



Neutral Citation Number: [2023] EWHC 2063 (Fam)

Case No: FD23P00058

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10.08.23

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

Between :

JC

Applicant

- and -

SS

Respondent

(Hague Convention: Consent; Child's Objections ; Article 13(b))

Adele Cameron-Douglas (instructed by Moore Barlow) for the Applicant
Anita Guha (instructed by Dawson Cornwall) for the Respondent

Hearing dates: 17 to 19 July 2019

Approved Judgment

This judgment was handed down remotely at 10.30am on 10.08.2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE ROBERTS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Roberts:

1. This is an application by JC, a father of four children who are currently in England with their mother, SS. It is brought pursuant to the Child Abduction and Custody Act 1985 incorporating the Hague Convention on the Civil Aspects of International Child Abduction. The four children who are the subject of the application are A, B, C and D who are now respectively 13, 12, 9 and 7 years old. The father issued his application on 2 February 2023 after the mother failed to return with the children to the Republic of Ireland where the family had been living prior to travelling to Manchester in December 2022. The mother opposes his application for summary return. In support of her case that this was not a wrongful removal or retention in Convention terms, she relies on defences of consent, acquiescence, the children's objections to a return and grave risk of harm under Article 13(b).
2. The children have been in this jurisdiction for nearly seven months. On 15 May 2023 Arbuthnot J granted the mother's Part 25 application and permitted her to obtain a report from an expert consultant psychiatrist. That report together with a detailed analysis of the children's wishes and feelings about their situation are now included within the substantial volume of material which makes up the court bundle which runs to over 800 pages. In addition to the parents' witness statements, much of that material consists of local authority and police records of involvement with this family both before and after their arrival in England earlier this year.
3. This is a case which involves significant allegations by the mother against the father of coercive control and domestic abuse. The mother's allegations are serious and involve physical harm (including strangulation, punching and head-butting), sexual abuse, psychological and emotional abuse. The father refutes those allegations. This is a summary hearing and it is no part of my function to determine the truth or otherwise of those allegations. I am required in this context to consider whether, if they are true, and in the event of a return, there would be a grave risk that the children would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court then asks how the children can be protected against the risk: see *Re E* [2011] EWCA Civ 361, [2012] 1 AC 144. That exercise involves a holistic evaluation of all the evidence before the court.
4. In relation to the issue of consent, I heard some limited oral evidence from each of the parents and from two further witnesses. In terms of the expert evidence, Dr Damian Gamble, a consultant psychiatrist, attended court via a remote link to speak to the contents of his report and to answer further questions about the likely effect on the mother's mental health if a return was ordered. I also heard from Mr Nick Lill, a member of the High Court CAFCASS team. He interviewed all four children for the purposes of his report and he was able to provide me with further insight into their current situation and the impact of the parental dynamic on their current wishes and feelings.
5. The children have had no contact with their father since he returned to the Republic of Ireland in January this year. As I could see for myself when the father was giving his evidence, their absence from his life has been a significant loss to him. These proceedings have been painful and traumatic for each of these parents. The father seeks above all to take whatever steps may be necessary to restore his relationship with his children. He

accepts that each is currently expressing a clear resistance to contact. The mother finds any form of contact with the father highly distressing and, on her case, traumatising. Arrangements were made to ensure that she was able to participate in the proceedings with as little distress as possible. She sat in a screened part of the court and the father absented himself to another room with remote facilities whilst she gave her oral evidence. As I observed for myself whilst she was giving evidence, the mother at times appeared overwhelmed by these proceedings and the prospect of returning to the Republic of Ireland. That said, she was able to compose herself and responded to questions put to her about the events which had brought her and the children to this country. I am sure that each of these parents has a very different perception of their relationship and the events which have shaped and influenced family life and, in particular, their children's experience of that family life. It was notable that, when giving evidence, the father told me that, until the mother expressed a wish to separate in the summer of 2022, there had been no problems in their personal relationship. He acknowledged that he had concerns for the mother's mental and psychological wellbeing and her ability at times to care for their children but there did not appear to be any insight on his part as to the causes of that presentation. He said this:

“We had been together for fourteen years. It just came out of the blue. She was quite happy where she was until we split up.”

6. There was a significant amount of ground to cover in terms of both the written and oral evidence and I am grateful to counsel for the focus and clarity which they brought to their written and oral presentations. Each provided me with a detailed exposition of the law in relation to the principles which are engaged in the case. Not only are those principles well known; they are also agreed in this case. In terms of approach, there is a wide canvas of evidence before the court. The dynamics of this family and the individuals involved with their own separate experience of life are complex. It falls to me to evaluate that evidence, and each piece, individually and holistically with a view to reaching my conclusions as to whether the case advanced by the father for a summary return of these children to the Republic of Ireland has been made out to the appropriate standard of proof which is the balance of probabilities.

The background

7. These parents never married but were in a relationship for many years. When they met the mother was 17 and the father 25 years old. The mother maintains that, increasingly in the latter years of their relationship as his dependence on alcohol increased, she was subjected to a number of different forms of abusive behaviour. He denies those allegations and, as I have said, this judgment is not the means by which that factual dispute will be resolved.
8. The father is an Irish national. The mother is British. The four children were born in England and are British nationals. The family home was in London until 2020. In November that year, they moved to the Republic of Ireland where they rented a property in County X. It is the mother's case that the children struggled with their education to begin with as they were being taught in Gaelic, a language they did not speak. It was without doubt a significant change for the entire family who went from living in a capital city to a different life in a very rural part of the Irish countryside. The mother described the property

to me as one which had none of the modern amenities of life such as a telephone landline or broadband connection. To heat the property the family relied on an open fire and very basic electric storage heating. Two of the children had been under the care of London hospitals for the management of medical conditions. New arrangements had to be made for their ongoing monitoring and care following the move which the mother describes as very isolating. She left behind her friends and family in London and followed the children's father to the Republic of Ireland where they both hoped the children might lead a better life.

9. The mother had some previous experience of living in the Republic of Ireland. Her own childhood had been damaging and traumatic. As a result, by her early teens she was missing school and had become involved in various forms of substance abuse. By the time she was 15 years old, her own father could no longer cope with her behaviour. He was estranged from her mother with whom she appears to have had no positive relationship at all. She moved to the Republic of Ireland to live in County X with MM who knew her father because he was then in a relationship with one of her siblings. It was while she was living in the Republic of Ireland under that informal foster arrangement that she met the father. Notwithstanding the age gap, they embarked upon a relationship and in 2009, after he had obtained a job in the construction industry in London, she moved with him to England. That was the centre of the family's life as the four children were born over the course of the next six years until their move to the Republic of Ireland towards the end of 2020.
10. In November 2020 the family moved to a rental property, the property I have described above. The tenancy was taken in the mother's name. Initially she moved alone with the children. The father joined them shortly thereafter once his work in London had come to an end. The mother describes an increasingly unhappy and chaotic life in the family home. In August 2022 the parties separated. The father left and moved in with his brother. On 26 August 2022 the local police attended at the family home following a report that the father had returned to the property in an intoxicated state and was behaving aggressively and making threats towards the mother. She was advised to make an application to the court. About a week later, the father returned again to the family home. According to the mother's evidence he persuaded the children to let him into the house and sought to persuade the mother to reconcile with him. Within days the mother obtained an interim barring order against the father in the District Court at town XX. That order, obtained without notice to the father, was subsequently set aside and replaced with a safety order (equivalent in its injunctive provisions to a non-molestation order). On 8 September 2022 the mother moved out of the family home and into a local women's refuge taking all four children with her. The following day the father applied for a guardianship order. At a hearing on 13 September 2022, the court confirmed that each of the parents should have guardian status in relation to the four children. It approved an agreement which had been reached in relation to the time the father was to spend with the children. On 25 October 2022 there was a further hearing in the local court following the father's application for an order preventing the mother from removing the children from the jurisdiction. It is clear by that point that the father was fully aware of the mother's clear wish to leave the Republic of Ireland and return to her family in England. When he gave his oral evidence, the father confirmed that he was aware from the point of separation that she wanted to move back to the United Kingdom. The mother attended that hearing. She confirmed to the judge that she was aware that she could not leave the country unless the court gave her permission or the father consented. On the basis of that assurance, the court declined to make the order which the father was seeking.

11. Both parties had legal representation in the Irish family proceedings. Prior to the hearing on 25 October last year the mother had given instructions to her lawyer to make a formal application for permission to relocate with the children to England. The mother's evidence is that she had embarked on preparing her evidence to support that application which she understood would be considered at a later hearing on 8 November 2022.
12. The father's departure from the family home did not appear to provide the mother with the respite which she sought. Whilst the parties have differing accounts of the circumstances in which there was ongoing contact between them, the father was subsequently arrested for breach of the safety order when he followed her into a local shop and then waited outside for her to re-emerge. It is the mother's case that his harassment of her continued notwithstanding his arrest, something which the father denies. When she refused to communicate with him, she maintains that he started sending messages to the children telling them that, if their mother would only speak to him, he would consider the family moving to England. Again, this is not part of the case which is accepted by the father.
13. The mother has recounted an incident which occurred on 7 November 2022 when she was taking one of their daughters to a hospital appointment. On her account the father attended the hospital unannounced and detained her for several hours during which he made various threats against the mother and her extended family. She says that he told her that he was receiving information about her from one of the staff members at the refuge where she was living. The father's account differs. During his oral evidence the father accepted that he had a social connection with someone who knew the owner of the refuge. He denies that he used that connection to intimidate the mother.
14. It is clear from all the evidence, including that of MM, that by this point the mother was struggling with her situation. I am entirely persuaded that her mental health and emotional wellbeing were compromised by the events of the preceding weeks and months. She was not coping well with life in the refuge with the four children. She attended a further court hearing on 8 November 2022 but was unable to remain in the court building. She maintains that she was subsequently persuaded by the father and MM to leave the refuge and move in with the children to MM's home. It is quite clear from MM's written and oral evidence that, for whatever reason, MM's position was by this point closely aligned with the father's. MM told me that her actions had been motivated solely by her concerns for the mother and the children whom she could see were being badly affected by their circumstances. She did not then, and does not now, believe that the mother had been a victim of domestic abuse. That position informs what happened next. She collected the mother and the children from the refuge and took them to her home. Two days later the father was permitted by MM to move into that home. MM and the father told me that he was there to assist with the care of the children. It appears that he was indeed getting the children up in the mornings for breakfast and taking them to school. The mother's evidence is that she had been driven to breaking point because of what she perceived to be overwhelming pressure and her complete lack of confidence in the authorities to protect her from the influence of the father.
15. What happened thereafter is clear even if the reasons for the next steps are in dispute. The mother agreed to make an application to the local court to discharge the safety order she had obtained against the father. She withdrew the statement she had made to the police in support of a pending criminal prosecution which related to the father's breach of that order. With MM's encouragement, she agreed to extensive unsupervised and overnight contact

between the father and the children. On her case it was a complete capitulation but one which she was unable to resist. In contrast, both the father and MM say that his role during this period was both necessary and supportive at a time when the mother was not coping. MM told me that there was nothing in the mother's demeanour which suggested she was fearful of the father and she willingly spent time with him and the children whilst they were all under her roof. Indeed the family were living on their own in the home for a period of about ten days over the Christmas and New Year period whilst MM was away with relatives.

16. What did not change during this period was the mother's wish to leave the Republic of Ireland and return to England with the children. It is also clear to me that this father had not then accepted that his relationship with the mother had run its final course. There were clearly ongoing discussions and MM appears to have been involved as an informal 'mediator' in those discussions. On 20 November 2022 MM committed to paper an agreement which the parents had reached that the mother should be permitted to travel with the children to the United Kingdom to visit family between 27 December 2022 and 3 January 2023. That agreement was subsequently endorsed by the court.
17. Separately, the father continued to discuss the family's position with the mother. It is her case that, by the early part of December, he had agreed to her relocation. He told her that she should approach her lawyer to formalise the arrangement. The mother attended at her solicitor's office on 8 December 2022. I have a witness statement from her solicitor, KT, who confirms that the mother attended by appointment on that date accompanied by the father. Both explained that they were there to request that she prepared the necessary document to record the father's consent to the mother returning to the United Kingdom with the four children. Quite properly, KT advised the father that she could not discuss the matter with him since the mother was her client. Having confirmed the mother's instructions, the solicitor drew up the document which the mother collected on 13 December. She was accompanied, once again, by the father. Both parties confirmed their agreement to the contents of the draft. KT advised the father that he should seek his own legal advice. The father told her that his solicitor was no longer instructed and he was happy to sign. KT advised that it would not be appropriate for her witness his signature and he should take the agreement to his solicitor in order that she could advise him.
18. That is what happened. The father took the document to a firm of solicitors in XX. He signed the document and his signature was witnessed by a solicitor in that firm. The document which he signed was headed "*Consent Relocation Agreement*" and was framed in these specific terms:-

“I, [name of father and address] consent to [name of mother] returning to the UK with our four children [names and dates of birth of each child] if she so chooses.
I understand that I have been advised to seek independent legal advice in relation to signing this consent, but I have declined to do so.”
19. The mother's evidence is that she subsequently confirmed with her own solicitor that she did not need a formal court order permitting the relocation if she had secured the father's formal permission to leave the Republic of Ireland.

20. The father has not sought to challenge the evidence of KT and so I assume that he accepts the chronology which I have outlined and circumstances in which the document came into being. I have a copy of the document in the bundle. On its face, the contents are clear although there is no reference in it to any fixed date of departure. That omission underpins part of the father's case in relation to the absence of any consent to a permanent relocation.
21. Relying on that agreement and in accordance with the earlier agreement which the court had approved authorising travel to England over the Christmas/New Year period, the mother proceeded to book flights to Manchester. She maintains that during ongoing discussions whilst they were all under the same roof at MM's home, the father told her he was leaving to her the choice as to whether or not she returned with the children to the Republic of Ireland. She further maintains that he spoke of regretting the family's move to Ireland because of the effect it had had on their relationship and on the children. On her case, he told her that he did not wish to be separated from his family and, if the mother moved with the children to England, he would go with her. She maintains that she made it quite clear to the father that she did not wish to resume their relationship but was happy to agree that he should have regular contact with the children if he, too, was living in England.
22. On 28 December 2022 the parties removed all their belongings from MM's home. They were left at their former family home and the same day both parents flew with their four children to Manchester. On arrival the mother went by train to area MN to stay with her father whilst the father booked into a hotel. The following day the mother went to the local housing office to request assistance with accommodation. She was told the only option at that point in time was a room in a hostel. When she discussed that option with the father he said he did not wish his children returning to a hostel or refuge and he would rent somewhere privately where the whole family could live.
23. The mother maintains that she was thereafter put under pressure by the father to bring the children to his hotel so that the family could spend New Year's Eve together. When she refused, she says that he telephoned her incessantly and threatened to commit suicide if she did not agree. The father denies making such a threat. I have records of the messages which the parties exchanged over this period to which I shall come in due course in relation to my findings. The mother was sufficiently concerned by the father's behaviour to leave her father's home in area MN the following day. She travelled with the children to London to stay with one of her close friends and made a report to the police about the father's behaviour. She secured accommodation for herself and the children locally in a refuge. She did not return to the Republic of Ireland and has remained here with the children ever since.
24. Those are the circumstances which give rise to the father's current application for a summary return.

The law

25. Article 3 of the Convention provides as follows:-

“The removal or retention of a child is to be considered wrongful where -

- 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 the removal or retention those rights were actually exercised, either jointly or alone, or would have been exercised but for the removal or retention....”

26. The father had, and has, full rights of guardianship in relation to all four children. Those rights were confirmed by the Irish court. For the purposes of this application they amount to rights of custody. There is no issue but that the children were habitually resident in the Republic of Ireland on 28 December 2022 when they flew with both their parents to England. The father does not seek to assert that their removal from that jurisdiction was wrongful in Convention terms. Both parents agreed that the children would accompany their parents on a pre-planned visit to England and the court had endorsed those arrangements. The issue for this court to determine is whether the mother wrongfully retained the children in this jurisdiction when she failed to return with them on 5 January this year. For these purposes I turn now to consider her defences and, first, the issue of consent.

Consent

27. Article 13(a) of the Convention provides that the court is not bound to order the return of a child or children if the person opposing return establishes that the person seeking the return had consented to, or subsequently acquiesced in, their removal or retention in the other jurisdiction.

28. The substantive law in relation to Article 13(a) can be collected from two Court of Appeal decisions: *Re P-J (Children)(Abduction: Consent)* [2009] EWCA Civ 588, [2009] 2 FLR 1051 and *Re G (Abduction: Consent/Discretion)*[2021] EWCA Civ 139.

29. In *Re P-J*, Ward LJ summarised the key principles as follows in para 48:-

- “(1) Consent to the removal of the child must be clear and unequivocal.
- (2) Consent can be given to the removal at some future but unspecified time or upon the happening of some future event.
- (3) Such advance consent must, however, be still operative and in force at the time of actual removal.
- (4) The happening of the future event must be reasonably capable of ascertainment. The condition must not have been expressed in terms which are too vague or uncertain for both parties to know whether the condition will be fulfilled. Fulfilment of the condition must not depend on the subjective determination of one party, for example, “Whatever you may think, I have concluded that the marriage has broken down and I am free to leave with the child.”. The event must be objectively verifiable.
- (5) Consent, or the lack of it, must be viewed in the context of the realities of family life, or more precisely, in the context of the realities of the disintegration of family life. It is not to be viewed in the context of nor governed by the law of contract.
- (6) Consequently consent can be withdrawn at any time before actual removal. If it is, the proper course is for any dispute about removal to be resolved by the courts of the country of habitual residence before the child is removed.

- (7) The burden of proving the consent rests on him or her who asserts it.
- (8) The enquiry is inevitably fact specific and the facts and circumstances will vary infinitely from case to case.
- (9) The ultimate question is a simple one even if a multitude of facts bear upon the answer. It is simply this: had the other parent clearly and unequivocally consented to the removal?"

30. In *Re G* Peter Jackson LJ confirmed those principles. In para 25 of his judgment, His Lordship gave further guidance on how consent could be manifested. Whilst it is necessary for any consent to be clear and unequivocal, there is no requirement for it to be given in writing or on any particular terms. The court is entitled to infer consent from a party's conduct as well as from any written material placed before the court: para 25(3). In addition, a person can give consent even if he or she has the gravest reservations. That alone will not render consent invalid if the evidence is otherwise sufficient to establish that such consent was actually given: para 25(4). Furthermore, consent must be "real" in the sense that it relates to a removal in circumstances that are broadly within the contemplation of both parties: para 25(5). In circumstances where a parent seeks to withdraw consent, it must be made known to the other parent by words and/or conduct. A consent or withdrawal of consent about which a removing parent is unaware cannot be effective: para 25(9).

31. The court is thus required to look objectively at all the circumstances to establish whether consent has been given but, where it is alleged that consent has been withdrawn at any point, it is entitled in addition to consider any reasonable belief genuinely held on the part of the removing parent that he/she had the other parent's consent to the removal. As Peter Jackson LJ stated in *Re G* at para [26]:

"Parties make important decisions based on the understanding that they have a consent to relocate on which they can safely rely. It would make a mockery of the Convention if the permission on which the removing parent had depended could be subsequently invalidated by an undisclosed change of heart on the part of the other parent, particularly as the result for the children would then be a mandatory return. Such an arbitrary consequence would be flatly contrary to the Convention's purpose of protecting children from the harmful effects of the wrongful removal, and it would also be manifestly unfair to the removing parent and the children."

32. In a more recent decision, Moylan LJ explained the important distinction to be drawn between Articles 13(a) and (b), both of which are being advanced in this case: see *Re B* [2022] EWCA Civ 1171. At para [57] his Lordship said this:

"... As counsel in this case rightly noted in their submissions, there is a clear difference between consent and Article 13(b). They are not, as suggested by Mostyn J and Peel J, equivalent. Consent is an issue of *fact* in respect of which the court has to make a finding. It is a binary issue of fact. Secondly, as Mr Setright pointed out, it is a finding which is closely connected with a central aspect of the structure of the 1980 Convention, namely whether the removal or retention has been wrongful. I appreciate, of course, that the issue of consent is addressed through Article 13(a), and not Article 3, but this does not alter the important role that consent plays in the application of the 1980 Convention. Further, as counsel pointed out, the *Re E* approach, which takes the allegations

relied on to establish an Article13(b) grave risk “at their highest”, is not available in consent cases.”

33. In terms of acquiescence, and in summary, the following guidance was provided in *Re H (Abduction: Acquiescence)* [1998] AC 72 at 90:

- (i) The court must look at the actual state of mind of the parent alleging wrongful removal or retention. What matters is not how that parent views the actions of the removing or retaining parent but whether he has in fact acquiesced.
- (ii) The court will consider and make findings in relation to the subjective intention of the wronged parent in the context of all the circumstances of the case. The burden of proof remains on the removing parent.
- (iii) In this context, the contemporaneous words and actions of the wronged parent are likely to attract more weight than bare assertions about his intention.
- (iv) Where the words or actions of the wronged parent demonstrate clearly and unequivocally that the other parent has been led to believe that the other parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with a return, justice required that the wronged parent is held to have acquiesced.

34. In order to determine the factual issues in cases where consent and/or acquiescence are raised as potential defences, the court is not confined to a careful scrutiny of what is now being said in Convention proceedings by a parent seeking summary return orders. The potential for subjective reconstruction is all too obvious. What is often of far more assistance to the court is evidence of contemporaneous exchanges of written emails or texts. In *WA (A Child)(Abduction)(Consent: Acquiescence: Grave Risk of Harm or Intolerability)* [2015] EWHC 3410 (Fam), Pauffley J said this at para [27]:

“The written messages on social media, in emails and texts allow a straightforward analysis of parental attitudes at various stages. Although it is customary to permit oral evidence at summary return hearings where consent and acquiescence are in issue, the reality is that the extant written material permits a far wider and more reliable assessment than the oral accounts particularly where, as here, the parties have such a strong investment in winning the arguments as to what the past comprised.”

35. It is clear from KT’s evidence that the father accompanied the mother to her offices on 8 December 2022 in the context of a joint approach to prepare the ‘Relocation Consent’ document. When the solicitor drew up that document, she did so on the mother’s case, in the knowledge that it had been her client’s intention to apply for formal permission from the domestic court to remove the children from Ireland for the purposes of a permanent relocation to England. It is clear from the solicitor’s sworn evidence that the father had accompanied the mother on that occasion as part of an agreed approach to complete whatever formalities were required for these purposes. The mother was advised by her

solicitor, once the father had left the meeting, that “there should be no issue with her returning to the UK if [the father] was in agreement with this”. He was advised to take independent legal advice by both KT and the solicitor who witnessed his signature. It is significant in my judgment that the document refers to consent being forthcoming to the mother’s and children’s “return” to England rather than their removal from the Republic of Ireland. This terminology has a resonance with the nature of the discussions which were clearly ongoing between the parents at the time. The father’s case is that his agreement to approach KT with a view to preparing this document was intended to address the mother’s concerns that he might change his mind about the trip which he accepts had been agreed. He maintains that he was placed under pressure by the mother and was fearful of her reaction if he did not sign. He said during the course of his oral evidence that he had agreed to use the mother’s solicitor to draw the agreement because she, the mother, did not trust his own solicitor. He confirmed that, despite what he told KT about withdrawing his instructions from his own solicitor, they both had access to lawyers at the time.

36. In answer to questions about why he felt under pressure at the time, the father told me that the mother “thought [he] might pull some sort of stunt if she went for a holiday” and that he had agreed to sign the document as a gesture of trust. He acknowledged more than once during his evidence that the mother felt that he was constantly trying to exert control over her and he wanted to show some goodwill. He was not able to explain to me what form of pressure was being exerted by the mother or how he was impacted by that pressure.
37. On his behalf Ms Cameron-Douglas points to several aspects of the evidence which suggest that the parties did in fact intend to continue living in the Republic of Ireland. The children’s registrations with local hospitals and schools had not been cancelled when they flew to England. The parties left the car in which they had travelled to the airport in the car park. Their belongings had not been removed from their rented home. Arrangements had been made for the temporary care and accommodation of the family pets. Return tickets had been booked on 15 December 2022 when the mother made the online bookings. In terms of the Relocation Consent document itself, she submits that its terms are ambiguous in that it does not identify when the mother and children were to be permitted to return to the United Kingdom. In terms of ‘acquiescence’, she points to the fact that the mother does not point to any specific evidence that the father subsequently acquiesced to the children remaining once they had been removed from the Republic of Ireland. Indeed, his first action prior to returning himself on 5 January 2023 was to make a missing persons report to the local police.
38. In this context, I look to the evidence I heard from Dr P. He is the husband of the mother’s best friend who supported her attempts to separate from the father and who made arrangements to take her to the refuge after she travelled from Nottingham to London in early January this year. Both Dr P and his wife were known to the father because they had been neighbours when the family lived in London prior to the move to the Republic of Ireland at the end of 2020.
39. Dr P had been told by his wife that the parents were in England and “were looking to rent a place in England”. However he had a face to face discussion with the father on 4 January 2023. On that date the father arrived at his home and appeared very upset. He did not know where the mother and children were and was seeking assistance to locate them. By this stage the police had become involved when the mother reported that the father was attempting to move back in with her. She was told not to stay with Dr P and his wife because

it was an address known to the father. Dr P was told by the police not to provide any details of the family's whereabouts to the father¹. Having reassured the father that the mother and children were safe, Dr P invited him to discuss the situation over a drink at a local pub. In his written evidence he set out what he was told by the father on that occasion.

- (i) The father said that he was getting help from a psychologist and had stopped drinking.
- (ii) He had rejected the formal route of court proceedings to settle the arrangements for the children because his experience of previous proceedings "nearly broke him".
- (iii) He referred to "having done stuff to [the mother] that he knew he shouldn't have done" and appeared remorseful. He denied that he had anything to do with the death of the children's pet lamb which was found outside their house².
- (iv) He spoke of needing to leave the Republic of Ireland and recognised that the move at the end of 2020 had been a mistake for the entire family.

40. From his conversation with the father, Dr P understood that they had decided to relocate to England where they would live separately and that they were in London for the purposes of setting up that move. The father confirmed that they were exploring options for accommodation. He wanted to be close to the mother and the children but did not know where they were. Dr P's evidence was that the father told him that his intention was to move to London on a permanent basis as he had employment contacts in North London where he had worked previously. He said he needed to return to the Republic of Ireland to collect the family's belongings and "sort things out". In terms of his immediate plans, the father said he intended to stay in a hotel that night and "head back to Ireland as soon as possible" before returning to London.

41. The father accepted in his oral evidence that he may have said to Dr P that the move to the Republic of Ireland had damaged his relationship with the mother. He said that it was Dr P who encouraged him to get a job in London so that he could provide for his family. He accepted that he said he was returning to Ireland to collect the family's belongings but maintained that this was said at the end of their conversation when he was distraught.

42. In relation to the reliability of Dr P's evidence, I look to what happened when the father returned alone to the former family home in County X. More or less immediately, he confirmed with the landlord that the tenancy of the family home would be terminated. Various house contents and items of furniture including the children's garden swing set, a chest freezer and a large sofa and reclining chair were advertised online for sale. It prompted his supervisor at work to send him a text message asking if he was "on the move again".

43. For the purposes of my findings in relation to consent, I look also to the contemporaneous evidence of the many text messages which were exchanged by these parents as events were unfolding following their arrival in England at the beginning of this year. They are revealing in their content.

¹ The mother and children were then staying at a local hotel prior to being accommodated in the refuge.

² This is a reference to the mother's allegation that he had threatened in the past to harm the children's pets.

44. Their initial exchanges on arrival in England suggest that they were able to converse in reasonably civil, if not familiar, terms. There were several telephone calls made during the course of the morning on 29 December, the day after their arrival. It is apparent from these messages that the mother had told the father about the outcome of her initial enquiries of the local housing authority. She described her situation as “very difficult”. The father expressed his concern about the prospect of the children returning to live in a hostel because of the stress he knew she had been under when she lived in a similar accommodation in Ireland after they had separated before. She asked him if he was in a position to provide a deposit for a private rental arrangement. He confirmed that he could help her. She suggested that it was better if he did not accompany her to make further enquiries about housing because her father had said there was likely to be little on offer if there was any suggestion that she was not a single mother.
45. Through her father’s partner, K, the mother made contact with the father again at his hotel on 30 December to tell him what would be required in terms of a deposit on a private rental agreement. She explained that, since at least three months deposit would be required and neither was then working, it was likely to be April 2023 before the mother was in a position even to start viewing properties. The father expressed again his concern about the prospect of the four children being housed on a temporary basis in hostel accommodation. He said this in one of his exchanges with K on the 30 December:

“I’m not trying to stop a move to England but I have to think of the kids and [mother’s name] as well.”

46. That prompted the following response from K:

“I understand this but I really don’t know what else she can do ... because if it’s going to take 3 months I’ve no idea where she can stay for that length of time so I’m worried about that too.”

The father replied:

“I’m trying to be a backbone for [mother’s name] and the kids at the moment and I do understand your concerns and I know there is no easy answer for everyone”.

47. The mother then sent a text to the father reminding him that he knew how she felt about the prospect of returning to the Republic of Ireland and she needed him to help her with housing, as he had said he would. She reminded him that he had taken her to Ireland and she did not want to be there. Shortly after midnight in the early hours of 31 December 2022 there was the following exchange between the parents:

Mother: “I honestly really don’t want to go back there please don’t make me”.

Father: “I signed what you asked please don’t guilt me please I’m asking you to think of the 4 kids”....

“I’m not asking you to go back but them kids won’t mentally take another hostel” ...

“A homeless shelter isn’t the answer for them” ...

“I’ve never stopped you once since we talked except the hostel thing”.

48. I do not intend to reproduce the content of all the exchanges between the parents in the body of this judgment. What comes across clearly from the significant run of text and other messages is that there had been several discussions between these parents about the practicalities of relocation during the four weeks preceding their departure from the Republic of Ireland on 28 December last year. Those discussions had included whether the mother and children would be returning to live in area MN near her family or in London where they had made their previous home. It is also clear that the father during those discussions had reassured the mother that she would have his support but he was concerned about the type of accommodation to which his family would be returning. In particular, he did not wish the mother and children to be staying in a hostel because he had seen the impact on her mental wellbeing of living in those circumstances.
49. Significantly, after the mother had secured assistance from the police to move into a refuge in January 2023, the father sent what appears to be his last text before his number was blocked on the mother's mobile telephone. It was sent within hours of his meeting with Dr P. This was what he said:
- “I've had a long chat with [S] husband. Which has helped me I'm going to XX to get some stuff together and things then I'm moving back to the UK for good and hopefully we can rebuild this in some way in the long term.”
50. That text confirms two important aspects of the mother's and Dr P's evidence. First, the father had clearly not accepted the mother's wish to separate. I find that she has established on the balance of probabilities that it was his stated intention to move back in with the family which prompted her call to the police on 4 January and her subsequent move from the hotel where she had been staying with the children to the refuge. Second, Dr P's account of what transpired during his discussion with the father on that date is confirmed in all its material detail by what the father himself has said in this written message. In terms of credibility, I accept Dr P's evidence and, where there are differences between the respective accounts of the father and Dr P, I find Dr P to be a reliable witness in terms of where the truth lies.
51. I place no particular weight on the evidence from MM in relation to her opinion of whether or not the trip was intended to be a permanent relocation. Her evidence has to be seen in the context of the totality of the evidence which I have analysed. She was plainly partisan in terms of her complete rejection of even the possibility that the mother's allegations of abuse might be well-founded. The fact that she saw no evidence of such abuse takes matters nowhere. She was not privy to the conversations which I have found these parents had during the ten days when they were living alone in her home over the Christmas/New Year period. The expectations of the children in relation to school and other events which they were due to attend in the new school term has to be considered in the context of the parents' intentions rather than the children's expectations. The mother accepts that their children were not involved in these decisions and there was no suggestion from the father that he had direct conversations with them during this window of time. Given the evidence of Mr Lill, the CAFCASS officer, that at least two of the children believed that were coming to England permanently when they left in December last year, it is likely that they were exposed indirectly to some of these discussions.

52. It is quite clear to me that the father's intention immediately prior to his departure on 5 January 2023, insofar as it was communicated to the mother, was to tie up all the arrangements which needed to be made in the Republic of Ireland and then to return to England "for good". He had keys to the family car which was left at the airport car park. He accepts that he returned to their rented property and established contact with the landlord. In addition to confirming the formal termination of the lease which was held in the mother's name, there were several bin bags of the possessions which had come back from the time they spent under MM's roof, as the photographs show. The sale advertisements in relation to many of the larger items of furniture and other contents are consistent not only with the need to deliver vacant possession of the property at the conclusion of the tenancy but also the father's stated intention to return to England. That intention is itself consistent with his agreement to enable the mother to relocate permanently with the children, as recorded on the face of the agreement he had signed. To the extent that he now seeks to resile from that position, I reject his evidence and accept what the mother told me about the plan as she understood it. It may well have been a plan which was effected with an element of expedition, if not opportunism, on the part of the mother once the family arrived in England. I accept that there were no prior or confirmed arrangements for housing or schooling. However, as the run of texts makes plain, the father was very well aware that finding accommodation was always likely to present issues whenever the move was made. Having left the Republic of Ireland and returned to England where she wanted to be, I suspect that the mother was indeed unable to contemplate a return to put in place a more orderly transition for the children. That, by itself, does not in my judgment neutralise or render ineffective the consent which she had by then secured from the father to relocate permanently to this jurisdiction. If the father had at any point intended to withdraw his consent prior to the family's departure, he did nothing to inform the mother or make her aware of this change in his position. In this context I have considered carefully the one aspect of the mother's evidence about this which had troubled me. She accepts that return tickets were booked on 15 December last year. She told me that she was under pressure from the father to book the return flights and she simply bowed to that pressure. To the extent that the father denies telling her to book return tickets, I find the mother to be a more credible witness. Having now had an opportunity to consider this aspect of the evidence in the context of all the available evidence, including the exchange of text messages, I have concluded that she was being truthful when she told me in both her written and oral evidence that she was fearful that the father would renege on his consent. I accept that, to her, the written consent he had signed was indeed an 'insurance policy' on which she could rely in that event. Having concluded that she could not return to the Republic of Ireland once she reached what was to her the safety represented by her support network in England, she made it plain to the father that she was intending to remain.
53. In my judgment nothing which he said or did thereafter can be construed as a withdrawal of that consent. I do not accept that his reservations about temporary hostel accommodation operate to convert the consent reflected in the Relocation Agreement to a conditional consent to the children's removal. In the circumstances in which this family then found themselves, and in the absence of any financial provision by the father in respect of securing rented accommodation, the mother and children were left with little alternative. The temporary arrangements which were made do not, in my judgment, affect or vitiate the clear consent which he gave in December 2022 and confirmed again in his exchanges with the mother once they arrived in this jurisdiction. It is significant in these circumstances that nowhere in that run of exchanges does the father demand that the children are returned forthwith to the Republic of Ireland. Indeed, they all point to the contrary. He did not tell

the mother that the children must be returned because this was no more than a holiday. On the contrary, following their arrival, he wrote in one of his subsequent text messages that he was “not trying to stop a move to England” and that he was “not asking you to go back”. His distress, and no doubt mounting frustration, was the result of not knowing where the family were once she had alerted the police to her predicament.

54. I accept that he made a report to the police on 4 January 2023 that she and the children were missing. Without the police report, which is not in the bundle, there is nothing to support the father’s account that he reported an ‘abduction’. It is clear that, after almost incessant communication with the mother over previous days, she blocked his calls on the same day once she was in the refuge. I find it is probable, as Ms Guha submits, that the father’s subsequent decision to seek the summary return of the children was motivated in no small part by a dawning realisation that the mother’s resolve to separate was likely to be permanent and final. Rather than returning to England to be near his children, which was his clearly stated intention before he returned to the Republic of Ireland, he elected instead to pursue the alternative course of seeking the children’s return. That application was formally issued at the beginning of the following month in February this year. As Ms Cameron-Douglas made clear, he seeks the return of the children regardless of whether or not they return with their mother.
55. Insofar as the father now seeks to assert that the mother wrongfully retained the children after 5 January 2023, she relies on his communications and his actions as leading her to believe that he was not asserting, or intending to assert, his right to demand a summary return of the children. In the light of the communications he was sending her as evidenced both by the primary source of his text exchanges as well as what he said to Dr P, and in the absence of any indication at that stage that he was renegeing on his stated plan to join the family in England, I find that the mother has established acquiescence during the period prior to the issue of these proceedings.
56. In conclusion, therefore, I find that prior to the issue of these proceedings the father did indeed consent to, and acquiesce in, the children leaving the Republic of Ireland and remaining in this jurisdiction. The finding in relation to prior consent means that both the removal from the Republic of Ireland and/or the subsequent retention of the children in England cannot be considered ‘wrongful’ and the court is not *obliged* to order a summary return. As is clear from *Re B* (above), such a finding does not absolve the court from considering whether or not to exercise its discretion to consider a return. The distinction between Article 13(a) and (b) remains. Nonetheless, as Moylan LJ made clear in *Re B*, the parameters for the exercise of the court’s discretion are very different once consent to a removal is established.
57. Before leaving the issue of consent, I say only this. Whilst I have not accepted the father’s evidence in relation to consent, I do not doubt the distress which he feels as a result of his separation from the children. I am also satisfied that his concerns about ensuring the children were living in appropriate accommodation were borne of concerns for their safety and wellbeing. I accept that he loves the children and is genuine in his wish to restore his relationship with them.

Children’s objections: Article 13(a)

58. On behalf of the father, Ms Cameron-Douglas accepts that, in terms of the children's objections to a return to the Republic of Ireland, the basis of the defence is established such that the discretion is at large. Whilst he has not abandoned his case that the children's views have been influenced to a greater or lesser extent by the mother, the father recognises that the evidence from Mr Lill establishes that each child has expressed a clear objection to returning to Ireland and that their ages and degree of maturity entitles the court to take those objections into account.
59. Mr Lill's evidence remains relevant at the discretionary stage of the court's decision. He was clear that the children's views were independently formed. He has obviously invested time and a great deal of care in meeting with the children and preparing his report for the court. It is a detailed piece of analysis which has provided me with considerable assistance in my understanding of these children's lived experience over the last few months and beyond. He has described the children's presentation in very positive terms. He found them sociable and engaging.
60. A, at 13, was able to provide an entirely coherent account of her exposure to the dysfunctional relationship between her parents. She described her father as "scary at times". She told Mr Lill that there were often times when her father would return home drunk and "there were a few violent times when mummy got hurt". She was able to describe memories of these occasions from several years ago when the family was living in London. She described hearing her father "choking" her mother and was present on another occasion when her father punched her mother's face. She told Mr Lill about occasions when the father had threatened the children with a wooden spoon or a bamboo stick "if we did anything bold". She recounted an occasion when he had returned home having drunk so much that he mistook her brother for another man brought into the home by the mother. She described her father as some who could be violent with the family pets.
61. The account of having witnessed her father punch her mother in the face is reflected in what A told the social worker who visited the family on 10 January this year whilst they were living in the refuge in England. The children were asked about their experience of family life in the Republic of Ireland. A was able to describe in detail the circumstances in which her youngest sister had been out at a birthday party and came home with a shoe missing. Her mother had left them at home to retrieve the shoe. He was angry that the children had been left alone and, when the mother returned with the shoe, A recounted that he had punched her in the face.
62. According to Mr Lill, A's resistance to returning to the Republic of Ireland was borne out of a positive wish to remain in England coupled with concern and worry for her family if the court were to order a return. She was clear in her wish that she did not want to see her father ("*Dad has done a lot over the years*"). She was worried that, when they were seeing him in the Republic of Ireland after the separation, he had photographs on his mobile phone of the refuge where they were living and asked "lots of questions".
63. B, a year younger than his sister, described his relationship with his mother in very positive terms. He, too, spoke of many occasions when his father would drink to excess and the distress he felt on these occasions as a result of his father's behaviour. He has been present when the father has been aggressive and verbally abusive towards her. He has no concept of having a loving relationship with his father and is unclear as to whether he is loved by his father. B regards England as his "home". He does not wish to return to the Republic

of Ireland. In the event that the court were to order a return, B said he would be “upset and worried about mum”. He, too, does not wish to resume contact with his father (*“I’ve had enough of him”*).

64. C is 9 years old. She shares her elder siblings’ experience of her mother’s emotional and physical warmth. In contrast she described emotional distance from her father who would often return from the pub and “make arguments”. She described one occasion when her father returned drunk from the pub and urinated on the floor, requiring the mother to “clean up”. She described how he shouted at the dog and “smack[ed] it really hard”. She told Mr Lill that she and her younger sister had “cried inside our bodies because Dad was mad”. When asked by Mr Lill what she meant, she said “so he didn’t see, we were scared”. She acknowledged that she loved her father and that he loved her but she was not missing him and was beginning to forget “his face”. When the family arrived in England in the New Year, C understood they were staying here permanently. She was able to tell Mr Lill all the things she liked about her life here and that she wants to stay. Given the father’s concession that the children’s objections are made out, I do not repeat here all the reasons she gave but it is clear that C shares her siblings concerns about needing protection from her father and the overriding need to “feel safe”.
65. The youngest child, D (now 7) was able to reflect many of the same concerns about living as a family in the Republic of Ireland. She described being hit by her father with a wooden spoon. She regularly saw her father return home in an intoxicated state when he would be “mean”. She understands her parents to have separated because her father pushed her mother into a wall “and her mum decided that was enough”. Whilst she had some positive memories of her father, she told Mr Lill that she felt “angry and sometimes sad”. She was very clear to Mr Lill that she wanted to stay in England. When asked about her main concern, she said that *“Daddy would spot us and then I would run off. I would hold mummy’s hand. She would protect me. Mummy would be very sad and upset”*.
66. Mr Lill’s conclusions, as set out in his written report, were that the children’s accounts, if true, are entirely consistent with having observed domestic abuse between their parents and the father’s excessive consumption of alcohol. He does not consider that it would be in their best interests to be returned to the Republic of Ireland or placed in the sole care of the father. Such are his concerns that he has made a number of express recommendations as to the range of protective measures which need to be put in place before any return is implemented should that be the court’s decision at the end of this case. He is wholly against any separation of these children from their mother’s care. During the course of his oral evidence he spoke of the instability which all four children have experienced over a number of years. He confirmed that there were some issues about which they were individually “really upset”. He accepted when asked questions by Ms Cameron-Douglas on behalf of the father that exposure to false allegations about their father could be equally harmful to the children as the domestic abuse they reported they had seen. Nonetheless he remained clear that he had found no evidence that the children had been manipulated or influenced by their mother although each was well aware of her position in relation to a return to the Republic of Ireland. He was keen to emphasise in his oral evidence that his overriding concerns flowed from the children’s worries about safety. He had been particularly struck, as I was, by the youngest child’s description of being “found” by her father and needing to seek protection and reassurance from her mother. His view was that this is likely to a reflection of D’s past experience.

67. In terms of the law in relation to the children's objections to a return, the principles are well established: see *Re M (Republic of Ireland)(Child's Objections)(Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26, [2015] 2 FLR 1074. The gateway threshold is relatively low and depends on a straightforward and fairly robust examination of whether the simple terms of the Hague Convention are satisfied. It is agreed for these purposes that the *Re M* threshold is crossed. I would have found that to be the case without the concession.
68. The next stage in relation to the exercise of the discretion is straightforward. Once that discretion arises, it is at large. The child's views are one factor to take into account. There is no exhaustive list of factors. The court is required to have regard to any specific welfare considerations which arise insofar as it is possible on the basis of whatever evidence is before the court in the context of summary proceedings. It must also bear in mind, and give appropriate weight to, Convention policy considerations and at all times bear in mind that the Convention only operates effectively if children who have been wrongfully removed or retained are returned to their country of habitual residence: see, for example, *Re M and H v K (Return Order)* [2017] EWHC 1141 (Fam).
69. What is striking about the cumulative effect of this evidence is the detailed and coherent description given by the children of their individual and collective experience of 'feeling unsafe' whilst they were living together as a family. In contrast, the three older children were able to convey to both the social workers to whom they spoke and to Mr Lill an impression of respite since they have been living with their mother in this country. They are enrolled in schools here and the reports from those schools suggest that the children are settled, happy and recovering some of the ground they lost whilst they adjusted to being taught, in part, in a language with which none appeared to be familiar. Against that evidence, I must factor in what I have found to be the father's genuine concerns for his children's welfare and wellbeing whilst they were living in unsatisfactory accommodation in two refuge placements. I also take due and proper account of the fact that, whilst the family were all under the same roof at MM's property, and at a time when the mother's mental health was clearly fragile, the father stepped in to offer practical help and support with the children's care.

Grave risk of harm or intolerability: Article 13(b)

70. Before reaching final conclusions on the overall exercise of my discretion in this case, I turn to consider the mother's final defence to a summary return. In written opening submissions made on his behalf, the father invited the court to find that the mother's Article 13(b) defence was not engaged. He now accepts that the allegations raised by the mother amount to serious allegations of domestic abuse. He recognises that the severity of the allegations may lead to the need for a full fact-finding enquiry but he submits these should be matters for the Irish courts. Given that the discretion is at large, the court's focus must now be on the protective measures which he offers to mitigate any perceived risk to the mother and/or the children in the event of an order for summary return. As I have said, his primary position is that the measures he has offered are sufficient. His secondary position is that the children should return without their mother if she feels unable to return with them. I can say now that, in light of the totality of the evidence which is now before the court and approaching that evidence through the *Re E* lens, I would not be persuaded at this stage to make any orders which had the effect of removing the children from their mother's

day to day care, or placing them in their father's sole care, before there had been a full investigation into these allegations.

71. Whilst the allegations remain unresolved, the question which must be addressed within a broad analysis is how these children can be protected from the grave risk or intolerable situation which, for these purposes, the father concedes may arise if they are returned to the Republic of Ireland.
72. In this context I am required to consider the situation which these children will face on their return. I must look not only to their immediate circumstances 'on the ground' but also to any need for ongoing protection. There is a further hearing date in the Irish court on 26 September this year. This is therefore not a situation where the father or mother would need to launch proceedings so as to engage the domestic jurisdiction. I recognise that the court is already seised of the matter. Whilst the next hearing may not provide the opportunity for a full forensic investigation into these matters, it does at least provide the safety net of an early hearing.
73. There are three types of risk captured within the Article 13(b) defence. The first is a grave risk that the return would expose the child or children to physical harm. The second is a grave risk of exposure to psychological harm. The third and final risk scenario is that the return would otherwise place the child in an intolerable situation. Whilst the court is directed to look in Convention terms to the risk of harm to the child, it is clear that harm to a parent, whether physical or psychological, can in appropriate circumstances give rise to any of the above risks to the child.
74. It is for the mother to satisfy the court that the protective measures which the father offers are insufficient to neutralise the risk to both her and the children. I have been referred to the three leading authorities on Article 13(b), all decisions of the Supreme Court: see *Re D (Abduction: Rights of Custody)* [2006] UKHL 51, *Re E (Children)(Abduction: Custody Appeal)* [2011] 2 FLR 758, and *Re S (A Child)(Abduction: Rights of Custody)* [2012] 2 FLR 443. I have also taken into account the principles set out in the HCCH's³ 1980 Child Abduction Convention: Guide to Good Practice Part VI: Article 13(1)(b).
75. I have also well in mind the restatement of the relevant principles by Moylan LJ in the more recent cases of *Re A (Children)(Abduction: Article 13(b))* [2021] EWCA Civ 939 and *Re B* [2022] EWCA 1172. In that latter case his Lordship stressed the importance of the need "to examine in concrete terms the situation that would actually face" the child or children on their return.
76. The mother's Article 13(b) defence relies principally upon the adverse impact on her mental health were she forced to return to the Republic of Ireland against her will and the consequent impact on her ability to offer these children stable and consistent care. It is accepted by the father that she is a vulnerable mother who has suffered in the past with various mental health issues. The aetiology of those issues is not agreed.
77. Ms Guha points to the evidence, supported by the father's qualified admission, that he has already breached one safety order put in place by the Irish court and tracked down the mother when she was placed in the Irish refuge. She questions whether the mother would

³ Hague Conference on Private International Law

have the emotional resources to maintain her separation from the father if she is put under pressure to resume a relationship with him.

The expert evidence

78. I heard evidence from Dr Gamble, the expert appointed to report to the court in relation to the mother's psychological health issues. His conclusions are set out in the report he prepared after his examination of the mother on 30 May 2023. He diagnosed her as suffering from a stress-related mental disorder which he described as "an adjustment disorder" similar to, although less severe than, post-traumatic stress disorder. His report and his oral evidence were measured and balanced. He did not form the impression that the mother was overplaying or exaggerating her symptoms. In his report he concluded that, if a return order was made, the mother was likely to be able to access the mental health support she needed in the Republic of Ireland and I have no reason to disagree with that conclusion on an objective basis. Whilst he recognised the potential for a detrimental effect on her parenting if her symptoms were to persist, he was unable to say in precise diagnostic terms what the position might be if a return was ordered. He recognised that she had displayed a degree of resilience in maintaining her efforts to work and parent the children in a foreign country where she did not wish to be and with only limited support.
79. During the course of his oral evidence, Dr Gamble agreed in response to questions from Ms Guha that an order for return was likely to impact adversely on the mother's mental health including her ability to function, to cope and make appropriate decisions for the children, at least in the short term. He did not consider any deterioration in her functioning was likely to be sufficiently serious to require hospitalisation but he could not predict with professional confidence the extent of any deterioration. He was clear that she was not overplaying or exaggerating the concerns which she was expressing. He accepted that there have been times when those subjective fears and anxieties could properly be diagnosed as a clinical condition. He agreed that a return was likely to have some effect on her mental health in circumstances where she would also be dealing with four children, each of whom had expressed a clear wish to stay in England. He knew about the set back earlier this year when she maintains she had been destabilised by seeing the father at a remote court hearing. That appears to have resulted in her drinking alcohol at the refuge in breach of the rules. As a result she and the children became homeless. All of this had been reported to him by the mother. He was also aware that she had now withdrawn from taking anti-depressant medication and was maintaining her health through other psychological and social interventions.
80. Dr Gamble was asked for his views about the efficacy of the protective measures offered by the father in the event of a return to the Republic of Ireland. He said this:
- "My evidence in my report is that because of the awful things which have happened to the mother growing up, she has a vulnerability and particularly in relation to recurring mental health problems. There will be stress if she is required to return to the Republic of Ireland because of her strongly held views."
81. In her closing submissions on behalf of the father, Ms Cameron-Douglas points to the apparent improvement in the mother's health and functioning in recent weeks. She submits that, unless she has the opportunity to confront irrational fears within the protective

framework proposed by the father, we will never know whether or not those fears will diminish. She suggests that the longer term outcome, however distressing it may appear to the mother now, could be ameliorated if, within the framework of the arrangements which the father proposes, she is required to confront those fears.

Protective measures

82. The protective measures offered by the father are set out in his witness statement sworn on 6 July 2023. In terms, they amount to the following:-

Undertakings

- (i) not to instigate criminal proceedings for the offence of child abduction but with the caveat that he has no ability to control any decisions which the court instigates of its own motion;
- (ii) to ensure no one from the paternal extended family (including himself) is present at the airport on the family's return;
- (iii) to pay up to €1,600 to the mother's Irish solicitors to cover her first month's rent prior to her departure from England. There is no reference to any deposit;
- (iv) to pay an equivalent of one month's state benefits whilst she reapplies for assistance on her arrival;
- (v) to cover the cost of the flights;
- (vi) not to make contact with the mother directly or indirectly save through solicitors (which includes an undertaking in relation to harassment and threats of violence);
- (vii) prior to the next hearing in the Republic of Ireland, not to seek to separate the children from their mother and/or to enforce the terms of access which were originally agreed. The father specifically rejects the request made of him to give an undertaking not to apply to the court in advance of the next hearing date if the mother and children return. He reserves his position to make any emergency applications if he considers, on advice, that the children's welfare warrants such an application;
- (viii) to approach Children's Services in this jurisdiction with a request that the case is transferred to their Irish counterparts, Tusla, in order that a safety plan be put in place in advance of any return;

Agreements

- (ix) until the next hearing, to respect the confidentiality of the mother's and children's home and school addresses; and
- (x) to attend family therapy or counselling with the children.

83. In the context of protective measures, I am entirely satisfied from the evidence which the father has provided and from my own knowledge of dealing with Convention cases involving the Republic of Ireland that the support infrastructure and medical facilities exist in that jurisdiction to offer this mother assistance if it is required. I do not know how long it might take her to access those medical and other support services if they were needed but, in principle, I proceed on the basis that the administrative, judicial and social service

authorities in the Republic of Ireland are equally adept in protecting the children living in that jurisdiction as the English authorities are in this.

84. Within the material before the court is a letter from Tusla, the local Child and Family Agency based in town XX in County X, dated 27 June 2023. That letter confirms that, as the family is presently unknown to the agency, it would not consider it appropriate to set up a safety plan at this time. If the UK authorities or the court were to consider such a plan necessary prior to the family returning to the Republic of Ireland, Tusla would assist “depending on service demand and availability of resources”. The parents would themselves be able to initiate a request for a referral once the children were back in the jurisdiction. All requests would be considered in the context of prioritising resources to respond to children and families in the greatest need. Timelines are likely to be “variable” depending on “service demand, resources, case prioritisation and parental engagement”.
85. In this context, I must also take into account the extent to which the protective measures which are offered are likely to be effective both in terms of the father’s compliance and in terms of the consequences in the absence of compliance: see *Z v D (Art 13: Refusal of Return Order)* [2020] EWHC 1857 (Fam).
86. No doubt on advice, the father’s willingness to offer assurances to the court and to the mother has expanded in response to her own evidence. Initially, he saw no need or requirement to protect the confidentiality of her address. No undertaking was offered in respect of an absence of any contact with her. Whilst those obvious deficiencies have now been addressed, he specifically reserves the right to make emergency applications to the local court in appropriate circumstances.
87. What is quite clear is that this mother is likely to be litigating with this father for what may be months into the future. She has had access to legal advice in the Republic of Ireland and I have no reason to think that such advice will not be available in the future. What has to be borne in mind is that this is a mother whose life experience to date from her early years as young child has been characterised by serious physical, sexual and emotional abuse. That abuse was perpetrated by a family member whilst she was growing up. It is not only Dr Gamble who accepts that such abuse has left her exposed as psychologically vulnerable and fragile. He agrees that it has on occasions been manifested in a diagnosable clinical condition. The father accepts this to be the case. On her case that abuse has been perpetuated by the father in the context of their relationship both as partners and as parents to a growing family throughout their 14 or 15 year relationship. Dr Gamble views a return as bringing with it inevitable additional stress for this mother particularly if she is trying to care for four children who are themselves experiencing stress. What he cannot do at this stage is predict the degree and potential manifestation of that stress in terms of the mother’s ability to cope and care properly for these children. I need no persuasion that any significant deterioration in her health would impact adversely on these children and place them in an intolerable position for the purposes of an Article 13(b) defence.
88. For these purposes, the court can have regard to the fact that the test in *Re S* (cited above) has both objective and subjective elements. There is no doubt that the respite which the mother has felt over the period of time she has spent with the children in England has led to an improvement in her anxiety and overall stability. This litigation will have caused her significant stress as it reaches the end of this initial summary process. I could observe for myself the effect which the hearing was having on her composure despite the measures which were put in place to reassure her.

My conclusions

89. The court's discretion in this case is wide. I have made a finding in relation to consent. The principles underpinning the Convention and, in particular, the definition of 'wrongful removal' and 'wrongful retention' must be seen in that context. That finding in relation to consent has been reached after a full evaluation and analysis of all the evidence available to me. It operates as a counterbalance to the important principles underpinning the Convention. In summary, and as I have set out in paras 35-57 of my judgment, there is no doubt whatsoever that these children arrived in this jurisdiction with the full consent of both parents. They all travelled together. There was already in place a court-endorsed agreement that they should travel on the date of their departure. The mother had by that stage obtained a further legal document drawn up by her lawyer enlarging the scope of the father's agreement to permit a plan of full relocation to this jurisdiction. Whilst I accept that document does not refer to any specific date for the proposed relocation, the father was fully aware throughout of the mother's wish to return to England. That is exactly what that document provided for. He expressly waived his right to take legal advice. He took the document to another lawyer who witnessed his signature. He reconfirmed that he did not wish to seek legal advice before signing. The mother relied on the consent embodied in that document. The father did nothing to signify the withdrawal of his consent following their arrival in this jurisdiction. The contemporaneous exchange of messages between them confirmed quite clearly that it was his intention to join the family in England to be close to the children once he had returned to the Republic of Ireland to deal with matters in that jurisdiction.
90. Further, for reasons I have explained in paras 58-69, I am satisfied that each of the children has expressed a clear objection to returning to the Republic of Ireland. In terms of their safety and welfare, Mr Lill has expressed significant reservations about the impact upon them of any order for summary return. They are concerns which I share given the nature of the worries and anxieties they have individually and collectively shared with him. These anxieties were expressed in similar terms to a greater or lesser extent with two experienced social workers after the children had arrived in this jurisdiction. Until a court has had an opportunity properly to understand the extent to which these children have been exposed to, or witnessed, the serious domestic abuse which informs the allegations made by the mother, I regard it as wholly inimical to their best interests to order a summary return at this point in time. All the evidence points to them being happy and settled in their schools. More importantly, they are being cared for by a mother whose psychological health is improving to the point where she is no longer relying on medication. In circumstances where she feels safe and confident in her own ability to resist future pressure from the father, the availability of that care is essential to the children's wellbeing.
91. In relation to the mother's Art 13(b) defence, I was initially less sure that this defence, if run alone, would have persuaded me to exercise my discretion to reject the application for summary return. Having now conducted a wide survey of all the evidence, including the protective measures offered by the father, I do have significant reservations about the father's ability to sever his ties with the mother and/or to accept her decision that their relationship is at an end. He was clearly struggling with these issues when he gave his oral evidence. His position from the start of the hearing has been that the children must return to the Republic of Ireland regardless of whether their mother is prepared to, or wishes to, return with them. That position has not changed despite Mr Lill's clear evidence about the

impact on these children of a separation from their mother or the loss of the significant benefits which they currently derive from the care she is providing. The practical arrangements which the father proposes for the financial support of the mother envisages that she will return to rent a property in the same area where he is living. His property particulars relate to rental accommodation in XX. He makes no proposals as to how she is to fund the deposit which will inevitably be required to secure such a property. It is highly likely that, without adequate financial support, she will end up in the same position which confronted her before. The children may well find themselves back in unsuitable temporary accommodation if not in a local refuge. The court already has evidence as to the likely effect on the mother's mental health of a return to this situation.

92. On balance I am not persuaded that the protective measures which the father offers are sufficient to address the grave risk which exists for these children in the event of an order for return. I reach that conclusion principally because of my concerns in the round for the mother's ability to care for these should her health deteriorate. I find that there are significant risks to the maintenance of the progress she has made to date whilst looking after the children in this jurisdiction. Dr Gamble cannot predict the extent to which further anxiety and exposure to stress may provoke another collapse in her health and neither can I. However, in my judgement significant contra-indicators exist to cause me concern. There is clearly a resistance to return on the part of each of the children who would be facing a return to a jurisdiction where they do not want to be. They would be returning to a home they do not know and an educational system in which they will once again need to learn in an environment where many of their lessons may be taught in a language with which they are unfamiliar. They will lose their friends and the attachments they have made to their school communities in this jurisdiction. The mother has no social or family support system in the Republic of Ireland. I accept that she would be likely to access professional support from local social services if the children were found to be in a position of risk but that support will not replace the existing raft of support she has relied on to sustain the improvement she appears to have made whilst living, as I have found, with the father's consent, in this jurisdiction.
93. I conclude, on balance, that the Article 13(b) defence is made out, albeit narrowly. Taken with all the other factors, including the children's clear objections to a return, I am satisfied that it would not be appropriate to exercise my discretion and grant the orders which the father seeks. Cumulatively, they are powerful contra-indicators which, in my view, outweigh any Convention policy considerations.
94. For the reasons stated in this judgment, I refuse the application for a return order in respect of each of the children on the following grounds:-
- (i) Wrongful removal / retention is not established;
 - (ii) The children object to a return to the Republic of Ireland; and
 - (iii) Article 13(b).

Order accordingly