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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**22/05/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND IN THE

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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

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AG

v

JW

Appellant

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The appellant Father JW appeared as a Litigant in Person
Ms Grainne Murphy KC with Ms Aoife Hughes (instructed by Caldwell & Robinson Solicitors) for the respondent Mother
Ms Sinead O'Flaherty KC with Ms Anna McHugh (instructed by Official Solicitor's Office) representing the interests of the children

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Before: Keegan LCJ, Colton LJ and O'Hara J

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KEEGAN LCJ (*delivering the judgment of the court ex-tempore*)

Introduction

[1] We have heard this case on an expedited basis given it is an appeal brought under the Hague Convention on the Civil Aspects of International Child Abduction 1980 ("the Hague Convention"). I will provide the ruling of the court as follows.

[2] This is an appeal from a decision of Mr Justice Humphreys ("the judge") of 29 April 2026 reported at [2026] NIFam 11 and subsequent orders that he made in proceedings brought under the Child Abduction and Custody Act 1985 which incorporated the Hague Convention.

Background

[3] In brief summary, the plaintiff in the original proceedings is the mother of two children who were initially before the court, MW aged 11 and SW aged three. The mother sought return from Northern Ireland to the Republic of Ireland in her proceedings. Return of SW has now been effected, and so this case only relates to the elder child MW.

[4] The defendant to the proceedings is the father of the children who wrongly retained the children in Northern Ireland after a mid-term break on 16 February 2026. Since then, he has refused to return MW to the Republic of Ireland notwithstanding two orders of the judge which set two return dates in May.

[5] As the judge stated in his judgment, the following foundational matters under the Hague Convention are not in dispute. That is, that the children were habitually resident in the Republic of Ireland and remain so, that the children were in Northern Ireland since 16 February 2026, that the plaintiff (the mother) was entitled to and was exercising rights of custody at the date the children were wrongfully retained in Northern Ireland, that the children are both under 16 and less than one year had elapsed since the retention occurred.

[6] It follows that the retention was wrongful and by virtue of article 12 of the Hague Convention, the court was obliged to make a return order unless one of the exceptions in the Convention was made out. In this case, there were two matters raised by way of exception to summary return. Firstly, that there was a grave risk of physical or psychological harm or otherwise intolerable situation that would arise as a result of return pursuant to article 13(b) of the Convention. Secondly, that the court should exercise its discretion to refuse return due to the child's objections in MW's case.

[7] The law is very clear and is set out in the judgment of the court. We are quite sure that all parties including JW, who has appeared as a personal litigant, understands the purpose of the Hague Convention because it is referred to in the judge's ruling. JW also understands the purpose and principles that underpin this Convention which requires immediate return to a state of a child's habitual residence to determine welfare matters. As this is a summary process all courts are enjoined by the Convention to avoid delay. In addition, a court dealing with a Hague Convention application is not making any final determination on where children should live or the welfare issues that arise.

This appeal

[8] JW appeals against the return order made by the judge in relation to MW ostensibly on the basis of new evidence that he says enhances the argument in relation to a risk of psychological harm that may occur if MW were returned. He relies upon a letter from her teacher which we have read, and evidence of a GP

attendance and a referral to CAMHS due to mental health difficulties she is experiencing. It is clear as a result of JWs written arguments and his submissions today that this is the focus of the case. He does not appeal any of the factual findings of the judge.

[9] At this point it is important to note that there is also new material received from the mother, which is an application under the Guardianship of Infants Act 1964 which applies in the Republic of Ireland in relation to proceedings for the children of this family. Time has been abridged for those proceedings, and a hearing is listed before the Galway District Court on Tuesday 26 May 2026. We received the new material from both sides without objection.

Consideration

[10] Lest there be any uncertainty in anybody's mind, the factual background of this application is material to a consideration of this court on appeal just as it was to the High Court judge. There is a commendation to be given to all parties for the alacrity with which proceedings were progressed which chimes with the requirements under the Hague Convention and is a model in terms of efficiency.

[11] The judge in his judgment sets out the evidence in relation to this family which we summarise. The parties met in 2008 and married in 2015. They have nine children aged between 17 and one. There have been rifts in the relationship, but a final separation occurred in August 2025. JW has been living in Northern Ireland since around about 2022 and the children have lived with their mother. It is very clear that the mother has made a consistent case that the relationship is characterised by domestic violence and that she had to seek protection of the Irish courts.

[12] A material matter in relation to the background is how MW actually came to Northern Ireland and the interplay between what happened with SW. The father came to collect MW and take her for a half-term break on 16 February 2026. SW, who was with the mother, was also brought by virtue of the father's behaviour towards the mother whereby she had no choice but to give up SW even though he was unprepared for the visit. We will not repeat some of the foul language that was used by the father on this occasion save to say it is outrageous and extremely problematic for him, used as it was when children were in the vicinity. What is also notable is that the father promised to bring the children back on 26 February 2026 but that did not happen because he immediately said he would not bring the children back and thereafter proceedings ensued.

[13] No objection has been taken with any of the evidence which the judge recites in his judgment. We note that the father made allegations against the mother in his affidavit evidence which we have now read. The judge points out at para [13] of his judgment that despite all these revelations which spread over the course of the year and his own conclusions that the children were being neglected and abused in their mother's care, the father chose not to make any report to TUSLA(social services) in

the Republic of Ireland and the mother in her rejoinder denied the allegations. The mother also asserted that MW had been placed under extreme pressure by her father who had given her everything she wants including a phone and allowed a nose piercing.

[14] The text messages exchanged between the parties set out by the judge are an extremely stark portion of his judgment. He is right to describe this as evidence that allows a court to gain some insight into the relationship between the mother and father through an extensive set of text messages. He points out that only four of the messages were sent by the mother and they are not problematic and are benign in their language. But the messages sent by the father, the judge said paint a disturbing picture of "relentless vulgar abuse and controlling behaviour" by him using the children to undermine and manipulate their mother at every turn. That is a factual finding by the judge.

[15] The judge sets the messages out in detail which we will not repeat. He also refers to two voice notes which were sent by MW to her mother all from her father's phone. The judge observed that these make for deeply disturbing listening. We agree with that having heard the voice messages ourselves.

[16] The judge rejected the father's explanation that he was simply trying to reach an agreement in relation to the children's future and rightly so. Whilst JW, in this court, has apologised for the language used this explanation can only be partially true as MW's situation is not an explanation for the constant barrage of insult levelled at his wife. The judge rightly took that material into account and, as we said at the outset, it is important that we also consider this background.

[17] As is the practice in this jurisdiction, the Official Solicitor was appointed to represent the interests of this child. The voice of the child is an important consideration in these proceedings which we recognise.

[18] Mr Barrett from the Official Solicitor's Office met MW on two occasions. The judge sets out his recitation of the Official Solicitor's evidence. It is important to note that as the judge records, Mr Barrett also spoke with the schools in the Republic of Ireland where SW and MW attended and a very positive picture was presented by both of those schools. He refers to the fact that whilst there had been some referrals in the Republic of Ireland to TUSLA, no child concern issues had been raised. Again, we observe that there is no argument made with how the judge has recorded this evidence. However, JW advances an argument that the judge has wrongly evaluated the evidence and that is what we will deal with.

[19] Before doing so, we confirm thar the judge correctly recites the law in relation to the Hague Convention, he refers to all of the headline cases in relation to how a court should deal with the grave risk defence and the child objection. We will not recite this again. No argument is made that he has made an error in law.

[20] Hence, the case boils down to whether the judge was legally correct to refuse a return order under the two exceptions that were raised by way of exception to return on the basis of his evaluation of the evidence. The first defence relied on is grave risk of physical or psychological harm.

[21] Having examined the judge's ruling as a whole it is very apparent that he took some time to consider the circumstances of each individual child. At the time of the first instance hearing, he had two children to deal with. He looked at both of them carefully and their particular position and he took a different route in relation to the two children which is, in our view, a sign of balance and the thought applied to this case.

[22] Relevant to potential grave risk there were disclosures that were proffered by the father on the basis that MW had raised issues against her mother. The judge made a factual determination as follows:

> "I harbour serious reservations about the credibility and cogency of the allegations made, it is striking, indeed, verging on the incredible, that a concerned father hearing about the level of abuse and neglect of his children would take absolutely no action with the relevant authorities. It is also extraordinary that his only actual response was to abduct two of the children and leave the other seven in an environment he regards as unsafe and dangerous without seeking any intervention."

[23] The judge also said:

> "I have already found that the father is an individual who exhibits coercive and controlling behaviour. I have no doubt that he is able to control the behaviour of his 11-year-old daughter by what she perceives to be kindness in order to achieve his goal. I am particularly struck by the father's readiness to agree that SW could return, to this unsafe, neglectful and abusive environment, provided MW is permitted to remain. It cannot be the case that the father believes SW to be at grave risk of physical or psychological harm if he is prepared to countenance this outcome."

[24] We see no reason to look behind these findings that the judge made. He goes on, however, having dismissed any grounds for an article 13(b) defence in relation to SW to look at MW separately. Having done so he records in his judgment that he was concerned about the psychological impact of a return in the light of her mental health difficulties and what he heard from the Official Solicitor. Again, this is the

hallmark of a judge who has listened to the position of a child and considered it. He came to a balanced conclusion as follows:

> "I am unable to confidently discount the allegations in MW's case and it is clear that, if they are true, these allegations meet the grave risk threshold."

[25] That, of course, is not the end of any article 13(b) argument because even if there is a grave risk of harm, protective measures in the host state need to be considered. It is only if there are ineffective protective measures in a state of habitual residence that a court would refuse return, notwithstanding the fact that grave risks have been established.

[26] We have carefully considered this issue. We note that the judge approved the suite of protective measures that would be available in the Republic of Ireland upon return. That is not surprising given this court handles Hague Convention cases with most regularity from the Republic of Ireland. It would be surprising and, indeed, unprecedented for a court here to find otherwise. Indeed, JW in exchanges with this court recognised that the Republic of Ireland has protective measures within its jurisdiction to deal with child welfare issues.

[27] The judge maps what the protective measures are as follows - that TUSLA who are on notice of this case, can put in place measures to assist MW and that the GP and CAMHS are available in the Republic of Ireland. Therefore, we find no basis upon which we would interfere with the judge's decision on grave risk as set out in his judgment.

[28] In relation to the child's objections, the judge applies the correct law in his judgment. He considers what has been said to him through Mr Barrett. The gravamen of his ruling on this is where he says:

> "MW is able to articulate her views strongly, she is aged 11 and would not be regarded by the law as competent. Nonetheless, the voice of the child in any proceedings of this nature must be given due weight."

[29] There is an important caveat because, as the judge says, he has already set out his serious concerns about the behaviour of the father and his undoubted ability to influence MW. That is why the judge declined to exercise his discretion to refuse return on the basis of the child's objections. To be clear, that was because of the context of the child's objections whereby the judge has already found influence on the part of the father in relation to the child. Therefore, we find no basis upon which this decision is wrong in law, and we decline to interfere with it. The judge's decision, in our view, was legally correct.

[30] The only remaining question is whether the new evidence that we have received by agreement should in some way change the consideration in this case. We have carefully looked at this evidence over the course of this week when it has been presented to us.

[31] It is important to note the nature of the new evidence in relation to MW's apparent distress and her self-harm attempt (with a photograph involving a butter knife) which JW puts to the court. The context of this is that MW's mental health issue has clearly emerged since the move to Northern Ireland in February 2026. We refer to this because there is no evidence of her exhibiting these types of issues before. It follows logically that this has happened whilst in her father's care which is an important factor.

[32] There is a real concern that these issues are influenced by the father's antagonism to the mother given his previous behaviour and the findings of the judge made in relation to that. However, we cannot discount the fact that this is an 11-year-old child who has made some representations about not wanting to return and we take that into account in the balance.

[33] Ms O'Flaherty KC has made some compelling points to us in relation to this question in representing the position of the child. She submits that the school report is not determinative and neither is the GP referral given that these are recent, that they do not chime with what has happened in the Republic of Ireland, but more importantly, that protections are in place for MW from TUSLA, the GP in the Republic of Ireland, and CAMHS. She also stressed that the father who is in the custodial position at the moment could help MW. Whether or not that comes to pass remains to be seen.

[34] Ms O'Flaherty rightly raises the point with us that the father should not be allowed to frustrate the smooth operation of the Convention and would be better advised to encourage MW's return on the basis that it is for a court which is actually now seized to decide the actual day-to-day and interim arrangements.

[35] The court listing in Galway is on Tuesday 26 May 2026. Through judicial liaison and an application by the mother, there will be no delay in the court in the Republic of Ireland taking a grip of this case and dealing with welfare issues including interim arrangements which, it seems to us, are the real issue now. There is a critical need to deal with those not least for MW who we bear in mind is a child who is clearly adrift, confused and exhibiting these concerning behaviours.

[36] Accordingly, having balanced all the relevant factors including MW's wishes and feelings, we are not convinced that the new evidence tips the balance in favour of refusing a return order. We are also not convinced that an ongoing stay of a return order is appropriate. In exercise of our discretion on that issue, we think that the stay should be removed today to facilitate a swift return to the Republic of

Ireland for MW and appropriate measures to be put in place to help her in the state of her habitual residence, the courts of that jurisdiction having now been seized.

Conclusion

[37] The order that we make is one dismissing the appeal and affirming the return order. Given the fact that the date for return has now passed, the order will simply be varied to make the return date Monday 25 May 2026. In relation to other matters we are satisfied that TUSLA, the GP and the Galway court are already aware of this case. They should be notified immediately of our order and the arrangements that we now affirm.

[38] The only other matter is the place of handover given that Monday is a bank holiday and the court which was previously suggested is unavailable for the handover here. We are happy to suggest a location that is suitable ourselves, unless anybody has something in mind that they would now tell us about.

Postscript

[39] Before the court concluded the father suggested the Ulster Hospital for the handover. That was agreed and the return was ordered for Monday 25 May at 12 noon. On the evening of this hearing (Friday 22 May 2026) the father lodged an application for leave to appeal to the Supreme Court which we refused as no point of law arose. The Official Solicitor informed us that prior to the return date social services became involved due to an incident between the father and his current partner in Northern Ireland and returned the child to the Republic of Ireland.