

Neutral Citation No: [2026] NIFam 19

Ref: HUM13127

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

Delivered: 21/08/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985

Between:

JW

Plaintiff

and

MR

Defendant

[Hague Convention: rights of custody; grave risk]

Joanne Hannigan KC & Eric Cleland (instructed by Francis Hanna & Co) for the Father
Nicola Rountree (instructed by Caldwell & Robinson) for the Mother
Sinéad O'Flaherty KC & Áanna McHugh (instructed by the Official Solicitor) on behalf of
the subject child

HUMPHREYS J

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 her parents.

Introduction

[1] This is an application for a return order brought by the plaintiff father, JW, in respect of a child, GW, who is four years of age. The application is brought 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, MR, is the mother of the child and she resists the making of the order on the basis that:

- (i) The father was not exercising rights of custody at the relevant time; and
- (ii) She is entitled to rely on the grave risk defence provided for in article 13(b) of the Convention.

[3] The following facts are not in dispute:

- (i) The child was born and is habitually resident in the United States of America;
- (ii) GW has been in Northern Ireland since 3 December 2025, initially with the consent of the father;
- (iii) Since 10 March 2026 the father has not consented to GW remaining in Northern Ireland;
- (iv) The child is aged under 16 years; and
- (v) A period of less than one year has elapsed since GW was either removed from the USA or retained in Northern Ireland.

The evidence of the parties

[4] The evidence reveals that the parties commenced a relationship in 2017 and married in the USA in 2021. GW was born in 2022. She has experienced some developmental delay and has undergone testing for autistic spectrum disorder.

[5] During the currency of the marriage MR made several extended trips back to Northern Ireland with the child and planned one such trip for December 2025 with the expressed intention of returning on 10 March 2026. This trip was with the consent of the father and he intended to travel later in December and stay until January 2026.

[6] JW received a call from Northern Irish Social Services on 22 December 2025 stating that allegations of domestic violence had been made against him and he ought not to travel to Northern Ireland.

[7] On 19 December 2025, the mother had filed an application in the Superior Court of the State of California for the County of San Mateo, seeking a Domestic Violence Restraining Order ("DVRO"). On 24 December 2025 the court made a Temporary Restraining Order ("TRO") on an ex parte basis. At the same time it also made a Child Custody and Visitation Order ("CCVO").

[8] Subsequent orders of the California court have provided that the father has indirect contact with GW three times per week, and more recently, that supervised direct contact take place in Northern Ireland on 6 and 7 July 2026.

[9] As a result of these court orders, the mother has contended that the father was not exercising custody rights in respect of GW immediately before 10 March 2026.

[10] The mother's affidavit evidence contains numerous allegations which are relevant to the grave risk defence. In summary, she claims:

- (i) She was the victim of a serious sexual assault perpetrated by the father on 21 August 2021;
- (ii) She was physically assaulted by JW on 9 April 2022 whilst pregnant when he forcibly grabbed her arm to prevent her from leaving a car;
- (iii) MR was subjected to degrading treatment by her husband including disparaging remarks about her appearance and claims that she was mentally ill;
- (iv) The father has coercively controlled her, restricting her access to money and matrimonial assets;
- (v) JW was physically abusive to GW from her birth, including the use of physical restraint, force-feeding, dragging her along the floor, using a high pressure water hose on her and pinning her to beds and furniture;
- (vi) The father frequently tried to silence GW by putting his hand over her nose and mouth;
- (vii) JW was emotionally abusive to GW, shouting at her and making derogatory comments about her behaviour and neurodivergence;
- (viii) JW drove GW whilst under the influence of drugs;
- (ix) GW has reacted to her treatment by JW by having panic attacks, becoming emotionally dysregulated and disengaged, rejecting her father and being significantly constipated;
- (x) JW has a number of guns which were often left unsecured within the home and within the reach of GW.

[11] The father denies all these allegations and says that they are concocted or, alternatively, do not meet the threshold for domestic abuse.

[12] In her evidence, MR stated that it was obvious when they left for Northern Ireland in December 2025 that she and GW were “not coming back.” However, she has sought to explain that this remark meant not returning to the marriage and the family home rather than not returning to the USA. It is the mother’s case that the decision not to return on a permanent basis was made in or around February 2026 and communicated in March 2026.

[13] The mother deposes that during the currency of her marriage she made multiple contacts with the domestic violence hotline in the USA. She informed medical practitioners of some level of abuse in 2022. She sought further medical assistance in the spring of 2025 and was assigned a specialist trauma-informed therapist. In the summer of 2025 she also contacted Women’s Aid and her GP in Northern Ireland.

[14] On her return in December 2025 MR attended with a GP and an onward report was made to Social Services on the basis of the allegations of physical and emotional abuse.

[15] It is MR’s case that GW’s presentation has improved significantly since her move to Northern Ireland. She began pre-school in January 2026 and this has been successful. GW has attended speech therapy in Northern Ireland and has the services of a clinical psychologist. In March 2026 she began to see an occupational therapist who specialises in neurodiverse children.

[16] The mother states that GW has reacted badly to the contact which she has had with her father since April 2026. This has caused sleep disruption, loss of appetite and episodes of self-harm.

[17] The father says that the two sessions of supervised direct contact in July 2026 went very well and that GW was affectionate and engaged. Photographs were taken at the time which show her happy and smiling.

[18] Counsel for the mother made an application to adduce oral evidence on the part of her client in relation to the question of intention at the time of removal from the USA in December 2025. Concern was expressed that the affidavit evidence may have been understood to mean that MR had formed an intention to leave the USA permanently at that time. The authorities make it clear that oral evidence ought to be admitted in Convention applications only exceptionally although in cases such as *Re K(Abduction: Consent)* [1997] 2 FLR 212 it has been permitted in relation to the issue of consent.

[19] I was satisfied that it was not necessary in this application to admit any oral evidence. The court was able to determine the issues on the basis of the affidavit evidence and exhibits.

The California court orders

[20] The TRO made on 24 December 2025 was expressed to be in force until 14 January 2026 and restrained the father from:

- (i) Possessing any firearm or ammunition;
- (ii) Harassing or molesting MR and GW;
- (iii) Coercively controlling MR and GW;
- (iv) Having any contact with MR or GW, save as ordered by the court;
- (v) Being within 100 yards of either MR or GW.

[21] The CCVO made on the same date provides:

- (i) JW cannot take GW out of San Mateo without written permission or a court order;
- (ii) JW has no access to GW's health or school information; and
- (iii) Sole legal and physical custody of the child was granted to MR.

[22] By the California Family Code, "legal custody" means the right and the responsibility to make the decisions relating to the health, education, and welfare of a child. "Physical custody" means residence.

[23] The evidence reveals that the father relinquished his firearms in accordance with the terms of the TRO and filed evidence in response on 12 January 2026, disputing the allegations and disagreeing with the orders made. In his response to the CCVO, JW has sought joint custody orders both in terms of legal and physical custody.

[24] In her evidence grounding the application for a DVRO, the mother stated there ought to be no visitation since she was presently in Northern Ireland with GW and would not be returning until 10 March 2026. It was asserted that, upon their return, supervised visits could be discussed.

[25] The court date was adjourned and the TRO and CCVO continued in force. On 8 April 2026 the court ordered that the father was to have indirect contact with GW by FaceTime three times per week at set times. On 29 April 2026 supervised direct contact in Northern Ireland on 6 and 7 July 2026 was directed.

[26] The minute of the court's order made on 29 April 2026 states:

“The court is NOT making any decision at this time regarding legal custody”

[27] In a report to the court, Family Court Services have recommended that if there is a finding of domestic violence after a court hearing, sole legal custody should be ordered to MR. In the event of no such finding being made the recommendation is for joint legal custody.

[28] An evidentiary hearing has been fixed for two days, 18 September and 2 October 2026 with the parties to appear in person. At that stage the court will determine the allegations of domestic violence.

[29] On 21 April 2026, following a criminal investigation, the District Attorney for the county of San Mateo determined that there would be no prosecution of the father.

The Official Solicitor's report

[30] The court had the benefit of a report from Ms Liddy of the Official Solicitor's office dated 11 August 2026. Understandably, in light of her age and presentation, Ms Liddy decided not to interview GW for the purposes of these proceedings.

[31] As the report rightly notes, litigation under the Convention is not the forum to determine welfare issues or address disputed questions of fact. In the event that a return order were to be made, Ms Liddy identified the following areas of concern in relation to any proposed protective measures:

- (i) The access to therapeutic services for GW;
- (ii) Accommodation arrangements;
- (iii) Financial provision;
- (iv) Travel arrangements;
- (v) Education; and
- (vi) Issues around firearms.

The Hague Convention

[32] 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.

[33] 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 ...”

[34] Article 3 of the Convention states that the removal or retention of a child is wrongful when:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

[35] Article 5 states that rights of custody “shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence”.

[36] In *TD v MT* [2026] EWHC 952 (Fam) MacDonald J outlined the approach to be taken in relation to disputes over rights of custody. He identified three questions for the court to determine:

- (i) What rights does the parent actually enjoy, as a matter of law, in the requesting state?
- (ii) Having identified those rights, did they amount to rights of custody within the meaning of the Convention?; and
- (iii) If the parent had rights of custody, were they being exercised immediately prior to the removal or retention?

[37] MacDonald J also referenced a number of principles divined from the relevant caselaw, including *Re D (A Child)(Abduction: Rights of Custody)* [2006] UKHL 51 and *Hunter v Murrow* [2005] EWCA Civ 976:

- (i) The Convention should be construed broadly and in a purposive way in order to make it work;
- (ii) The lawful removal by one parent of a child from the jurisdiction of their habitual residence does not act to destroy the rights of custody of the other parent. The parent will continue to enjoy rights of custody subject to the effect of the instrument or agreement permitting the lawful removal of the child from the jurisdiction;
- (iii) A right to veto the removal of a child to another jurisdiction, and determine a child's place of residence also amounts to a 'right of custody' under the Convention;
- (iv) The right to apply for a court order does not amount to a right of custody;
- (v) Even extensive rights of access do not amount to rights of custody, notwithstanding that an international move may impede effective access rights. Overnight stays are not sufficient to create a right of custody under the Convention;
- (vi) In relation to the exercise of rights, article 3(b) must be construed widely rather than taking a narrow approach based on the actual day to day exercise of rights.

[38] Article 12 mandates the return of a child wrongfully removed or retained 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.”

[39] 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."

Was the removal wrongful?

[40] Removal and retention are separate concepts. As Lord Brandon explained in *Re H (Minors) (Abduction: Custody Rights)* [1991] 2 AC 476:

"For the purposes of the Convention, removal occurs when a child, which has previously been in the State of its habitual residence, is taken away across the frontier of that State; whereas retention occurs where a child, which has previously been for a limited period of time outside the State of its habitual residence, is not returned to that State on the expiry of such limited period."

[41] I am satisfied on the evidence, including contemporaneous messages sent to friends and medical practitioners, that when MR left the USA in December 2025 she intended to return with GW in March 2026. This trip was with the consent of JW. Sometime in February 2026 she determined not to return. The removal was not therefore wrongful.

Was the retention wrongful?

[42] Equally, I am satisfied that JW did not consent to the continued retention of GW in Northern Ireland after 10 March 2026. Whether this retention was wrongful depends on whether, at this date, JW was exercising rights of custody.

[43] There is no dispute that JW had and was exercising custody rights in respect of GW in December 2025. Indeed, the agreement for the child to travel was itself an exercise of such rights.

Was the father exercising rights of custody?

[44] The question is whether the making of the TRO and CCVO on 24 December 2025 effectively extinguished those rights or created a factual situation in which JW was no longer exercising those rights.

[45] The mother says that the CCVO granted sole legal and physical custody of the child to her and therefore, at the date of retention, JW's rights had ceased to exist.

[46] Once served with the court orders, it is evident that the father instructed lawyers and responded to the allegations made by MR. He also made applications to the court and appeared at hearings, resulting in orders being made in respect of indirect and direct contact.

[47] It would be a surprising outcome if an ex parte interim order, made without any determination of the facts, were to result in the rights of custody enjoyed by a parent being extinguished.

[48] In *Re A (Abduction: Rights of Custody: Imprisonment)* [2004] 1 FLR 1, the mother had obtained an Apprehended Violence Order ("AVO") in Australia, similar in terms and operation to a non-molestation order. She argued that the AVO effectively precluded the father from exercising rights of custody and therefore her removal of the child from the jurisdiction was not wrongful. Butler-Sloss P held the AVO had the effect of preventing the father from exercising some of his rights but it did not remove his right to veto the child's removal from the jurisdiction. For that reason, the removal to the United Kingdom had breached the rights of custody which would otherwise have been exercised but for the removal.

[49] Similarly, in *Re L (A Child)* [2005] EWHC 1237 (Fam), the fact that the father was imprisoned did not mean that rights of custody were not being exercised. More recently, the High Court in England & Wales in *KS v CS* [2024] EWHC 2115 (Fam) rejected an argument that incapacity caused by illness caused an abandonment of the exercise of rights of custody.

[50] The court orders made in California do grant sole legal custody to the mother but this was expressed to be on an interim basis pending the hearing of the applications. In particular, it is clear that:

- (i) No final determination has been made on the question of legal custody;
- (ii) JW is seeking an order for joint legal custody; and
- (iii) This issue will await the outcome of the fact finding hearing on domestic abuse in light of the recommendation from Family Court Services.

[51] The CCVO itself does restrict some of the father's rights but it does not purport to restrict or remove the father's right to veto his daughter's removal from the jurisdiction. Indeed, the evidence relied upon by MR in obtaining the order makes it clear that she is only out of the jurisdiction temporarily and will return on 10 March 2026.

[52] I am therefore satisfied that JW was exercising rights of custody immediately prior to 10 March 2026 and therefore the retention of GW in this jurisdiction was wrongful.

[53] By virtue of article 12 of the Convention, the court must therefore make a return order in respect of GW unless the defence of grave risk provided for in article 13(b) is made out.

Grave risk

[54] In *PK v DK* [2026] NIFam 3 and *AG v GW* [2026] NIFam 11, I have recently reviewed the law relating to the grave risk exception under article 13(b) of the Convention.

[55] As explained therein, the court does not carry out a fact-finding exercise in respect of the allegations which are said to give rise to the grave risk of physical or psychological harm or the intolerable situation. The court's approach is in three stages:

- (i) Does the evidence enable the court confidently to discount the possibility that the allegations made 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?

[56] The evaluative exercise which the court must engage in at the first stage is necessarily limited. If the court harbours doubts about the validity and cogency of the evidence, that does not necessarily mean that the allegations can be confidently discounted. Williams J stated in *T v L* [2023] EWHC 3455 (Fam):

“... the ‘confidently discounted’ territory is really a relatively limited territory where the court is satisfied, on good evidence or absence of evidence, that really there is no substance to the allegations which are made.” (para [50])

[57] In this case, the father contends that the allegations of domestic violence and abuse are uncorroborated. There is no independent and objective evidence to substantiate any of the claims and the District Attorney has made a decision not to prosecute.

[58] It is evident that MR has sought medical intervention from a range of practitioners in both the USA and Northern Ireland and, in doing so, has made complaints of verbal, physical and emotional abuse. Not all the matters raised in these proceedings have been the subject of specific report but nonetheless there is evidence of previous and consistent reporting having been made. Taking the evidence as a whole, I am unable to confidently discount the possibility that the allegations give rise to a grave risk of physical or psychological harm to GW.

[59] As such, I must take the allegations at their height and I have concluded, on that basis, that they establish a grave risk that return would expose the child to physical or psychological harm. In doing so, I have taken account of GW’s particular vulnerability and her reported responses to some of the events which have occurred, including the claims of self-harm, panic attacks and serious emotional dysregulation. I am satisfied that there is a risk that such events could recur and cause significant psychological and/or physical harm to her.

[60] I stress that this court is making no findings of fact or engaging in a forensic evaluation of each of the allegations. This will be a matter for the Californian courts in the hearings listed on 18 September and 2 October 2026.

[61] As a result, the court must consider whether the proposed protective measures afford the necessary level of protection against the risks identified.

Protective measures

[62] 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."

[63] In Convention cases, it is well established that 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).

[64] In this case, the court has evidence in relation to the remedies available, and the procedures applicable, in cases of alleged domestic violence in the courts in California. There is already in place a TRO and CCVO with a full hearing to follow in the near future.

[65] The father has offered the following undertakings in the event of GW returning to the USA:

- (i) He will pay \$4,000 per month towards the maintenance and upkeep of MR and GW for an initial period of three months until spousal and child support can be formally assessed by the USA court or agreed;
- (ii) He will not make or pursue any criminal complaint against MR arising out of the removal of GW from the USA to Northern Ireland and/or the subsequent retention;
- (iii) He will fund flights and any reasonable travel costs from Northern Ireland to the USA for both MR and GW;
- (iv) He will fund suitable furnished accommodation for the mother and GW up to approximately \$5,000 per month, for an initial period of three months, pending determination of any further relief by the USA court;
- (v) He will have no direct contact with MR save via a parenting app or lawyers pending the adjudication of outstanding litigation in the USA;
- (vi) He will not hold a firearm pending adjudication of the DVRO proceedings in the USA;
- (vii) He will source and fund suitable therapeutic input as may be required for the GW;
- (viii) He will not attend at MR's address or be within the curtilage of the building in which she lives;
- (ix) His direct contact with GW is to be supervised or decided by the court in USA pending the determination of the proceedings;
- (x) He agrees that upon the return to the USA GW is to remain in the custody of the mother unless otherwise ordered by the relevant court in the USA; and

- (xi) He will take all necessary steps to forthwith lodge the undertakings attached to the return order with the relevant court in the USA and take steps to ensure that these are enforceable in that jurisdiction.

[66] I am satisfied that the orders which are already in place, together with the undertakings which the father has provided to this court, and which will be enforceable in California, are sufficient to meet the risk which has been identified in this case. They correlate with the issues raised by the Official Solicitor and, taken as a whole, provide a comprehensive framework of safety within which the Californian courts can make the necessary decisions in relation to the family and, in particular, the welfare of GW.

[67] For this reason, the defence under article 13(b) of the Convention must fail.

Conclusion

[68] In accordance with article 12 of the Convention, the court must make a return order requiring the return of GW to the USA unless one of the exceptional defences provided for in article 13 is made out.

[69] For the reasons set out, the grave risk defence in relation to GW fails. I therefore order that GW be returned to the USA.

[70] I direct the release of this judgment and the papers in this application to the Californian court and to the parties' legal representatives.

[71] I will hear the parties as to the precise terms of the order.