merits of the situation. But, he says:
>
> "that is over-broad – the statement is expressly made in the specific context of proceedings for the return of an abducted child. The logic of the Hague Convention is that a child who has been abducted should be returned to the jurisdiction best-placed to protect his interests and welfare, and it is only there that his situation should be reviewed in full."

> *Neulinger* "does not therefore signal a change of direction at Strasbourg in the area of child abduction." The President has therefore gone as far as he reasonably could, extra-judicially, towards defusing the concern which has been generated by, in particular, para 139 of *Neulinger*. It is, of course, as Aikens LJ pointed out in the Court of Appeal, not for the Strasbourg court to decide what the Hague Convention requires. Its role is to decide what the ECHR requires."

[21] The appellant referenced another decision of *X v Latvia* [2014] 1 FLR to emphasise how welfare-linked impacts must be evaluated in Convention cases. However, this decision reiterates the point made above in the following terms:

> "… the Hague Convention is basically a jurisdiction selection treaty, but it is not blind to substantive welfare issues concerning the individual child involved, since it imposes an assessment of that child's best interests in Art 13 and of his or her human rights in Art 20. Only an over-simplistic view of the Hague Convention's general public order purposes and tangible effects on the life of the individual abducted child and his or her parents could support the assertion that this is a merely procedural text. The opposite conclusion is also imposed by the almost universal ratification of the United Nations Convention on the Rights of the Child 1989 which reflects the international consensus on the principle of the paramountcy of the child's interest in all proceedings concerning him or her and on the perspective that every child should be viewed as a subject of rights and not merely as an object of rights. Moreover, the sociological shift from a non-custodial abductor to a custodial abductor, who is usually the primary caregiver, warrants a more individualised, fact-sensitive determination of these cases in the light of a purposive and evolutive approach to the Hague defence clauses."

[22] Also of note is the following dicta :

> "In spite of some systemic shortcomings, the Hague Convention has proved to be a crucial instrument in helping to resolve the drama of cross-border parental child abduction. Its positive legacy is undeniable and should be preserved and fostered. Nevertheless, both the universal acknowledgement of the paramountcy of the child's best interests as a principle of international

> customary and treaty law, and not a mere 'social paradigm', and the consolidation of a new sociological pattern of the abducting parent now call for a purposive and evolutive interpretation of the Hague Convention, which is first and foremost mirrored in the construction of the defences to return in the light of the child's real situation and his or her immediate future. A restrictive reading of the defences, based on an outdated, unilateral and over-simplistic assumption in favour of the left-behind parent and which ignores the real situation of the child and his or her family and envisages a mere 'punitive' approach to the abducting parent's conduct, would defeat the ultimate purposes of the Hague Convention, especially in the case of abduction by the child's primary caregiver. Such a construction of the Hague Convention would be at odds with the human rights and especially the Art 8 rights of the abducted child in Hague return proceedings, respect for which undeniably merges into the best interests of the child, without evidently ignoring the urgent, summary and provisional nature of the Hague remedy."

[23] The parameters of article 13(b) which is invoked in this case are explained by the Supreme Court in *Re E* [2011] UKSC 27. This law was adopted in this jurisdiction in *F&M* [2024] NICA 38 as follows:

> "… 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."

[24] In addition, at para [20] the court stated:

> "… 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."

[25] We proceed on the basis of the above well-established law to consider whether a summary return of MC under the Hague Convention should be ordered or whether a return order should be refused on the basis of a grave risk of psychological harm and/or intolerable situation if MC were returned to the Republic of Ireland. We do so, mindful of MC's interests and Convention rights and cognisant of KLs views which we have ascertained for this hearing. We are also conscious that a court in the Republic of Ireland is already seised of this case.

This appeal

[26] There was consensus before this court as to the appellate test to be applied. The appellant, in skeleton arguments, stated that the appellate jurisdiction in Hague Convention proceedings is strictly confined, an appeal will only succeed where the appellant demonstrates that the trial judge was wrong, whether by reason of an error of law, a misapplication of principle or a conclusion that was not open to the judge on the evidence. The appellate court is not invited to conduct a rehearing or to substitute its own evaluative judgment merely because it would have reached a different conclusion – see *F and M (Hague Convention/grave risk)* [2014] NICA 38.

[27] Ms McKeown has helpfully narrowed the grounds of appeal to two propositions:

(i) That whilst the judge was aware of the factors which fed into the case being made as to grave risk, he did not properly analyse the factors in a holistic way; and

(ii) That the judge did not take into account welfare considerations in his analysis.

[28] Before dealing with the substance of these arguments, it is important to record that the law in relation to grave risk was not at issue in this case. There is, as the trial judge stated, no suggestion that the father presents any risk to the child. He has enjoyed overnight and weekend contact with MC throughout his life. There was also no issue raised about the need for undertakings or protective measures in the Republic of Ireland. Rather, the mother raised a case that the father through impending criminal trial could be incarcerated and this presented a grave risk. Secondly, that for the child to be returned to the Republic of Ireland and his half-sibling remain in Northern Ireland would amount to a grave risk given sibling separation and, thirdly, that the mother had, given her marriage in Northern Ireland, issues with obtaining housing in the Republic of Ireland that she previously had.

Consideration

[29] Framing our consideration in this case is the evidence which is compiled in the affidavit. On the first issue, which was the father's pending criminal proceedings, the judge found that this was speculative. At para [43] of his judgment, he said:

> "[43] The father has pleaded not guilty and intends to contest the charges. Even if he were to be convicted, this court is not in a position to judge whether or not he would receive a custodial sentence. In any event, this is a matter which a court exercising its welfare jurisdiction in the best interests of the child would be best placed to consider."

[30] We consider this assessment to be entirely realistic and appropriate. In addition, as Ms Smyth KC pointed out, this issue of the father's impending trial has been around since 2022. However, it was not mentioned by MC as a factor at all when he was interviewed by the Official Solicitor. Furthermore, there is no vouched evidence of psychological harm or otherwise intolerable situation by virtue of this particular issue. Therefore, the judge is plainly not wrong in the assessment he made on this issue.

[31] The judge also deals with separation of siblings in detail in his judgment. He refers to two cases *Re K (Children)* [2014] EWCA Civ 1195 which Ms McKeown also relies on. This is not a Hague Convention case but is a welfare decision where a court referred to the real risk of significant emotional harm due to permanent separation of siblings. It is immediately obvious to us that this is not the situation we are dealing with given that a welfare decision will be made in the appropriate court which will obviously deal with the important question of sibling relationships. Therefore, *Re K* is not an authority that holds weight in this consideration.

[32] The other authority relied on by Ms McKeown was *C v M* [2023] EWHC 1182 which was a Hague Convention case. The mother wrongfully removed two children from Mauritius to England, and the court initially ordered return subject to protective measures. One of the children then sought legal representation and applied to have the order set aside. In light of these strong views the father then pursued an alternative claim for return of only one sibling and the court concluded that separating the child from his sister and mother would result in grave emotional harm and place him in an intolerable situation contrary to his welfare.

[33] We agree with the judge's analysis of C *v M* that the circumstances are clearly different not least due to geography but also due to the family structure that pertained in that case. Therefore, we agree with the judge's analysis in relation to the sibling issue that this does not meet the test of grave risk of intolerable situation or harm within the family dynamic that pertains in this case. This is undeniably a

family dynamic where MC and his half-sibling sister move between Northern Ireland and the Republic of Ireland to visit their respective fathers for significant staying periods.

[34] Furthermore, the Hague Convention application is not a vehicle by which a final determination in relation to where siblings should live is made. Rather, it is a summary procedure by which a jurisdiction is decided which can make the welfare decision. Therefore, any disruption to siblings' relationships is necessarily temporary pending a final welfare decision which in this case would be made in the Republic of Ireland in the next number of months by a court that is already seised of the case. The proximity of that jurisdiction is a factor of some significance. Furthermore, we have the subject child wanting to return to the Republic of Ireland and his half sibling wanted to stay in Northern Ireland but expressing some confusion about what might happen in the future. Overall, the argument based on sibling relationships does not hold decisive weight.

[35] The remaining matter that was raised before us concerned practical arrangements because the mother surrendered her housing in the Republic of Ireland in September of 2025 when she returned to Northern Ireland and states that she cannot be rehoused by the Irish authorities. Suffice to say that we understand there will be practical arrangements and difficulties with any order that we make. However, both parties have resources in that the father is employed, and the mother's husband is employed. We note the contents of a joint consultation which took place on 9 January 2026 which has been shared with the court whereby the mother said that she would relocate to the Republic of Ireland whilst proceedings were ongoing in the Naas court and live in a hotel although that was not what she wanted. She has now revised that position to say that she would obtain rental accommodation in the Republic of Ireland. We were also informed that the father has consistently paid child maintenance for MC and continues to do so.

[36] Either way, the fact of the matter is that the District Court in Naas is seised of the case. As we explained this court can make an order for interim arrangements immediately to deal with the practical issues that arise pending the hearing of the case in April 2026 when we understand a welfare report is likely to be sought. These issues do not, in our view, stand in the way of a return order by establishing grave risk of psychological harm or an otherwise intolerable situation. The history of the case is that this family have moved across the border on numerous occasions by choice given the family structure that pertains. The practical issues that arise cannot be used as a strategy to prevent the jurisdiction of the child's habitual residence from hearing the case.

[37] Overall, we are satisfied that the judge considered all the relevant issues which Ms McKeown raises before us and made an assessment which was holistic and one within his discretion to make. Ms McKeown also sought to argue that the judge had not made a proper welfare assessment. This was not specifically raised at the lower court. However, having considered the matter ourselves we find that the

judge has not offended Convention rights in reaching his assessment. Ms McKeown's reliance on *Neulinger and Shuruk*, is misplaced as that case was on its particular facts where there was such a long delay in proceedings (five years) that a return order did not comply with the Convention. It is in any event, the Supreme Court in *Re E* clearly explains that whilst a welfare element comes in in terms of establishing any of the grounds to prevent removal Hague proceedings are governed by article 16 of the Convention. *X v Lativa* does not alter that jurisprudential landscape. Therefore, we find no merit whatsoever in the Convention argument which is now raised on appeal.

Conclusion

[38] The position in this case is that MC was habitually resident in the Republic of Ireland in August 2025 and his father held and was exercising custody rights when he was unlawfully removed to Northern Ireland on 2 August 2025. In accordance with article 12 of the Hague Convention the court must, therefore, make a return order, requiring MC to be returned to the Republic of Ireland unless one of the exceptions provided for by article 13 is made out. On the evidence in this case, this child has expressed no objection to return to the Republic of Ireland and wants to return to the Republic of Ireland. It has not been established that there is any grave risk of psychological harm or intolerable situation if he should return. We, therefore, affirm the return order and dismiss this appeal.

[39] We are minded to retain a short stay in this matter until 4pm on Saturday 17 January 2026, by which stage MC must be returned to the Republic of Ireland. This short pause will allow him to finish his week at school without any further disruption and also, importantly, allow the parties to immediately approach the Naas court for an interim arrangement order pending the full welfare hearing which is next listed in April should they not be able to agree arrangements in the meantime for interim residence and schooling. We will also allow disclosure of all relevant papers to the Republic of Ireland court.

Postscript

[40] We heard from Ms McKeown after we delivered our summary of judgment on 12 January 2026 that the appellant as a personal litigant wishes to extend the stay and bring an application for leave to appeal to the Supreme Court. We will deal with any application for leave to appeal administratively. Any further stay application to this court must be lodged before close of business tomorrow.

[41] Ms Ramsey on behalf of the respondent also raised the issue of costs as the father is automatically entitled to legal aid as a respondent to the Hague Convention proceedings. The appellant is not legally aided which is potentially an anomaly but, in any event, given these are children proceedings we are not minded, notwithstanding the fact that we find no merit in the appeal, to make an order as to costs against the appellant in this case.

[42] We conclude our judgment by reiterating the fact that a strength in this case has been that post-separation these parties have managed to agree arrangements amicably for contact and residence notwithstanding the complications of family life that pertain with the different adults involved and the number of children involved in this case. We had hoped that the parties might reach a resolution themselves as to the way forward. However, in the absence of agreement the parties can now bring an urgent application to the Naas court and also prepare for a welfare hearing in the next months. If any judicial liaison is needed this court will, of course, assist pursuant to the provisions of the Convention.