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Case No: FD24P00418

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06 December 2024

Before :

Mr Stonor KC
sitting as a Deputy High Court Judge

Between :

The Special Guardians
- and -
The Mother

Applicant
Respondent

**Re AB and CD (Children) (1980 Hague Child Abduction Convention:
Harm/Intolerable Situation; Child's Objections)**

Mani Singh Basi (instructed by **Hopkin Murray Beskine Solicitors**) for the **Applicant**
Special Guardians

Miriam Best (instructed by **Ben Hoare Bell LLP Solicitors**) for the **Respondent Mother**

Hearing dates: 05 and 06 December 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Stonor KC

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.

Mr Stonor KC:

1. Introduction

1. This is an application dated 13 August 2024 for a return order under the 1980 Hague Convention in relation to two brothers, “AB” who is aged 14 and “CD” who is aged 9. The application is brought by the boys’ maternal grandfather (“SG1”) and his partner, (“SG2”), who are the boys’ Special Guardians (“SGs”) and live in Ireland. The application is opposed by the boys’ mother, “M”, who lives in the North-East of England. The boys’ father is serving a custodial sentence. He has played a limited role in the boys’ lives and has played no part in these proceedings.
2. The boys have lived with the SGs in Ireland since July 2020, initially under a care order in favour of X local authority. That order was made by a Circuit Judge (“CJ”) sitting in the Family Court in the North-East of England at the conclusion of lengthy care proceedings. M subsequently applied for the boys to be returned to her care. Following a contested hearing before CJ in July 2023, at which the court heard evidence over three days, the care order was discharged and a Special Guardianship Order (“SGO”) was made in favour of SG1 and SG2 (“the SGs”). The SGO was made with the agreement of X local authority and the boys’ Children’s Guardian within those proceedings, and it was supported by evidence from multiple social work professionals in the UK and in Ireland. The court’s order made detailed provision for direct and indirect contact between the boys and M.
3. On 03 August 2024, as planned and in accordance with the court’s order, SG1 and SG2 brought the boys to the North-East of England to spend time with M and their younger maternal half-sibling (who lives with M). They were due to be brought back to Ireland by M on 08 August 2024. That evening, at 1923, SG2 sent a message to M: *“Is everything on schedule for collecting the kids at 11pm”*. M responded at 2041: *“The boys won’t be returning to Ireland tonight. I have spoke to everyone who needs to be spoken to, that includes social workers and police. They are both absolutely fine and happy to be staying longer. You need to contact the [social worker] tomorrow. I would appreciate no hostility from yourselves.”* In subsequent messages that evening, SG2 said that she and SG1 were *“worried sick”*, and M said: *“I made the decision to keep their here as their mam as I still have parental responsibility for them as well as yous and informed all the professionals who needed to be made aware . . .”*
4. M applied back to the same Family Court for discharge of the SGO and a “live with” order in her favour. The SGs applied to that Family Court for enforcement of the order made in July 2023. On 05 September 2024, CJ declined to hear both applications on the basis that the court did not have jurisdiction. By that stage, with the assistance of the Irish Central Authority and ICACU, the SGs had made their application under the 1980 Hague Convention.
5. The parties agree that, as at 08 August 2024, AB and CD were habitually resident in Ireland and the SGs were exercising rights of custody; and that accordingly, the boys’ retention by M was wrongful pursuant to Article 3 of the 1980 Convention. These agreed matters are amply supported by the evidence before the court.

6. M defends the application for summary return on two bases: Article 13(b) (“Harm / Intolerable Situation”) and Article 13 (“Child’s Objections”). Inevitably there is a degree of overlap in the evidence relied on and arguments advanced in respect of each defence.
7. In short, in relation to “Harm / Intolerable Situation”, M asserts that there is a grave risk that a return to Ireland would expose both boys to physical or psychological harm or would otherwise place them in an intolerable situation because:
 - (1) Their care needs would be neglected by the SGs and they would suffer emotional harm as a result of the SGs’ harshly punitive parenting style.
 - (2) The SGs cannot be relied upon to promote the boys’ relationship with M which is very important to them.
 - (3) A “forced return”, against the boys’ expressed wishes, would itself be emotionally harmful, particularly in respect of AB who, as a 14 year old, is likely to feel disempowered and that his autonomy has not been properly respected.
8. The SGs do not accept that the boys would be at any risk of harm in their care. They point to the fact that, as recently as July 2023, the Family Court undertook a holistic welfare evaluation and made an SGO in their favour. Even taking the disputed allegations relied upon by M at their highest, the SGs assert that the nature and degree of harm / intolerability alleged does not engage Article 13. Even if it does, they propose protective measures which they say will meet whatever the court may consider to be the assumed risk. In particular, they offer undertakings that they will proactively engage with the Child & Family Agency in Ireland (“TUSLA”) and, with the court’s permission, will ensure that all key documents relating to the boys will be disclosed to TUSLA to inform their work with the family. The SGs offer these protective measures whether or not the court finds that Article 13 is engaged. M points to what she says is the SGs track-record of poor engagement with school and social work professionals and says that the court can have no confidence that they will engage in the future.
9. In relation to “Child Objections”, the SGs do not actively dispute that the “gateway test” has been met and that both boys object to being returned to Ireland and that they have each attained an age and degree of maturity at which it is appropriate to take account of their views. Their case is that the court should nonetheless exercise its discretion in favour of a return order because:
 - (1) The court can have little confidence that the boys’ expressed views are authentically their own, and in any event, the weight to be attached to their views should take account of their emotional vulnerability.
 - (2) The boys’ expressed wishes are at odds with considerations of welfare.
 - (3) Policy considerations strongly favour a return order.
10. The application had been listed before me for a two day final hearing. I considered the case papers which run to over 600 pages and include:
 - (1) Statements from M and from the SGs, with exhibits.
 - (2) A Child Abduction Report from Daisy Veitch, CAFCASS High Court Team, dated 25 October 2024.
 - (3) Documents relating to previous Family Court proceedings including a transcript of the judgment of CJ in July 2023.

- (4) Documents relating to the involvement of TUSLA before and after the boys' retention in the UK.
 - (5) Documents relating to the involvement of Y LA since the boys' retention in the UK.
11. Counsel attended in person together with representatives from their instructing solicitors. Ms Veitch also attended in person. In accordance with previous directions, M and the SGs attended remotely, as did social workers from Y LA who are currently providing support to the boys on a Child in Need basis.
 12. CD had told Ms Veitch that he would like to meet the judge. On the morning of the first day of the hearing, I had a short meeting with CD by remote link to his school. CD was accompanied by his Head Teacher and Ms Veitch joined the link and kindly took a note. CD told me that "*the people in Ireland*" "*were a bit mean to me and my brother*". Although AB had not previously expressed a wish to meet the judge, I was informed that he did in fact wish to have a meeting. With the assistance of his school, arrangements were swiftly made. AB was accompanied by two members of staff and Ms Veitch again joined the link and took a note. AB told me that he wanted to make it clear that "*I'm not going back to Ireland*". I was very pleased to have met both boys.
 13. I then heard short evidence from Ms Veitch. I am grateful to Mr Basi and Ms Best for their detailed skeletons and helpful oral submissions.

2. Background

14. Although this is a summary process, it is important to set out the background in some detail as it is relevant when I come to consider both defences.
15. AB was born in 2010. Since 2011, AB has been the subject of intermittent social work involvement and multiple sets of public law proceedings. Safeguarding concerns relating to M's care over time broadly related to neglect, criminality, substance misuse and domestic abuse.
16. Between December 2011 and May 2013, AB was the subject of a child protection plan under the category of "neglect". In 2013, AB became a looked after child for one day (under s.20 Children Act 1989) before being cared for by his maternal grandmother. In 2014, AB was returned to M's care. This period of statutory involvement ended in November 2014.
17. CD was born in 2015. Between July 2015 and September 2015, he was the subject of a child protection plan under the category of "neglect". This period of statutory support ended in June 2016.
18. Both boys were the subject of care proceedings in 2018. These concluded at a hearing before CJ in July 2020 with the making of a care order in favour of X LA. In accordance with the care plan, AB (then aged 9 ½) and CD (then aged 5) moved to live with the SGs as foster carers. Direct contact with M was set at four times per year though arrangements were hijacked by the pandemic and the first direct contact did not take place until August 2022 when the boys spent time with M in Ireland.

19. In July 2022, M had a daughter (EF) who is the boys' half-sister. EF was the subject of a Child In Need plan with Y LA until October 2022 when social work involvement ended. On all accounts, M has made remarkable progress in her life for which she deserves great credit.

20. In October 2022, M applied for the discharge of the care orders in relation to the boys and their return to her care. As I have already mentioned, in a final hearing in July 2023, CJ heard evidence over three days. The learned judge discharged the care order and made an SGO in favour of SGs. The learned judge received written and oral evidence from M, the SGs, a social worker at X LA, an independent social worker in Ireland and the boys' Children's Guardian.

21. The learned judge's judgment included the following:

7. [AB], in particular, has experienced significant instability in his life to date. He has experienced multiple changes of placement. He has moved at different times between the care of his mother, his maternal grandmother, back to the care of his mother, to foster care, and ultimately to the maternal grandparents. . . .

8. There have in fact been three sets of care proceedings concerning [AB]. These discharge proceedings are the fourth set of proceedings in the life of this 12-year-old boy. After the proceedings ended in 2013, [AB] was eventually returned to the care of his mother and father. I understand the second set of care proceedings commenced in 2015 after [CD] was born. Again, the concerns related to significant exposure to polydrug misuse and chaotic parenting, to domestic abuse within the relationship of the parents and neglect.

[After the learned judge noted the "significant lifestyle changes" made by M] . . .

12. In light of these changes the mother has sought the return of [AB] and [CD] to her care. This aspiration is contrary to the expressed wishes and feelings of [AB] and [CD]. They have told the social worker, the independent social worker, and the guardian that they regard themselves as very settled in Ireland and they wish to remain there with the maternal grandfather and [SG2].

13. It is right to record that at the outset of this case the local authority reported a number of concerns regarding the children's foster placement in Ireland with the grandparents. School attendance was reported to have dropped significantly to around 45 per cent. The school themselves were reporting concerns at times about the appearance of the children. There was a view taken that some aspects of the grandparents' use of discipline, in the form of withholding privileges from the boys, was excessive. There was difficulty in consistently engaging with the local authority's social worker; meetings were missed with the local authority; and there was a sense that, in discharging their care responsibilities to the children, the grandparents were not abiding by their obligations as foster carers.

14. The local authority was directed to file reports as to the children's wellbeing. They utilised an Irish social worker . . . who conducted a number of home visits to the

children, [SG2], and [SG1]. I also directed the preparation of an independent social work assessment of the grandparents, which was carried out by [“ISW”]. It is his professional recommendation, which he maintained in his evidence, that both boys continue to remain in Ireland. He had no concerns regarding the quality of the care that the boys were being afforded, and he described solid and positive attachments between [AB], [CD], and their carers.

15. He also explained that in his opinion the boys were not coping well with ongoing professional involvement and were expressing real frustration that they were continuing to be repeatedly questioned about their wishes and feelings. [ISW] told me that the boys were very clear that they did not wish to return to England and to the care of their mother. He maintained his view that the ongoing statutory involvement of [X LA] was having a negative effect on the children’s wellbeing.

16. The views of [ISW] were very much echoed by the allocated social worker, Ms N. She too does not support rehabilitation. The mother has not cared for [AB] and [CD] for over five years, since 2018. The fact that M is meeting [EF]’s needs to a high standard is not an indication that she can also meet [AB] and [CD]’s needs to an equally high standard. Ms N explained that [AB] and [CD] have additional emotional needs. Thus, she could not support the mother’s plan, which also involved a transitional element that the boys return to England and initially stay with the maternal aunt while further work would be done to rebuild the relationship with their mother.

17. Ms N explained that this is far too much change for [AB] and [CD]. Another move would be profoundly unsettling for them. It would involve the change of schools, it would involve leaving their carers where they have been for over three years, leaving their friends and in essence making, yet again, another new start.

18. Those professional opinions also entirely coincided with those of the children’s guardian. [“CG”] spoke in poignant terms of the reactions of [AB] and [CD] to being told about the proceedings, which I had asked should be delayed until additional evidence was before the court regarding the grandparents and the mother. The guardian described [AB]’s reaction as being like “the floor having been pulled from under his feet.”

...

22. My impression of M in evidence and at court, is of a mother who deeply loves her children and wants to put right the errors of the past but who lacks insight into the real impact of her proposal on the children. Despite hearing about the boy’s distress at her application, seeing their letters to me and their comments to professionals, she has stuck to her belief that the adjustments the boys would have to make to returning to the UK would be short-lived, and the long-term benefits would outweigh the disruption. Each professional disagrees with that. They are all clear, as are the grandparents, that the impact upon them both, and [AB] in particular at approaching 13 years of age, would be profound.

...

24. . . . I was satisfied, having heard both from Ms X and MGF that they do recognise and respect the importance of promoting the boys' contact with their mother. . . .

[After turning to s.1 Children Act 1989 . . .]

26. I have refused the application of the mother to return the children to her care, whether under a care order or under another order, because I am satisfied it is not in the children's best interest. I have reached that conclusion considering the following. Firstly, the children's wishes and feelings: both children expressed clearly a desire to remain with their grandparents in Ireland. As [AB] is nearly 13, his wishes and feelings carry greater weight, and these have been consistently expressed. So too have [CD]'s.

27 I have considered the children's needs both physically and emotionally, their characteristics, their age, and their educational needs. In many respects, the children have the same needs as any other children of eight and twelve years of age. But these children, especially [AB], have experienced a significant amount of trauma in their early childhood. They have required a degree of therapeutic, reparative parenting. Whilst at times I am satisfied that the grandparents have used strategies which are not considered by the professionals to be beneficial and indeed excessive, they will continue to accept support around their care of the boys.

28. I am satisfied that there were reasonable explanations for the low school attendance last year, which has now significantly improved, and I accept that the reports generally from the professionals are that the maternal grandparents are meeting the boys' global needs both physically and emotionally.

29 I have considered the impact of a change in circumstances for the children. Again, I return to [AB], who has experienced significant disruptions to his placements since his very earliest days. I think he has had a minimum of five changes of placement. The placement with the grandparents, as Ms N reminded me, is the longest and most stable that either boy has had to date, and that is only a three-year period.

30 I am reminded that the children have not been cared for by their mother for five years. They have not lived with a baby sibling. They are integrated in their schools, in their sporting activities, in their friendship groups, and they are very settled. So, when I consider change, in every respect it represents a significant interference and disruption in the lives of the children, both their placement, their carers, their country, their school, their friends and their activities.

. . .

32. I have considered the harm that the children have suffered, and there is no doubt that they have suffered significant harm. That is not in dispute, but the professional opinion is that they are continuing to be harmed as a consequence of this application. It has caused them distress and uncertainty. I have considered the capabilities of the parents and carers. The maternal grandparents, I am satisfied, have provided – and can continue to provide – safe and nurturing care. I accept the evidence of [the social worker and ISW] that the boys are well cared for, thriving and happy.

33. They do, of course, have an emotional need for a relationship with their mother and sibling and I am ultimately satisfied that [SG2] and [SG1] will promote that contact. I do not feel that they have maximised the opportunities to do so to date, for example the mother's birthday and Mother's Day, and they have kept the mother at arm's length but, with a structure to a contact going forward, I am confident that that will change.

34. In terms of the mother's capabilities, she is demonstrably caring well for [EF], and I have no reason to think that [EF] is anything other than thriving in M's care. But sadly, there is a long, well documented history in relation to her ability to meet the needs of the boys to 2018, and the reality is that by 2020 she had consistently failed to do so.

35 She is to be commended enormously for the changes she has made but the ability to care for [EF] does not mean that she would be able to manage all three children – 13-year-old, an 8- year-old and a one-year-old – and particularly so with [AB]'s and [CD]'s complex needs and traumatic experiences. I am satisfied that any move would likely exacerbate the sense of trauma and disruption to the children . . .

36. For all of these reasons, I conclude without any hesitation that a return to the mother is contrary to the interests of [AB] and [CD]. I have taken into account the importance of their relationship with their mother and their maternal family and with [EF], but I remain firmly of the view that the status quo for the children must prevail.

[When considering the discharge of the care order . . .]

38. More significantly, however, the professionals agree that the care order is now having a disruptive and unsettling effect on [AB] and [CD], who resent quite openly the intrusion of social workers, the need for meetings, and different professionals coming in and out of their lives.

22. CJ's order included detailed provision for direct and indirect contact, with the first period of direct contact in England taking place during the Easter 2024 school holidays.
23. Regrettably, relations between M and other members of her family on the one hand, and the SGs on the other, remain fraught.
24. M was unhappy about CJ's decision. She made a complaint to X LA.
25. Within a few weeks of the decision, during contact in August 2023, M reports that AB was telling her that things were getting worse in Ireland and he was asking if the matter could go back to court.
26. Over the months that followed, M reports that both boys, but AB in particular, complained to her about life in Ireland. Their complaints to M included:
 - (1) AB complaining that the SGs were treating CD a lot better than they were treating him.
 - (2) AB complaining that the SGs would send him into the garden to do weeding, and both boys complaining about excessive household chores.

- (3) AB complaining that he was not permitted to have food or do anything else until nighttime.
 - (4) AB complaining that he would be punished at times and made to go for a run in the rain.
 - (5) Food was strictly regulated and they were not allowed to snack.
 - (6) They were only allowed to shower once per week.
27. The SGs have produced a letter which they say was written by AB to M on 19 December 2023. There is no dispute that the letter was written by AB but there is no evidence before the court as to the circumstances in which the letter was written, nor whether it was in fact sent. In the letter, AB writes: *“Do you remember in October we had that chat in the bar. I have to tell you that I would rather live in Ireland. I love when you visit we have fun but I really like my life in Ireland. I just sometimes can't say how I feel as you would judge. So please just leave it as it is. I am not going through this crap anymore and stop talking about it privately to me. I just want to have a good time. I still speak to you every week. I am very happy in Ireland, that's it. Don't act sour around me.”*
28. On 23 January 2024, TUSLA received a notification from the Police after SG1 had apparently brought AB to the Police Station raising concerns about his behaviour.
29. On 02 February 2024, the boys' school made a referral to TUSLA, raising their concerns about:
- (1) AB's unkempt appearance and ill-fitting clothing.
 - (2) AB appearing underweight.
 - (3) AB frequently expressing anxiety and fear about getting into trouble, and reporting that the SGs deny him privileges at home and at school – *“This has had a profound impact on his emotional state, with him constantly living in fear.”*
 - (4) A recent occasion when AB was the only child in class who was not allowed to have a class hoody, and when the class clubbed together to buy him one he had to return it.
 - (5) Poor engagement from the SGs.
30. On 27 February 2024, M contacted TUSLA raising concern about the care of both boys.
31. TUSLA sought to make arrangements to see the boys. The SGs were resistant to this and no meeting had taken place by the time the boys were brought to England in August 2023. The SGs do not accept that their care of the boys has been deficient. They maintain that the school referral was motivated by the Head Teacher's hostility towards them. They seek to explain their non-engagement by reference to their desire to protect the boys from unnecessary discussions with safeguarding professionals.
32. The end of school reports for both boys were positive. According to the local Educational Welfare Officer, the boys had been thriving at school.
33. As I have described, on 08 August 2024, M indicated that she would not be returning the boys as had been planned. Earlier that day, M had contacted social workers and then the Police raising concerns about bruising to CD. No allegations of physical abuse were made by CD. An investigation was undertaken under s.47 Children Act

1989 and then a Child & Family assessment, and ultimately the boys were made the subject of Child In Need plans by Y LA.

34. In discussions with social workers from Y LA, both boys have complained about the care they were receiving in Ireland. Their complaints have essentially involved the repetition of the matters which M says they had reported to her since the making of the SGO. Both boys have at times described positive aspects of life in Ireland, CD more so than AB.
35. Sadly, and despite this court having made two interim orders in relation to contact, there has been precious little communication between the boys and the SGs since August 2024. Both boys have expressed a reluctance to have any contact, AB more so than CD.
36. The boys are attending a school which is local to M's home. School and social workers report that, in all the circumstances, the boys appear to be settling well and are making good progress.

3. CAFCASS Evidence

37. Ms Veitch met with the boys separately at the Royal Courts of Justice on 14 October 2024. She has prepared a detailed and comprehensive report. She sets out what each boy told her during their meetings.
38. AB told Ms Veitch that he does not like the SGs because they were strict and used to make him and CD "*do stuff we don't want to like clean for them*". AB said he was made to do "*horrible chores like weeding, they made us pick up even the tiniest one. Sometimes I got away with it because the rain was lashing down but not always*". AB said that things got worse after the last court order (in July 2023) – something he has also said to M and social workers at Y LA. He said he had missed his friends but now has their numbers so there is nothing about life in Ireland that he misses. Ms Veitch noted that AB "*visibly brightened*" when she asked him to talk about life in England. When asked how M and the SGs get along, AB said "*They don't. I don't think anyone over in England likes them.*" AB told Ms Veitch: "*I just wanna stay here. Because it is just a better life here, we have more fun as a family, and do more things.*" When asked how he would feel if the court said he had to return to Ireland, Ms Veitch noted that "*[AB]'s face and tone darkened. He said: 'I just wouldn't go back. I'm not going back there.'*"
39. AB wrote a letter to the judge:
*"Dear Judge,
I want to live in England because I have a better life here, with more family time and stuff. I just didn't like being bored in Ireland and staying on my own all the time. In England I am never on my own.
I'm not going back to Ireland whether anyone likes it or not, I am staying.
From [AB]"*
40. CD told Ms Veitch that he did not want to see the SGs saying: "*They're mean and stupid. They locked me outside for four hours.*" Later, he said: "*They shouted and were mean and made us do chores and never let us go on the Switch it just sat there*".

When asked what he missed about Ireland, CD said: *“Maybe my cousins and my friends, nothing else, not them [his grandparents] for sure”*. Ms Veitch noted that this was a change because CD had previously told his social worker that he wanted to speak to and see the SGs. Later in her report, Ms Veitch commented: *“I got the impression that it is difficult for [CD] to be the only person on good terms with his grandparents, and that he may be beginning to opt out of calls with them, to be aligned with his brother which may feel less complicated to him.”*

41. CD wrote a letter to the judge:

*“Dear Judge,
I want to live in England because I didn't like [SG2] and [SG1] in Ireland. They locked me outside, they locked me in my bedroom and put a lock on it. They always shouted and they made us go outside all the time even when we didn't want to. Mum brings us more places like the bowling alley, the race track and stuff. We can get food out the fridge whenever we want to which we couldn't before and we can watch TV and play on our switches but only at the weekend. She doesn't shout at us. I wouldn't want to go back to Ireland and I wouldn't listen even if I had to go back. I would feel sad and annoyed.
From [CD].”*

42. When considering the boys' expressed wishes and feelings, Ms Veitch wrote:

45. I am mindful of the applicants' argument that the children have been influenced and even coached by their mother to speak negatively about them and their life together in Ireland. In my assessment both [children]'s manner of speech and the language they each used was spontaneous and appropriate to their age and stages of development, which lent authenticity to their expressed views. I did not observe a scripted or rehearsed quality to their comments, nor did I notice any adult terminology which would suggest that they have been told what to say or were sharing views which are not their own.

46. In my view, [the children] have provided cogent reasons for their views grounded in their lived experience. They report that their grandparents and special guardians were 'mean', describing a punitive and authoritarian parenting style. The children say they were often shouted at and given excessive punishments of housework and gardening even in poor weather. CD says he was locked in his bedroom and out of the home. I note that the information provided within the bundle, including that from the school [the children] attended in Ireland, go some way to confirm the children's reported experiences

47. At times, CD appeared wholly negative about his special guardians. He has begun calling them by their first names when I understand he used to call them the more affectionate [names] as recently as August 2024. CD could not recall anything positive about his life in Ireland to me, though he had previously told his social worker they went on fun days out like to the circus. I am also aware that both children completed some written views for me alongside their maternal grandmother. In these, they did not list any Irish family members as important to them. AB and CD each told me they no longer wish to speak to their special guardians in the directed video calls.

48. These examples illustrate a shift in the children's presentation from a balanced view of their Irish and English homes and carers, to an increasing negativity towards [the SGs]. I therefore cannot rule out some measure of influence against a return to Ireland, from [M] and the maternal family, which may have bolstered [AB]'s view and affected [CD]'s. However, it is also possible that this is as the children are distanced from their experiences in Ireland, they are increasingly open about what happened and are beginning to understand it, if true, as unjustified, and unkind. As they remember how this felt, their views and opinions about their special guardians may have hardened accordingly.

49. Further they are acutely aware of the acrimonious relationship between their mother and special guardians. I understand the conflict between [M] and [SG1] is long-standing and was apparent in the previous proceedings. Both children reported overhearing their grandparents shouting at their mother over a video call on 13/10/2024, which will have been confusing and upsetting for them. [AB] and [CD] may be 'siding' with their mother emotionally, to survive the turmoil of being stuck within the dispute between the two sides of their family

43. Ms Veitch assessed that the boys' respective maturity was broadly in accordance with their age. She noted that AB's childhood so far *"has been characterised by repeat adverse childhood experiences, and I consider it likely that this has taken a toll on his self-esteem and emotional wellbeing"* and that *"It is not surprising that he expressed himself in a determined manner."*

44. In oral evidence, Ms Veitch stood by the contents of her report. In answering questions from Mr Basi, she confirmed that the boys' objections seemed to relate more to their home with the SGs rather than Ireland itself. When considering the extent to which the boys' views are authentically their own, she said: *"It is very difficult to know if their negative view of Ireland is because of experience or influence."* In answering questions from Ms Best, Ms Veitch confirmed that both boys were expressing a strong view against a return to Ireland, and that in her view, on balance, if there was influence then it is more likely that it would be strengthening a pre-existing negative view. Whilst to a degree Ms Veitch shared the concerns which had been raised by the social workers at Y LA about the practicalities of a "forced return" and its emotional impact on the boys, she said that this was not straightforward and that steps could be taken to seek to mitigate the impact by, for example, sensitively explaining the court's decision to the boys.

45. I found Ms Veitch to be a measured, thoughtful and conscientious witness.

4. Discussion

46. This is a summary process. I am not deciding the long-term care arrangements for AB and CD. Whilst the prospect of further court proceedings for these boys is a chilling one, my decision will determine where any dispute about those long-term arrangements should be litigated.

47. There is no issue as to the law and this has been helpfully set out in detail in the skeleton arguments prepared by Mr Basi and Ms Best.

48. The relevant parts of Article 13 of the 1980 Convention are as follows:

“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:

.../

(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.”

4.1 Article 13(b): Harm/Intolerable Situation

49. I have regard to the guidance from the Supreme Court in *Re E (children) (international abduction)* [2011] UKSC 27 and the helpful summaries of applicable principles provided by MacDonald J in *MB v. TB* [2019] EWHC 1019 and *Z v. D (Refusal of Return Order)* [2020] EWHC 1857.
50. As I have already summarised at para 7 above, but will repeat for convenience, M’s case is put on the basis that a “forced return” would engage the “Harm / Intolerable Situation” defence because:
- (1) The boys’ care needs would be neglected by the SGs and they would suffer emotional harm as a result of the SGs’ harshly punitive parenting style.
 - (2) The SGs cannot be relied upon to promote the boys’ relationship with M which is very important to them.
 - (3) A “forced return”, against the boys’ expressed wishes, would itself be emotionally harmful, particularly in respect of AB who, as a 14 year old, is likely to feel disempowered and that his autonomy has not been properly respected.
51. In relation to point (1), as clarified in the authorities, I must and do take the boys’ allegations at their highest. In doing so, it would be folly to ignore the fact that, on the evidence currently available, the Family Court was concerned with *broadly* similar allegations during proceedings which concluded in July 2023. Those broadly similar allegations were investigated by an independent social worker in Ireland and the consensus between him and the social worker and Children’s Guardian was that it was manifestly in the boys’ welfare interests to remain living with the SGs. CJ, after hearing evidence from all relevant adults, and faithfully applying the law, came to the clear conclusion that an SGO should be made in favour of the SGs. That was barely twelve months before the wrongful retention of the boys.

52. For the avoidance of doubt, I am troubled by the contents of the referrals made by the Police and the boys' school in February 2024. I am also troubled by the SGs' poor engagement with the boys' school and TUSLA – particularly when their inconsistent engagement with professionals had been commented upon by CJ.
53. However, as has been observed in the authorities, whilst although “grave” characterises the risk rather than the harm, there is in ordinary language a link between the two. In my judgment, the allegations relied on in support of point (1) fall short of the sort of harm which might engage this defence.
54. In relation to point (2), this is not supported on the evidence currently before the court. It seems that contact took place broadly in accordance with the order made by CJ in July 2023.
55. In relation to point (3), whilst I do not doubt that the implementation of a return order may be difficult for the boys, particularly AB, to accept, the court expects that all of the adults involved in the children's lives would behave responsibly, “step up to the plate”, and do their level best to support the boys in their return to Ireland.
56. Moreover, in relation to points (1)-(3) taken cumulatively, and focusing as I must on the future, that is the situation as it would be for the boys if they were returned to Ireland, it is important to acknowledge the existence of TUSLA and the very real prospect that they will provide necessary support and monitoring.
57. Whilst the nature and level of alleged harm does not in my judgment engage this defence, I am nonetheless pleased to note that the SGs offer a commitment to proactive engagement with TUSLA. This is essential. I also expect that they will offer a commitment to proactive engagement with the boys' schools and any other professionals who may be concerned from time to time with the boys' welfare.

4.2 Article 13: Child Objections

58. Since August 2024, AB and CD have both consistently expressed their clear opposition to a return to Ireland. Whilst Ms Veitch noted that the boys' opposition focused more on their home with the SGs rather than Ireland itself, the only realistic conclusion in my judgment is that the “gateway” test has been met. As I have already indicated, the issue is whether the court should exercise its discretion to make a return order.
59. In the recent Court of Appeal decision in *C v M (A Child) (Abduction: Representation of Child Party)* [2023] EWCA Civ 1449 at para 76, Moylan LJ said:

Finally, I set out passages from Lady Hale's speech in *Re M¹* in which she made a number of observations about the breadth of the discretion which arises under the 1980 Convention when a child objects to returning:

“[43] My Lords, in cases where a discretion arises from the terms of the Convention itself, it seems to me that the discretion is at large. The court is entitled to take into

¹ *Re M (Children) (Abduction: Rights of Custody)* [2007] UKHL 55

account the various aspects of the Convention policy, alongside the circumstances which gave the court a discretion in the first place and the wider considerations of the child's rights and welfare"; and

"[46] In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are "authentically her own" or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances."

60. When considering the nature and strength of the boys' objections, both boys - AB more so than CD - have expressed their opposition in robust terms. The views of a 14 year old and, inevitably to a somewhat lesser extent, a 9 year old, will always demand respect. It cannot be ignored, however, that these boys are emotionally vulnerable as a result of their life experiences to date. Nor can it be ignored that their robust opposition is entirely at odds with the way in which they were expressing their views during the run up to the hearing before CJ in July 2023. Whilst the circumstances surrounding AB's letter to M in December 2023 remain vague, the sentiments expressed in that letter chime very much with the observations made by CJ in her judgment. There has been a "sea-change" in the boys' expressed views.
61. To what extent are the boys' views authentically their own or the product of influence from their mother or other members of the maternal family? Ms Veitch considered, on balance, that if there was influence then it was likely to be strengthening a pre-existing negative view. The boys, particularly AB, have plainly been unhappy at times about their "lived experience" in the care of the SGs. There is some third-party corroboration for that unhappiness, particularly in the school referral from February 2024. There are aspects of the care offered by the SGs which troubled CJ and, as I have already indicated, there are aspects of their recent conduct which trouble me.
62. But the themes of the boys' complaints broadly chime with those which were before the court in July 2023 at a time when the boys were clearly stating that they were happy living with the SGs. How have those complaints developed into a robustly expressed opposition to a return to Ireland? CJ found that M loved her boys but lacked insight into their emotional needs, holding as she did to her fixed view that they should return to her care notwithstanding their clearly expressed wishes to the contrary. M's unhappiness about the decision made by CJ in July 2023 is apparent. Since August 2024, the boys have been living in a home environment where it seems that no-one has a good word to say about the SGs. Influence can of course be exerted directly or indirectly. On the evidence currently available, I am not at all confident that the boys' views are authentically their own.

63. To what extent are the boys' objections coincidental with or at odds with other relevant welfare considerations? It is not a function of these proceedings for the court to undertake a holistic welfare evaluation. It is a feature of this case, however, that as recently as July 2023, the Family Court did just that and concluded that welfare considerations pointed unswervingly towards the boys remaining in Ireland. Of course, I must look at the here and now. If the boys' objections were followed, then they would know that their wishes had been respected and they would continue to live with their mother and half-sister and attend the school where they are settling reasonably well. To that extent, there may be some short-term benefit for them. But it would mean them living in a home which, on the clear findings of CJ in July 2023, was not one which would meet their long-term emotional needs.
64. If the boys' objections were not followed, then at least in the short term they may be harmed by the sense that their views had been overruled and their autonomy disrespected. There would be yet more disruption in their lives. However, they would be returning to the home they had been living in for four years prior to their wrongful retention, a home which, as found by the Family Court in July 2023, is the one which offers the much better prospect of meeting their emotional needs.
65. I have regard to the well-established policy considerations which include the fact that the Convention only works if, in general, children who have been wrongfully retained or removed from their country of habitual residence are returned, and returned promptly.
66. For all these reasons, I am not satisfied that the "Child Objections" defence has been made out.

5. Conclusion

67. For the reasons set out above, I make a return order.
68. Having reflected on the submissions made as to timing if such an order were made, whilst there is no easy answer to this, I consider it better for the boys if - as proposed by the SGs - they were to finish the school term and spend time over Christmas with M and their half-sister. I direct that the return order should take effect by midnight on Monday 30 December 2024.
69. I am grateful to the social workers at Y LA for confirming that they will share my decision with the boys. I do not doubt that my decision will be upsetting for M and other members of the maternal family. I urge her and them to work constructively with the SGs and social workers in the implementation of my order. The boys should be told that (1) the court has listened very carefully to M, the SGs and Ms Veitch, (2) the court has listened very carefully to what they themselves have had to say, (3) the court has decided that they must go back to Ireland, (4) the SGs have promised the court that they will work with the boys' school and social workers in Ireland to make sure that they receive the best possible care, (5) if there is to be any change to their care arrangements then that will have to be dealt with in Ireland, (6) M and SGs all love them dearly and they are not in any trouble.

70. I give permission for this judgment, Ms Veitch's report and other relevant parts of the case papers (which I trust can be agreed) to be disclosed to Y LA and TUSLA.
71. The protective measures proposed by the SGs will be formally recorded on my order, notwithstanding my conclusion that the Article 13(b) defence was not made out.
72. I will now deal with any consequential directions.
