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| Neutral Citation No: [2026] NICA 22 | Ref: | TRE12999 |
| <i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i> | ICOS No: | 15/106137/13 |
| | Delivered: | 12/05/2026 |

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION (OFFICE OF CARE AND PROTECTION)

Between:

A FATHER

Appellant

v

A MOTHER

Respondent

IN THE MATTER OF NI (A MALE CHILD AGED 14)

The Father appeared as a Litigant in Person
Mr Gregory McGuigan KC and Ms Paula McKernan (instructed by the Official Solicitor’s
Office) for the Child
Ms Suzanne Simpson KC with Ms Maeve Mullan (instructed by John J McNally
Solicitors) for the Respondent

Before: Treacy LJ and Colton J

TREACY LJ (*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 not their initials. Nothing must be published which would identify the child or the parents.

Introduction

[1] The father applied for a residence order in respect of NI. He wishes NI to reside with him in England and to have contact with his mother in Northern Ireland. This application was rejected by Kinney J in a reserved written judgment on 24 October 2025 (unreported). By this appeal the father seeks to overturn the ‘whole of the order’ of Kinney J made on that date.

[2] The grounds of appeal are stated as:

“per statement lodged with Court of Appeal, the judgment was:

- (A) Wrong: the judge made a significant error in the way he applied the law, misunderstood and ignored the evidence before him, and reached a conclusion that no reasonable person could have made to the detriment of NI;
- (B) Unjust due to a serious procedural irregularity; failing to ensure a relevant Expert makes comment on both issues of attachment & violence, there was also a serious error in the way the case was handled, as the Applicant not given the chance to present their case and excluded from the 4th June 2025 hearing, and relevant evidence was not considered or cited by the Judge;
- (C) Demonstrable bias; The Judgement only considers the respondent’s position, with the Judge demonstrating such bias that affected the outcome of the case, to the extent the Judgement could have been drafted by the dishonest lying abusive barrister representing the respondent.”

[3] The respondent submits that Kinney J did not err in law, that he considered and addressed the correct legal principles and evidence in the proper manner. Additionally, that there was no procedural irregularity in the management and hearing of the proceedings.

[4] The court appointed the Official Solicitor to represent NI. NI was spoken to by Ms Coll from the Official Solicitor’s Office regarding the application before the court. The Official Solicitor lodged a position paper dated 25 September 2025 to assist the court and to advise of NI’s wishes and feelings.

Background

[5] The court was provided with a chronology of court proceedings which we have attached as **Appendix 1**.

[6] The parties are the parents of the subject child, NI, who is now 14 years old. Court proceedings commenced in respect of the child when he was less than one year old, in late 2012. Since then there has been persistent litigation, mainly brought by the appellant father.

[7] The appellant has sought a residence order in his favour, in respect of NI, repeatedly over many years in courts in both England and Northern Ireland. He has never been granted a residence order in respect of NI. A residence order in favour of the respondent mother in respect of NI has been in force since 2013. This has been upheld in this jurisdiction in 2016, 2019, 2022 and 2025.

[8] The appellant has appealed unsuccessfully many times.

[9] On 10 May 2023, the Court of Appeal in Northern Ireland dismissed an appeal by the appellant by concluding that the appeal was ‘utterly devoid of merit.’ A costs order was made against the appellant.

[10] Another appeal determined on 21 October 2024 by the Court of Appeal in Northern Ireland stated that:

“the appellant’s sad inability to leave the events, including litigation events, of past years behind him and to focus exclusively on the present and the future, giving precedence to his son’s best interests and discarding his own purely self-interested wishes and ambitions, to his son’s manifest detriment, is the stand-out feature of this latest litigation chapter in a saga of some 12 years duration.”

A costs order was against made against the appellant.

Legal framework regarding appeals

[11] The test on appeal is to determine whether the decision of the lower court was wrong. Such consideration occurs via a review of the original decision and does not require an appellate court to determine issues afresh see *Re B* [2013] UKSC 33. This test was approved in *Re H-W Children* [2022] UKSC 17 which held that where an appeal occurs by way of a review the appellate court should not undertake a fresh evaluation of the question of necessity and proportionality. Where the judge has adopted the correct approach to these issues, the appellate court’s function is to review his findings, and to intervene only if it took the view that he was wrong.

[12] These principles were considered in *AU v Belfast HSCT* [2024] NICA 1:

“Flowing from these decisions the essential question for the appellate court to ask is whether the judge was wrong. The judge can err in a case by misapplication of the law. The judge may also be found to have erred if the judge has proceeded on a material error of fact. However, [as AU himself conceded], matters of weight are not

matters which the appellate court should interfere with. That is because too ready an interference by the appellate court risks depriving a family trial judge of the discretion entrusted in him or her by law.

It follows that a court may not interfere with a decision unless it is satisfied that the judge exercised his discretion on a principle of law which is wrong or under a material misapprehension of fact or based on failing to take into account all relevant options in a case or based upon a failure to provide proper reasons.”

[13] Munby J considered the approach of an appellate court to a first instance judgment in *Re F* [2016] EWCA Civ 546:

“Like any judgment, the judgment of the Deputy Judge has to be read as a whole and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in *SP v EB and KP* [2014] EWHC 3964 (Fam), there is no need for the judge to “incant mechanically” passages from the authorities, the evidence or the submissions, as if he were “a pilot going through the pre-flight checklist.”

[14] In the recent decision of *Re A (A Child)* [2025] EWCA Civ 424 Moylan LJ referenced with approval Lord Justice Baker’s findings in *Re YW (A Child)*:

“... I acknowledge of course that the assessment of evidence, and the apportionment of weight to be attached to each piece of evidence, are matters for the judge at first instance and that an appeal court must not interfere with findings of fact by trial judges unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. I bear in mind the warning given by Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at paragraph 115 that the expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed,

that in making her decisions the trial judge will have regard to the whole of the sea of evidence presented to her, whereas an appellate court will only be island hopping, and that the atmosphere of the courtroom cannot be recreated by reference to documents.”

[15] In light of the above authorities we agree with the respondent that:

- (a) This appeal should be determined by way of review.
- (b) The test to be applied is whether the trial judge was wrong.
- (c) The appellate court should be mindful of the advantages available to the trial judge which are not open upon appeal.
- (d) When considering the trial judge’s reasoning, the appellate court ought not to approach a written judgment with the expectation that every point argued before the judge or considered by him will be slavishly rehearsed therein.

The relevant legislation

[16] The relevant legislation is The Children (NI) Order 1995 (“the 1995 Order”):

“Residence, contact and other orders with respect to children

8. – (1) In this Order –

“contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

“residence order” means an order settling the arrangements to be made as to the person with whom a child is to live;

This legislation sets out at Article 3 that the welfare of the child is the court’s paramount consideration.

Child’s welfare to be paramount consideration

3. – (1) Where a court determines any question with respect to –

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

[The Welfare Checklist]

(3) In the circumstances mentioned in paragraph (4), a court shall have regard in particular to –

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
- (g) the range of powers available to the court under this Order in the proceedings in question.

(4) The circumstances are that –

- (a) the court is considering whether to make, vary or discharge an Article 8 order, and the making,

variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge an order under Part V.

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.”

Response to the grounds of appeal

Ground 1: Wrong: the judge made a significant error in the way he applied the law, misunderstood and ignored the evidence before him, and reached a conclusion that no reasonable person could have made to the detriment of NI

[17] At the case management hearing on 8 May 2025, Kinney J advised the appellant that the burden was on him to make the case that it is in NI’s best interests to replace the existing residence order. The court advised that it would be looking at the welfare checklist and considering NI’s current circumstances, welfare and best interests. The court advised that if the appellant did not meet the burden his application would likely fail.

[18] At para [5] of the judgment, Kinney J stated ‘he was informed that it was for him to demonstrate how NI’s welfare and best interests were served by his move to England and to his father’s care.’ The appellant failed to provide any or sufficient evidence to discharge this burden. This appears from para [10] of the judgment which states “the father has provided little by way of evidence or information regarding the benefits of relocating NI and making a residence order in his favour in England.” To the contrary, the father instead blamed the mother for his lack of contact with the child, rehashed historic issues and failed or refused to focus at all on his child’s current circumstances. As the court noted at para [22] ‘there was no focus on NI or his welfare’ in the application before the court.

[19] The court below did not have any evidence or information from the appellant in respect of NI’s current or proposed circumstances if the order sought was made. The appellant sought to rely on his views and opinions of past events and past decisions by the courts which do not relate to NI’s present circumstances. At para [22] the court noted the appellant’s statement was:

“entirely absent any consideration of the benefits to NI of the making of a residence order and relocation to England, or any insight into the issues that would arise for a 13 year old leaving a secure and settled home, school experience

and friendships for an unknown quality of life in England and a family he has not seen for five years. The father has not set out any proposed arrangements for his care, for his education or for contact with his mother and social network in Northern Ireland.”

[20] The appellant continues to blame the respondent mother for the lack of direct contact between himself and NI. A contact order made on 9 March 2022 was carefully drawn up, is detailed and prescriptive. However, the appellant remains unsatisfied with its terms, and will not comply with it. This is evidenced by his ongoing unsuccessful applications to courts since 2022. The court noted at para [19] of its judgment how the appellant has not ‘engaged in any meaningful way with contact arrangements that would have allowed his ongoing relationship with NI.”

[21] The court took into consideration the entirety of the welfare checks contained in Article 3(3) of the 1995 Order. The court considered the wishes and feelings expressed by NI to the Official Solicitor as outlined at paras [25] and [28] of the judgment. He does not wish to have contact with the appellant at this time. As is clear from the judgment Kinney J plainly considered NI’s age, educational needs and the potential detriment of continuous court proceedings. We agree that the judge did not make any error of law.

[22] As the respondent points out, the appellant’s originating application and statement rehearses old issues which have been addressed historically by the courts, albeit not to the satisfaction of the appellant. The application failed to focus on why the transfer of residence sought would be in NI’s best interests or to consider and look at the welfare checklist.

[23] We agree that the conclusion reached by Kinney J, at para [24], that the application was ‘ill-conceived and devoid of merit’ was the only logical conclusion to reach in light of the evidence before him and consideration of the relevant legislation.

Ground 2: Unjust due to a serious procedural irregularity; failing to ensure a relevant expert makes comment on both issues of attachment & violence, there was also a serious error in the way the case was handled, as the applicant not given the chance to present their case and excluded from the 4 June 2025 hearing, and relevant evidence was not considered or cited by the judge

[24] The appellant has not had any direct contact with NI since the period between Christmas and New Year 2020/2021. This is confirmed by para [11] of his originating statement of 4 March 2025. This lack of contact was his own choice. He has over the years, failed to engage with NI via sending cards or presents for his birthday or Christmas annually. He reserves his engagement with NI to when he is having contact with him in England only. He has thus diminished his own relationship with NI. In December 2024 the appellant sent NI a card unexpectedly. The content was

inappropriate, in keeping with his court applications and his refusal to engage in Facetime contact since February 2023.

[25] The limited relationship between NI and his father is the result of his father's choices. The appellant sought the instruction of an expert to examine 'attachment and violence.' The appellant's attachment to NI has been eroded by his choice not to comply with contact orders over many years. The courts, despite submissions by the appellant over the years, have not determined any violence on the part of the respondent mother. It would not be appropriate for an expert to comment on or determine domestic violence, when this is the remit of the court. The instruction of an expert would not be appropriate at this time due to the lack of ongoing relationship with NI. Kinney J specifically addresses this at para [24] of his judgment when he noted that the instruction of an expert would not be appropriate at this time and that the appellant father needs to take small steps to 're-establish' his relationship with his child. We agree that the judge's comments are even more relevant in circumstances where NI has expressed no desire for direct contact with the appellant through the Official Solicitor.

[26] The appellant asserts that he could not present his case, was excluded from the 4 June hearing and that relevant evidence was not considered or cited by the judge. The appellant made submissions to the court, he was not under oath at the time of making the submissions but these submissions were very carefully considered by the trial judge. He did not ask to be placed under oath as was his choice. The respondent mother did not give evidence under oath, as was her choice. Senior counsel made submissions on behalf of the respondent mother. We fail to understand how, in these circumstances, the appellant could justifiably feel that he was unable to present his case.

[27] The appellant did not raise any issue pertaining to the review convened on 4 June 2025 at first instance.

[28] Additionally, the appellant was present at the case management review on 8 May 2025 when the review date of 4 June 2025 was determined. He was therefore fully sighted on the review date. He sets out his opinion of the 4 June review at page 16 of his appeal statement of 5 November 2025. It is clear that he assumed that the 4 June 2025 review would not proceed because he had lodged an appeal against the directions made on 8 May 2025. This is an error on his part. He is an experienced self-litigant and is very familiar with how to contact the relevant court office to clarify any issue. There was no basis for any assumption on his part that the 4 June 2025 review was not taking place or that he did not receive court remote link details. The appellant was not 'excluded' from the 4 June 2025. Moreover, he has not produced a shred of evidence in support of this assertion. It is apparent the appellant failed to attend on 4 June 2025 because of his own error/decision.

Ground 3: Demonstrable bias: The judgment only considers the respondent's position, with the judge demonstrating such bias that affected the outcome of the case, to the extent the judgment could have been drafted by the dishonest lying abusive barrister representing the respondent.'

[29] We agree that the judgment of Kinney J is comprehensive, that he carefully considered the legislation, particularly the wishes/feelings of NI and that he took into consideration the lack of evidence provided by the appellant father to demonstrate how it would be in NI's best interests to relocate to live in England with his father. The judge was plainly cognisant of the past history of litigation and the appellant's accepted lack of direct contact with his son since 2020 by his own choice. The judge reached a conclusion based on information before him from the parties and the Official Solicitor.

Conclusion

[30] We consider that the decision of Kinney J is unimpeachable and there is absolutely no merit in any of the three points of appeal raised by the appellant. Accordingly, we dismiss the appeal. Finally, we observe that there is considerable force in the respondent's submission that the appellant is a perpetually dissatisfied litigant in person and that his appeal points are neither supported by fact nor law.

APPENDIX 1

CHRONOLOGY OF HISTORIC COURT ORDERS AND JUDGMENTS IN RESPECT OF THE SUBJECT CHILD

| | | <u>Court Tier, Judge and Orders made</u> |
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| 1. | 27th September 2013 | Norwich County Court HHJ Curl Residence Order in favour of [Mother] Contact Order in favour of [Father] Written judgment dated 29 th September 2013 |
| 2. | 13 th February 2014 | Court of Appeal, London McFarlane LJ Appellant, [Father] Permission to Appeal refused |
| 3. | 11 th August 2014 | Norwich Family Court HHJ Plumstead Applicant, [Father] Residence Order to [Mother] affirmed Variation to Contact Order to [Father] Order under 91(14) of Children Act 1989 prohibiting [Father] from making any further applications to the Court without first obtaining the permission of the Court for a period of 5 years. |
| 4. | 29th September 2014 | Norwich Family Court HHJ Plumstead Permission to bring a Specific Issues Order application by [Father] refused |
| 5. | 2nd December 2014 | Court of Appeal, London Ryder LJ Appellant, [Father] |

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| | | Permission to Appeal orders of 11 th August 2014 refused |
| 6. | 5 th August 2015 | Norwich Family Court HHJ Gordon-Saker Applicant, [Father] Permission to apply for a Child Arrangements Order refused |
| 7. | 11 th February 2016 | Court of Appeal Master Bancroft-Rimmer Appellant, [Father] Appeal dismissed |
| 8. | 23 rd June 2016 | Londonderry Family Care Centre HHJ Loughran Residence Order in favour of [Mother] Contact Order in favour of [Father] Prohibited Steps Order forbidding [Mother] from changing the subject child's surname. Article 179(14) under the Children (NI) Order 1995 prohibiting any application in respect of the subject child without first obtaining the leave of the Court for a period of 3 years from date of judgment. Written judgment provided by the Court |
| 9. | 14 th May 2018 | Court of Appeal in Northern Ireland Appellant, [Father] Appeal of an Interim Contact Order Appeal dismissed |
| 10. | 17 th December 2019 | High Court of Justice in Northern Ireland O'Hara J Appeal by [Father] of Order of 23 rd June 2016 Appeal dismissed Residence Order in favour of [Mother] affirmed Amended Contact Order in favour of [Father] Article 179 (14) Article 179(14) under the Children (NI) Order 1995 prohibiting any application in respect of the subject child |

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| | | <p>without first obtaining the leave of the Court for a period of 3 years from date of judgment.</p> <p>Written Judgment provided by the Court</p> |
| 11. | 22 nd September 2020 | <p>Court of Appeal in Northern Ireland</p> <p>Appellant, [Father] Appeal of Orders of 17th December 2019 Appeal dismissed</p> |
| 12. | 19 th November 2020 | <p>Londonderry Family Proceedings Court District Judge (Magistrates Court) Mullan</p> <p>Applicant, [Father] Leave to commence Residence Order Proceedings Refused</p> |
| 13. | 18 th December 2020 | <p>Londonderry Family Care Centre HHJ McCaffrey</p> <p>Appellant, [Father] Appeal of decision of 19th November 2020 Appeal dismissed</p> |
| 14. | 30 th December 2020 | <p>High Court of Justice in N Ireland McFarland J</p> <p>Applicant, [Mother] Leave granted to bring an application under Children (NI) Order 1995 Ex-parte Specific Issues Order made directing [Father] to return the subject child to the care of [Mother]</p> |
| 15. | 4 th January 2021 | <p>High Court of Justice in N Ireland Tracey LJ</p> <p>Applicant, [Mother] Specific Issues Order made directing [Father] to handover subject child to a nominated representative for [Mother] Recovery Order directing Police Service of Norwich to recovery the subject child should [Father] fail to comply with terms of Specific Issues Order</p> |

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| 16. | January 2021 | Application by [Father] for Leave to Appeal, to the Court of Appeal in N Ireland, the orders of 4 th January 2021 Leave to Appeal refused |
| 17. | 1 st March 2021 | Applications by both parties for leave to commence Children Order Proceedings before the High Court of N Ireland Leave granted to both parties |
| 18. | 10 th August 2021 | Court of Appeal in Northern Ireland Appellant, [Father] Appeal of interim Contact order of McFarland J made on 23 rd July 2021 Appeal dismissed |
| 19. | 22 nd November 2021 | Court of Appeal in Northern Ireland Appellant, [Father] Appeal of directions made by McFarland J on 7 th September 2021 Appeal dismissed |
| 20. | 22 nd November 2021 | High Court of Justice of N Ireland McFarland J Leave granted to [Father] to withdraw proceedings commenced in 1 March 2021. |
| 21. | 25 th January 2022 | High Court of Justice in N Ireland McFarland J Application by [Father] for leave to commence Contact Order proceedings Leave refused |
| 22. | 9 th March 2022 | High Court of Justice of N Ireland McFarland J Determination of proceedings commenced by [Mother] in 1 March 2021 Residence Order in favour of [Mother] Varied Contact Order in favour of [Father] Penal notice attached to the Contact Order |

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| | | <p>Article 179 (14) Article 179(14) under the Children (NI) Order 1995 prohibiting any application in respect of the subject child without first obtaining the leave of the Court for a period of 3 years from date of order.</p> <p>Written judgment provided by the Court</p> |
| 23. | 12 th August 2022 | <p>High Court of Justice of N Ireland McFarland J</p> <p>Applicant, [Father] Leave to issue a Residence Order Application refused and Application dismissed.</p> <p>Written Judgment provided by the Court</p> |
| 24. | 10 th May 2023 | <p>Court of Appeal in Northern Ireland</p> <p>Appellant, [Father] Appeal of decision by McFarland J of 12th August 2022</p> <p>Appeal dismissed with a 50% costs order against the Appellant</p> |
| 25. | 13 th November 2023 | <p>Supreme Court of the United Kingdom</p> <p>Appellant, [Father] Permission sought to appeal the Court of Appeal decision of 10th May 2023</p> <p>Permission refused with a 100% Costs order against the Appellant</p> |
| 26. | 23 rd April 2024 | <p>High Court of Justice in Northern Ireland McFarland J</p> <p>Applicant, [Father] Applicant for leave to commence Residence Order application</p> <p>Leave refused with a 100% Costs Order against the Applicant</p> |
| 27. | 21 st October 2024 | <p>Court of Appeal in Northern Ireland</p> |

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| | | <p>Appellant, [Father] Appeal of decision of McFarland J of 23rd April 2024</p> <p>Appeal dismissed with a 100% Costs Order against the Appellant</p> |
| 28. | 24 th October 2025 | <p>High Court of Justice in Northern Ireland Kinney J</p> <p>Applicant, [Father] Application for a Residence Order</p> <p>Application refused and dismissed. Contact Order of 9 March 2022 rescinded Indirect Contact Order made 179(14) Order preventing applications without the leave of the court. To expire on [NI's] 16th birthday.</p> |

Prepared on behalf of the Respondent, [Mother]

Suzanne Simpson KC
Maevé Mullan BL

Instructed by John J McNally Solicitors for the Respondent, [Mother].

4th September 2025