

Neutral Citation No: [2026] NIFam 3

Ref: HUM12977

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

Delivered: 04/02/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Between:

PK

Plaintiff

and

DK

Defendant

[Hague Convention: consent, acquiescence, grave risk & children's objections]

Joanne Hannigan KC & Sarah Walkingshaw (instructed by Andrew Russell & Co) for the Plaintiff

Claire MacKenzie (instructed by MSM Solicitors) for the Defendant

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

HUMPHREYS J

Introduction

This judgment has been anonymised as it involves 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 two children, namely CK, aged six and RK, aged five. 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 of the children who took the subject children from Ireland to the United Kingdom on 25 July 2025. 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 following facts are not in dispute:

- (i) The children were born and are habitually resident in Ireland;
- (ii) The children have been present in Northern Ireland since 25 July 2025;
- (iii) The children are both aged under 16 years;
- (iv) The plaintiff has rights of custody in respect of the children which were being exercised prior to their removal from Ireland on 25 July 2025; and
- (v) A period of less than one year has elapsed since their removal.

[4] As a result, the removal of the children from Ireland was wrongful and article 12 of the Convention mandates the court to order the return of the children unless any of the defences provided for by article 13 are made out.

The evidence of the parties

[5] Both the plaintiff and the defendant are Irish citizens. They married in an Islamic ceremony in 2016 and came to live in Ireland in 2018. The children were born in 2019 and 2020 and the family lived together until the plaintiff and defendant separated in 2024.

[6] The defendant avers that, whilst they were living together, the plaintiff regularly slapped her in the face, pushed her, and spat on her and some of these instances were witnessed by the children. The relationship was also characterised by demeaning verbal abuse, the plaintiff calling her derogatory names, often in front of the children.

[7] The defendant describes one particularly serious and violent incident when the plaintiff pushed her against a wall in the bedroom, put his hand around her neck to restrict her breathing and put a large black knife to her throat. He told her that if she told anyone about drug dealing in which he was involved that he would 'deal' with her. The defendant says that the plaintiff told her he had money and could send other people to 'deal with' her. She says it was clear to her that the plaintiff was threatening to kill her or have her killed.

[8] The defendant describes being under the ongoing control of the plaintiff and being sufficiently afraid of him due to the ongoing violence and abuse that she agreed to make false allegations of rape against another individual to An Garda Síochána.

[9] The plaintiff flatly denies all allegations of violence. He admits that he has been charged with an assault on the man whom he alleges was having an affair with the defendant but denies any violence against her or the children. He states there were verbal arguments during the course of their relationship but denies all the plaintiff's allegations. He points out that there was never any report to the police, nor did the defendant seek any assistance from the courts in relation to any claim of domestic violence.

[10] It is common case that the defendant left the children with the plaintiff for a period of over two months from 19 May to 23 July 2025 when she went to visit her parents abroad. The defendant makes the case that she did so having been worn down by the plaintiff's demands for her to travel. On her evidence, she felt that she had no choice but to leave the children at this time.

[11] During her time away the defendant states her contact with the children was limited but during one call RK disclosed that her father had slapped her across the face. This caused the defendant significant concern for her children's safety and she realised that she could not leave the children in his care. She returned to Ireland on 7 July 2025.

[12] However, the defendant did not immediately go to her children. Instead, she spent 16 days in emergency living accommodation before collecting the children on 23 July 2025. On that day, the defendant told the plaintiff she was taking the children to a nearby hotel for a few days and that she needed their passports and birth certificates. On the defendant's evidence, when she went to collect those from the plaintiff's place of work, an argument ensued and she was the subject of vulgar abuse. This culminated in the plaintiff disowning the family and saying to the children:

"Go, I am no longer your father."

[13] The plaintiff says that on 23 July the defendant informed him that she had a new partner and wanted to be with him. The plaintiff admits that he said things in distress which he did not mean. At that time there was no indication that she intended to move to Northern Ireland.

[14] The defendant stayed in a hotel for two nights and then travelled to Belfast on 25 July. She met her new partner online in July and then in person in Enniskillen in August 2025. It seems clear that the decision to go to Northern Ireland was prompted by this new relationship. The pair married on 29 November 2025, two days after these proceedings were served on the defendant.

[15] The court has been provided with translated versions of dozens of messages passing between the plaintiff and the defendant, as well as a voicemail message left by the plaintiff on the defendant's father's phone. In the latter, dated 28 July 2025, the plaintiff is recorded as saying:

"If she wants to go, then custody is hers ... These are not my children and I do not know them ... In any case the court remains and we will resolve everything in court"

[16] The text messages are littered with intemperate language and vulgar abuse. It is neither helpful nor necessary for the court to set these out in detail. On occasion, reference is made to the children and the need to sort out their differences. On 27 August, the plaintiff alluded to going to court and, the following day, he referred to getting the children "through the court or through a lawyer only." On this date the defendant informed the plaintiff that she and the children were now living in Belfast.

[17] In further messages, the defendant makes the case that the plaintiff disowned the children, whilst the plaintiff repeatedly refers to the alleged infidelity and the mother's new partner. He also states that her actions and conduct are well known amongst the Islamic community.

The Official Solicitor's Report

[18] Ms Liddy of the Official Solicitor's office met with the children on 9 December 2025 in order to ascertain their wishes and feelings. She found them both to be co-operative and focussed, despite their young age.

[19] Both children referred to their mother's new partner as "daddy" and to their father by his given name. CK said:

" ... he's not our father anymore. He put my mum and me and my sister away. He kicked us out of the house. He always hit us."

[20] RK commented:

"my father fight with mummy and she got all sore."

She also referred to being slapped on the face by her father because she "had not been good."

[21] When asked about their preference for living in Northern Ireland or Ireland, both children said that they liked Belfast because of the bus, the shops and the playroom and also because their father was not there.

[22] Ms Liddy concluded:

“... considerable caution must be exercised in attributing weight to their expressed views and recollections, particularly in relation to allegations of physical harm. At this developmental stage, children are highly susceptible to suggestion and adult influence. In this regard, it was notable that [RK] stated clearly that her mother had told her that her father had hit her and made her sore, which indicates a degree of narrative influence.”

[23] Ms Liddy also expressed her concern about the lack of contact which had taken place between the children and their father.

The Hague Convention

[24] 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.

[25] 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 ...”

[26] Article 3 of the Convention states that removal of a child is wrongful when it occurs 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, at the time of removal, those rights were actually exercised.

[27] 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.”

[28] 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.”

Consent and acquiescence

[29] Consent, in the context of article 13 of the Convention, means the giving of consent by one parent to the act of removal or retention of children by the other. The authorities establish that such consent must be clear and unequivocal and the burden of proof rests on the defendant to the civil standard.

[30] Having considered the affidavit evidence, and the body of text messages exhibited, there is nothing approaching a clear and unequivocal indication that the plaintiff consented to the removal of the children from the jurisdiction. In fact, there

is no suggestion that he knew of the defendant's intention to move to Northern Ireland in advance of 25 July 2025. No exception by virtue of consent can therefore arise.

[31] Acquiescence, by contrast, relates to conduct after the removal has taken place. Again, the burden of proof in establishing this rests on the defendant on the balance of probabilities.

[32] In *H v H (Abduction: Acquiescence)* [1998] AC 2, the House of Lords identified the following principles:

"(1) For the purposes of article 13 of the Convention, the question whether the wronged parent has 'acquiesced' in the removal or retention of the child depends upon his actual state of mind. As Neill LJ said in *In re S (Minors) (Abduction: Acquiescence)* [1994] 1 F.L.R. 819, 838: 11 'the court is primarily concerned, not with the question of the other parent's perception of the applicant's conduct, but with the question whether the applicant acquiesced in fact.'

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

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

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

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

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

[34] When one stands back and looks at the evidence in this case of the plaintiff's subjective state of mind, it is quite clear that he was irate at his former partner's new relationship and her alleged infidelity. He lost his temper and shouted abuse at her on 23 July 2025 and this involved him declaring that he was "disowning" the children.

[35] However, he did not know about any removal to Northern Ireland until 27 August 2025. The evidence reveals that, at that time, he immediately sought the advice of a local solicitor and had both telephone and in-person consultations. He was advised that he would need the assistance of a Northern Irish solicitor. By 25 September he had consulted a solicitor in Belfast and was advised to contact the Central Authority. This process began on 30 September and, a week later, the plaintiff was seeking the children's birth certificates and passports to facilitate his application. These proceedings were issued on 10 November and served on the defendant on 27 November.

[36] Throughout the tranche of text messages, the plaintiff makes it clear that he intends to see his children through the court process. There is nothing in these contemporaneous documents that would lead to the conclusion that the plaintiff acquiesced in the removal of the children to another jurisdiction.

[37] I am satisfied, on the evidence, that the plaintiff's state of mind was such that he did not at any stage agree to or acquiesce in the removal or the retention of the children.

Grave risk

[38] The leading case on article 13(b) of the Convention is *Re E* [2011] UKSC 27, as adopted in this jurisdiction in *F and M* [2024] NICA 38:

"… 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])

[39] 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])

[40] More recently, in *EN v RN* [2026] EWHC 21 (Fam), MacDonald J has analysed the judicial task as involving three stages:

- (i) Does the evidence enable the court confidently to discount the possibility that the allegations made by the mother give rise to an article 13(b) risk?
- (ii) If not, taking the allegations at their highest, do the allegations establish a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation?
- (iii) If so, are there protective measures available which are capable of meeting the level of risk assumed?

[41] 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."

[42] It is important to recognise that in a case concerning article 13(b), the court is not involved in a fact finding exercise. The summary nature of Convention proceedings makes such an exercise difficult and it is, in any event, unnecessary. Instead, the court is concerned with an assessment of risk. Once the court has decided that it cannot confidently discount the possibility that the allegations give rise to a grave risk, it must then engage with an assessment of the level of risk and the proposed measures which could be put in place to mitigate same.

[43] In her evidence, the defendant describes significant and persistent domestic violence in the latter stages of her relationship with the plaintiff. On her account, she was subjected to physical violence, being repeatedly slapped in the face, and emotional abuse in the form of shouting and name calling. In the one particularly serious incident which she describes, the defendant strangled her and put a knife to her throat, making it clear that he could kill her or have her killed.

[44] This behaviour, if true, constitutes domestic abuse at the more serious end of the spectrum. I recognise the plaintiff's emphatic denials and the lack of any corroboration of the defendant's account. It is true that the defendant made no complaint at the time to police or other agencies nor did she seek any form of

protection through the courts. However, as all those engaged in the field of domestic abuse will acknowledge, this is not unusual.

[45] It is striking in this case that, despite the violence inflicted by the father, the mother was prepared to leave him with exclusive care of the children for a period of two months from May to July 2025. It could be argued that this is inconsistent with the claim that a return to Ireland would cause the children to be placed at grave risk of physical or psychological harm. However, it is noteworthy that prior to her departure in May 2025 there was no allegation of physical abuse of the children. That picture changed when RK told her mother that she had been slapped in the face by her father.

[46] On the basis of the evidence, I am not able to confidently discount the possibility that the allegations made by the defendant give rise an article 13(b) grave risk.

[47] Given that the court is not in a position to fact-find or otherwise evaluate the substance of the allegations, I am obliged to take them at their highest in considering whether they meet the threshold of "grave risk of physical or psychological harm" or otherwise place the children in an intolerable situation.

[48] It is important that the court recognises the serious adverse impact upon children of domestic abuse. Witnessing and being aware of such abuse can cause serious psychological harm, as can the inability of a parent who is the victim of domestic violence to provide for their children's needs. The type of behaviour described by the mother involving strangulation and the use of a weapon clearly presents a grave risk of such harm occurring.

[49] RK's account to Ms Liddy of being slapped in the face "for being bad" chimes with the version of events given to the mother when she was away visiting her parents. Such conduct is contrary to the criminal law of Ireland, there being no defence of reasonable chastisement in that jurisdiction. This also gives rise to a grave risk of the children being subjected to physical harm.

[50] I have therefore concluded that the grave risk threshold is met and the court must consider whether there are protective measures available which would meet the level of risk identified.

Protective measures

[51] MacDonald J identified the following principles relevant to the evaluation of proposed protective measures in *H v O* [2025] EWHC 114 (Fam):

- "(i) The court must examine in concrete terms the situation that would face a child on a return being ordered. If the court considers that it has insufficient

information to answer these questions, it should adjourn the hearing to enable more detailed evidence to be obtained.

- (ii) In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance.
- (iii) The issue is the effectiveness of the undertaking in question as a protective measure, which issue is not confined solely to the enforceability of the undertaking.
- (iv) There is a need for caution when relying on undertakings as a protective measure and there should not be a too ready acceptance of undertakings which are not enforceable in the courts of the requesting State.
- (v) There is a distinction to be drawn between the practical arrangements for the child's return and measures designed or relied on to protect the children from an Art 13(b) risk. The efficacy of the latter will need to be addressed with care.
- (vi) The more weight placed by the court on the protective nature of the measures in question when determining the application, the greater the scrutiny required in respect of their efficacy.
- (vii) With respect to undertakings, what is required is not simply an indication of what undertakings are offered by the left behind parent as protective measures, but sufficient evidence as to extent to which those undertakings will be effective in providing the protection they are offered up to provide.
- (viii) Within the foregoing context, there is an imperative need for the applicant's proposals for protective measure to be included in the directions for the applicant's statement, including the terms of the undertakings being offered."

[52] In Convention cases, it is well established the court should accept that, unless the contrary is proved, the administrative, judicial and social services in another Contracting State are as adept at protecting children as they are in this jurisdiction (see *Re H (Abduction: Grave Risk)* [2003] 2 FLR 141).

[53] The court is aware that any individual in Ireland who claims to be the victim of domestic abuse can seek a safety order or a barring order under the Domestic Violence Act 2018. Orders can be obtained on an interim and/or emergency basis and breach of any such court order constitutes a criminal offence.

[54] In the event of a return of the children to Ireland, the plaintiff has offered to enter into the following undertakings:

- (i) He will stay away from the defendant in the standard terms of a safety/barring order in Ireland, will not be within 100 metres of her and will not discuss her in a derogatory manner;
- (ii) On their return, the children shall remain in the full-time care of the defendant unless otherwise ordered by the relevant court or directed by TUSLA;
- (iii) He will issue proceedings forthwith in the Irish courts in relation to the arrangements for the custody of the children;
- (iv) Pending the determination of custody arrangements, contact with the children shall be supervised by his parents;
- (v) He will provide child support to the defendant of €150 for a period of 12 weeks until his child maintenance assessment can be processed;
- (vi) He will pay the deposit on a private rental property and the rent for a maximum of three months until such times as a welfare benefit application can be made and determined;
- (vii) He will take all necessary steps to have these undertakings registered with the Irish courts to ensure that they are enforceable in that jurisdiction.

[55] In relation to the proposed property rental, the plaintiff has sworn an affidavit to the effect that he will borrow €4000 from his father and provide proof of these funds within seven days.

[56] Formal confirmation has been received from the principal that the children will be able to recommence their education at the school attended by CK prior to their removal from the jurisdiction.

[57] The mother has expressed doubts around the ability of the plaintiff to deliver accommodation in the relevant area and, in light of his hostile and abusive

communications, she does not believe that he will fulfil any of his undertakings. She is also concerned about the response to her in the community and the risk of honour-based retribution and violence.

[58] This court will always give appropriate weight to the principle of comity, a cornerstone of the Hague Convention system. There is no reason to believe that the judicial and administrative functions of the neighbouring state would provide any lesser degree of protection to the children than would be available in this jurisdiction.

[59] The package of measures presented, in terms of protection, accommodation, education, enforceable undertakings and legal proceedings, is comprehensive and will significantly mitigate against the risks identified. Relevantly, it encompasses all areas of concern referenced by Ms Liddy in her report. I have therefore determined that there will be available proper and adequate protective measures to provide the necessary level of protection in this case.

[60] On that basis, the exceptional defence afforded by article 13(b) of the Convention must fail.

Children's objections

[61] 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])

[62] 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])

[63] The children in this case are young, although I note their ability to engage with Ms Liddy and discuss their situation. There is clearly a risk that their views have been influenced by the defendant in circumstances where they have had no contact with their father for months. It is particularly evident that the mother must have told the children about being struck by their father and it being "sore."

[64] The views expressed by the children relate to their father as an individual rather than constituting a principled objection to a return. In light of this, and their age and maturity, I do not find that the gateway to the exercise of the court's discretion has been opened. Even if I had, I would not have been satisfied, in these circumstances and in light of the governing objectives of the Convention, that this would have been an appropriate case to refuse a return order.

Conclusion

[65] I, therefore, make the return order sought in respect of both children and will hear the parties as to the precise terms of this order.