



[2026] JMSC Civ 54

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FAMILY DIVISION

CLAIM NO. SU2025FD01947

BETWEEN	AT	CLAIMANT
AND	DG	DEFENDANT

IN CHAMBERS

Mr. Rodain Richardson, Mr. Lorenzo Eccleston and Miss Nichole Chambers, Attorneys-at-Law instructed by The Jamaica Central Authority for the Claimant

Mrs. Judith Cooper-Bachelor, Attorney-at-Law instructed by Chambers, Bunny & Steer, Attorneys-at-Law for the Defendant

FAMILY LAW - RETURN OF CHILDREN – CHILDREN (GUARDIANSHIP AND CUSTODY) ACT - THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION 1980 - ARTICLE 3, 12 & 13 - HABITUAL RESIDENCE – GRAVE RISK – CHILDREN’S OBJECTIONS.

HEARD ON: MARCH 14 AND APRIL 16, 2026

REID, ICOLIN J.

INTRODUCTION

[1] The Claimant, AT is a Romanian national employed to the National Health Services in the United Kingdom (hereinafter referred to as the UK) and resides there. The Defendant, DG, is a Jamaican Pilot, who now resides in Jamaica. The Claimant and the Defendant have 3 children, **CG**, born on December 10, 2012,

KG, born on June 10, 2016, and **RG** born on February 20, 2020. All the children were born in the United Arab Emirates (“U.A.E.”). The children lived with the Claimant in the U.K from the year 2020 until the 18th of April 2025. The parties were married in the United States of America (U.S.A.), on the 12th of April 2013, but separated in 2015.

[2] The Defendant continued to reside in Abu Dhabi because of his job but would visit with the children regularly during his breaks. During one of these visits the Defendant, on the 18th of April 2025, removed all three children from the UK and brought them to Jamaica. This was done without the knowledge or consent of the Claimant.

THE APPLICATION

[3] On May 27, 2025, a Fixed Date Claim Form was filed on behalf of the Claimant seeking the following orders:

1. *An Order for the return of [CG], born December 10, 2012; [KG], born June 10, 2016; and [RG], born February 20, 2020, to their place of habitual residence at 8 Thorpe Close, Crewe, East Cheshire, United Kingdom.*
2. *An Order that the Defendant, within twenty-four (24) hours of being notified of the confirmed date of return to the United Kingdom, hands over [CG], [KG], and [RG] to the Claimant at the offices of the Jamaica Central Authority;*
3. *An Order directing that the Defendant surrenders to the Jamaica Central Authority all travel documents in his possession belonging to [CG], [KG], and [RG], at the first hearing.*
4. *An Order that the Defendant visit the Child Protection and Family Services Agency located at 48 Duke Street Kingston between 9:00am - 4:00pm with [CG], [KG], and [RG], once per week until a determination is made in the matter.*
5. *An Order to Stay any court proceedings initiated in Jamaica by the Defendant concerning the custody of [CG], [KG], and [RG], until this matter is treated with by this Court.*
6. *That the Honourable Court confirms the interim stop order previously granted on application of the Claimant.*
7. *That the Claimant be granted liberty to apply and to seek such ancillary or consequential orders as may be necessary to secure the safe return of the children.*
8. *Such further and other relief as this Honourable Court deems fit.*

[4] The grounds for the said application included the following:

1. *Wrongful removal of [CG], [KG], and [RG] by the Defendant as per section 7C (1) of the Children (Guardianship and Custody) Amendment Act;*

2. *Application for the return of [CG], [KG], and [RG] being made pursuant to section 7E (1) (f of the Children (Guardianship and Custody) Amendment Act;*
3. *The Court may make an Order for the return of [CG], [KG], and [RG] as per section 7M of the Children (Guardianship and Custody) Amendment Act;*
4. *Pursuant to Article 3 of The Hague Convention on the Civil Aspects of International Child Abduction (1980), the removal or retention of a child is considered wrongful where it breaches rights of custody attributed to a person under the law of the State in which the child was habitually resident immediately before the removal or retention.*
5. *Pursuant to Article 12 of The Hague Convention, where a child has been wrongfully removed or retained in breach of custody rights, and less than one year has elapsed from the date of the wrongful act, the judicial authority of the requested State shall order the return of the child forthwith.*
6. *Pursuant to Section 7C and Section 7Q of the Children (Guardianship and Custody) Act, this Honourable Court may make orders concerning the return of children wrongfully removed from their country of habitual residence and may secure and organise arrangements to give effect to custody and access rights. for the return of the children.*

[5] It is agreed between the parties that the children's country of habitual residence is the UK. Early in the proceedings an application was made by the Defendant seeking orders to include the following:

- (1) *The Office of the Children's Advocate (OCA) is appointed as the independent legal representatives of CG, KG and RG in these matters.*
- (2) *The OCA is joined as an interested party in these matters.*
- (3) *The OCA is to conduct its own investigations, prepare a report(s) and make submissions on behalf of the minor children in these matters.*
- (4) *The Court appoints Dr. Kai A. Morgan, Registered Clinical Psychiatrist, as an expert witness.*
- (5) *The defendant be permitted at the trial of this matter to put into evidence the expert report(s) of Dr. Kai A. Morgan.*

[6] The grounds on which the Defendant sought the orders included the following:

- (1) *The OCA may with the leave of the Court intervene in any proceedings before a court or tribunal involving law or practice concerning the rights or best interests of children and may act as amicus curiae in any such proceedings.*
- (2) *As the minor children's independent legal representative, the OCA is able to assist the Court regarding the issues before the Court in these matters.*
- (3) *The issue of whether there is a grave risk that the return of the children would expose them to physical and psychological harm or otherwise place them in an intolerable situation is a matter in issue before the court.*

- (4) *The issue of whether the children have attained an age and degree of maturity such that it is appropriate for the Court to take account of the children's view is a matter in issue before the Court.*
- (5) *The Defendant contends that the children would be unsafe and in danger of future abuse if they are returned to the care and control of the Claimant.*
- (6) *The Defendant contends that the children do not wish to be returned to the care and control of the Claimant.*
- (7) *The Defendant contends that the Claimant mentally and physically abused the children while they resided with her.*
- (8) *Dr. Kai A. Morgan is an experienced clinical psychiatrist and is able to assist the Court regarding the issues for the Court in these matters.*
- (9) *The granting of the orders is in the interest of the overriding objective of the Court and will imbue to the best interest and welfare of the minor children.*

[7] The Court considered the evidence from both parties on the application. The Claimant objected to the application, and the court heard submissions from counsel for both parties. Thereafter, the Court ruled that the OCA would not be joined as an Interested Party but would be directed to conduct an independent investigation concerning the three children and to file a report. The orders sought in relation to Dr. Kai A. Morgan as an expert witness were refused.

[8] The Court formed the view that whereas the Cheshire East Council Child and Family Assessment (the Assessment) and the Section 47 Enquiry presented an independent version of the circumstances of the children's lives when they were living with the Claimant in the UK, the OCA report would on the other hand, present an independent version of the children's circumstances since their arrival on the island. The Court would therefore be able to analyse both reports in determining the issues in the case. I reminded myself that this was not a custody application and as such, a report from Dr. Kai Morgan was unnecessary for the purposes of the Hague application.

[9] The OCA interviewed each child and their parents separately and filed its report. The Court is grateful for the insight provided particularly in relation to the post removal opinions of the children. The report also aided the Court in determining

the dynamics between the parties and their interactions with the children, both pre- and post-removal from their country of habitual residence.

SUBMISSIONS

[10] The court is grateful to counsel for the parties for their detailed submissions however the court will only refer to those aspects of the submissions which were helpful in resolving the issues before the court.

ISSUES

[11] The sole question before the court is whether the children ought to be returned to the United Kingdom. In addressing this question however, the Court recognises that there are two issues arising from the Defendant's defence which must be considered:

(1) Whether there is a grave risk that the children's return to the UK would expose them to physical or psychological harm, or otherwise place them in an intolerable situation?

(2) Should the children's objection be taken into consideration in deciding whether they should be returned to the UK?

LAW AND ANALYSIS

ISSUE 1: *Whether there is a grave risk that the children's return to the UK would expose them to physical or psychological harm, or otherwise place them in an intolerable situation?*

[12] Jamaica acceded to **The Hague Convention on the Civil Aspects of International Child Abduction** 1980 ("The Hague Convention") on 24 February 2017. **The Children's (Guardianship and Custody) Act** ("the Act") was thereafter amended on 2 May 2017 to give effect to the Convention. The Convention provides for the prompt return of children who have been wrongfully removed from or retained outside their country of habitual residence.

[13] Section 7C of the Act which mirrors Article 3 of The Hague Convention states:

For the purpose of this Act, the removal to, or retention of a child in, a Contracting State is considered wrongful, where-

(a) Such removal or retention is breach of rights of custody or rights of access of an individual or institution or other body, whether attributed to the individual, institution or body either jointly or solely; and

(b) At the time of such removal or retention, those rights were actually exercised either jointly or solely, or would have been so exercised, but for such removal or retention”

[14] Section 7K speaks to timelines that should be considered under the Act. It states:

7K. Notwithstanding sections 7I and 7J,

a) Where, at the date of commencement of Court proceedings, a period of less than one year has elapsed from the date the child was wrongfully removed or retained, the Court shall order the return of the child; or

b) Where the Court proceedings are initiated after the expiration of one year from the date of the wrongful removal or retention of the child, the Court shall order the return of the child, unless it is demonstrated to the Court that the child is now settled in his new environment.

[15] Article 13 of The Hague Convention states:

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a) ...

*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.***
(Emphasis mine)

[16] The Defendant relies on Article 13(b) of The Hague Convention and bears the burden of establishing that the return of the children to UK would expose them to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation. I accept the submissions of Counsel for the Claimant that this Court is not engaged in a general welfare inquiry and is not required to determine which parent is to be preferred. The Court's task is a narrower one, namely, to determine whether the Defendant has established, on a balance of probability, a risk of sufficient gravity to displace the Convention's primary remedy of returning the children.

[17] The applicable principles are well established. In **Re E (Children) (Abduction: Custody Appeal)** [2011] UKSC 27, the UK Supreme Court made it clear that Article 13(b) is of restricted application and must not be used as a vehicle for determining custody disputes. The risk must be grave and not merely serious. The court also notes the case of **T.B. v J.B. (Abduction: Grave Risk of Harm)** [2001] 2 FLR 515 and agrees with the submissions of Counsel for the Claimant that these authorities establish a high threshold. In paragraph [40] of this case, the court opined:

Hence the courts in this country have always adopted a strict view of Article 13(b). The risk must be grave and the harm must be serious. As Lord Donaldson of Lynton MR said in Re C (A Minor) (Abduction) [1989] 1 FLR 403, at p 413, 'the words "or otherwise place the child in an intolerable situation" ... cast considerable light on the severe degree of psychological harm which the Convention has in mind.' The courts are also anxious that the wrongdoer should not benefit from the wrong: that is, that the person removing the children should not be able to rely on the consequences of that removal to create a risk of harm or an intolerable situation on return. This is summed up, after a review of the authorities, in the words of Ward LJ in Re C (Abduction: Grave Risk of Psychological Harm) [1999] 1 FLR 1145, at p 1154, quoted by the Judge in the present case:

'There is, therefore, an established line of authority that the court should require clear and compelling evidence of the grave risk of harm or other intolerability which must be measured as substantial, not trivial, and of a severity which is much more than is inherent in the inevitable disruption, uncertainty and anxiety which follows an unwelcome return to the jurisdiction of the court of habitual residence.' (Emphasis mine)

[18] I adopt the position taken in **Re S (A Child)** [2012] UKSC 10, that the Court must first consider whether, if the allegations are true, they establish a grave risk within Article 13(b). If so, the Court must then consider whether that risk can be mitigated by protective measures in the requesting state. Only where such measures are insufficient may the Court need to resolve disputed facts.

[19] In **Halsbury's Laws of England** [2023], the authors state as follows in relation to grave risk:

The courts have been cautious in giving effect to these exceptions. In particular, it has been held that 'grave risk' is not to be equated simply with considerations that the child's welfare should be paramount, though the best interests, not only of children generally, but also of any individual child involved, were a primary concern in the Hague Convention process.

- [20] The Defendant's case is advanced primarily through his firsthand interactions that he had with the Claimant and the children when he resided with them in Abu Dhabi and when he visited them in the UK. He also relies on the accounts of the children as recorded in the OCA Report and through text messages said to have been sent by CG. It is therefore necessary to examine the various pieces of evidence, both individually and collectively, and to assess what weight can properly be attached to them.
- [21] The Defendant gave evidence of the alleged emotional and verbal abuse of CG and KG by the Claimant when they were living in Abu Dhabi. He also alleged that the Claimant encouraged CG to physically abuse him and to behave in a disrespectful manner towards him. DG spoke of an incident which occurred when CG was 5 years old during which the child told him that "*Mummy punched me in my stomach*". The Defendant said he raised the issue with the Claimant who denied hitting CG, but he did not believe her. In his First Affidavit the Defendant stated that "*The Claimant's (sic) verbal and emotional battering caused a lot of tears and damaged the children's self-esteem and sense of self. This situation made them deeply unhappy, and I hope that it has not done irreparable harm*"
- [22] The Defendant gave evidence regarding the condition in which he found the home where the children resided in the UK with the Claimant. He said that she neglected to obtain or provide medical care for the boys when they were ill. He described the home as being filthy and spoke of its unhealthy surroundings stating that he had to ensure that the children had their daily hygienic care because the Claimant neglected to attend to these issues. He further alleged that the children were not being properly cared for, and the Claimant would leave them at home unattended. He also complained that the Claimant did not assist the children with their homework during the time they were attending school remotely.
- [23] The Defendant said that, on one occasion, after trying unsuccessfully to reach the children or the Claimant, he called the police. He then messaged the Claimant, who subsequently returned to the home. He indicated that the children constantly

complained to him about the treatment they received at the hands of the Claimant, and he became concerned. As a result, in November 2024, he contacted the Cheshire East Council and expressed his concern about the children's welfare. He stated that they conducted an investigation but only CG was interviewed and he was not informed of their findings.

[24] He said the situation escalated and in January and February 2025 he received two (2) WhatsApp messages from CG which led him to believe that CG was in emotional distress. He then decided that during the summer he would take the children to Jamaica to have a psychological evaluation done.

[25] The Defendant stated that on March 7, 2025, the Claimant called him in relation to the incident between herself and CG. He stated that it was only after Child Services threatened to remove CG from the home that the Claimant contacted him. He further stated that he called and spoke to the head of Child Services who informed him that since he (DG) was returning to the UK to be with the children they would not contemplate removing CG from the home. The Defendant said he informed the Claimant that he would stay at the house with the children or take CG with him wherever he was staying as that was the only way to ensure that the state did not take CG.

[26] It is noted that when the Defendant was interviewed by the Cheshire East Council Child Services in March and April 2025 before the removal of the children from the UK he complained to the officer that the Claimant's home was an abusive household and that she was emotionally abusing CG. He mentioned that the Claimant was insulting CG and was verbally hostile toward him. The Defendant stated that when there was an argument between the Claimant and CG, she did not know how to de-escalate it, and he feared that another incident would happen that would result in CG leaving the home in handcuffs. He indicated that the situation with CG was not good and that when he was in Abu Dhabi and tried to contact the children, he could not, because the Claimant had blocked him.

- [27]** In his interview with the social worker after the March 2025 incident, the Defendant indicated that he did not think that the Claimant would intentionally physically harm CG, but he thought that she could not manage CG's behaviour. He stated that he believed that CG needed clear boundaries which were not being provided by the Claimant. The Defendant thereafter asked for a social worker to be assigned to the children to ensure that they were being properly cared for. He complained that the reality of the situation was not being addressed by the authorities. From this statement, it can be gleaned that the Defendant believed that the Children Services were not responding in a manner that indicated that they appreciated the seriousness of the children's and particularly CG's dilemma.
- [28]** It is also noteworthy that, in the assessment, although the Defendant expressed his concerns regarding the welfare of the children, especially CG, he did not indicate that they were in grave danger if they remained with the Claimant. It should also be noted that nothing new happened after the Social Services interviews and the assessment, that is between April 2, (the date of the last interviews with the children by Social Services) and April 18, 2025, (the date of their removal from the UK) to trigger the removal of the children. This is considered in light of the Defendant's own evidence that the Claimant would not intentionally harm CG.
- [29]** Of the children's account, told to the OCA investigator, CG is the most detailed. He describes the Claimant as "distant and cruel" and states that she shouted at him and KG, failed to respond appropriately when he experienced testicular torsion, and on several occasions left him and KG without food and locked them outside as punishment in the winter and in rainy weather. He also describes the March 2025 incident involving the wi-fi router, stating that the Claimant pushed him, hit his head into the wall and he sustained scratches on his left arm from her. I accept that CG has expressed these views and that he classified aspects of the Claimant's parenting as harsh.

- [30] In the OCA report I note that KG corroborates CG that the Claimant had locked them out of the house on several occasions in rainy and cold weather. KG said that this occurred when they were fighting with each other or with RG or arguing with RG. KG said they would be locked out for between 10 to 15 minutes. He said she would also lock him in the room where jackets and shoes were kept. He also said she sometimes left the house with RG and he and CG were home alone with no food and they had to call the Defendant to order food for them.
- [31] I have considered the Claimant's evidence in response to these allegations of abuse and/or neglect. She has denied neglecting CG and KG and states that she has always responded by providing appropriate medical care for the boys. I noticed too that she did not deny the allegations in respect to locking the boys outside the house. She, however, sought to explain the reasons for doing so. She admits that there were times when she had to separate the children to restore calm in the home during sibling disputes. She said that on some occasions one child "*remains outdoors (e.g. in the back garden) while the other comes indoors, for no more than 3-4 minutes, depending on where the conflict started*". She added that she has never locked or deliberately left her children outside unsupervised and that the decisions taken in these circumstances were not punishment and were conducted in a safe, weather appropriate and attentive manner.
- [32] These are very serious allegations made by the boys. I bear in mind that KG at 9 years old may not be sufficiently intelligent to determine how long 10 to 15 minutes is. I also bear in mind that the Defendant said that when he raised these issues with the Children's Services Officer her remark was that single parenting is difficult.
- [33] The allegation that the boys were left without food is not supported by the evidence. The fact that they at times contacted the Defendant for him to purchase food does not, without more, establish that they were deprived of food. KG also told the OCA's investigator that the Claimant would hit him and CG with her hands if they fought. Remarkably, neither of these complaints of abuse were mentioned by the boys in the Assessment. These complaints, whether taken individually or

collectively, are serious and the court must determine whether they were authentic, and if so, why they were not brought to the attention of the social worker in the UK.

- [34]** The Claimant's Counsel has sought to persuade the Court that because these reports were not made contemporaneously in the UK, little or no weight should be attached to them and that these views expressed by the boys to the OCA have been coloured by the Defendant. However, the fact that the Claimant has not denied some of these allegations but instead has given explanations as to the reasons for and the extent of her conduct compels the Court to disagree with her Counsel about their relevance. I agree with Counsel for the Defendant that these allegations must be carefully considered despite the Assessment stating that CG was not worried about anything, and all three children, having had the purpose of the Social Worker explained to them, indicated that they did not need a Social Worker.
- [35]** There is no evidence in the Assessment as to the duration of the interviews conducted with the children. The Defendant stated that it took less than 5 minutes. Similarly, there is no evidence as to the length of time the OCA investigator spent with each child, but it does appear that the OCA investigator got more information out of the children. The Assessment spoke of KG and RG both being sad when the Claimant shouted at them when they were naughty. CG also reported that he was sad when the Claimant shouted at him, but he never gave any reason for her shouting, unlike his siblings. He further indicated that he was sad when the Defendant was grumpy, again, without providing any explanation. The children's officer apparently did not seek any explanation from CG concerning his parents' behaviour.
- [36]** RG's account is materially different. It is obvious from the evidence of CG and KG, that they believe the Claimant has a clear preference for RG and treats her more favourably. While the Court considers that perception to be of some concern and a matter which ought properly to be addressed, it must be assessed in the context of the evidence as a whole. The court notes however, that RG is the youngest of

the children and her account must be approached with a degree of caution. RG stated that she is fine living with her father but that she misses her mother and wishes to return to her, and that she prefers her school in the UK. She does not describe the Claimant's care in terms of harm or fear. Her evidence does not support the contention that the Claimant's home was an environment of harm but rather demonstrates that the children's experiences were not uniform.

[37] In consideration of the children's evidence, it is noted that CG has expressed the strongest criticisms. KG supported aspects of those criticisms but RG does not. The disparity in their views is important. It calls for caution in treating the most serious accounts as representative of all three children's views and undermines the suggestion that the Claimant's home was an environment of harm. It is of significance that the Claimant does not seem to have any challenges with RG. As a matter of fact, RG is with the Claimant either when the boys are sometimes left alone at home with a baby-sitter or an adult (SD), who lives nearby on call if necessary; or when either boy or both are locked outside by the Claimant. This is clear indication that the response of each child must be examined critically to determine what are his/her true feelings on the issues to be determined.

[38] The Defendant also relied on a series of text messages purportedly sent by CG while he was in the UK. A substantial number of those messages were forwarded, and the court is unable to determine from whom they originated. There are also messages which appear on the face of the document to have been sent by CG, as they are identified under his name and were not forwarded. These messages too are undated and there is no indication when they were sent or the circumstances under which they were sent. This affects the weight to be attached to them.

[39] The Defendant relies upon CG's allegations of verbal abuse, including being shouted at or insulted by the Claimant. In the text messages allegedly sent by CG it stated that he was called "*a little shit*" and that his mother was "*always angry*" and that he "*hate[s] most things about [his] life*", that he is scolded and insulted by his mother and that he prefers to remain in his room. He also refers to turning to

food and gaming as a means of coping. I accept that such language, if used by the Claimant is inappropriate and could cause some amount of psychological harm to CG.

[40] If the Defendant is to be believed, then those messages were sent to him before the March 5 incident and he thereafter came to the UK and stayed with the children. It therefore begs the question that if CG felt so strongly about the abuse and neglect that he was receiving at the hands of his mother, why did he not inform the social worker or why did the Defendant not bring it to her attention when they interviewed him.

[41] I accept that these messages, if they were sent by CG, were a reflection that he was experiencing frustration and dissatisfaction in his home. They are consistent with the account he later gave in the OCA Report, where he expressed unhappiness with his mother's behaviour and her rules. It is of significance though that while CG expressed great dissatisfaction with his circumstances in the UK in the OCA Report, the earlier assessment, prepared while the children were living in the UK, indicated that he felt safe at home and did not identify any harm or neglect. I therefore find that CG's evidence is contradictory.

[42] I find that the text messages taken at their highest, if they were sent by CG, establishes that CG was unhappy and that there were difficulties in his relationship with his mother, but they do not establish a level of harm, capable of meeting the threshold under Article 13(b).

[43] The Court has also considered the incident at the Yas Marina Mall involving CG, which is relied upon by the Defendant as part of his concerns regarding the Claimant's care of the children. AG, the Defendant's older son from a previous marriage, also gave evidence of this incident. However, what he observed amounted to the aftermath of CG screaming. He did not witness the Claimant abusing CG, but he nonetheless concluded that it was "*obvious*" to him that whatever she did had caused CG to scream.

- [44]** The Claimant responded that the incident occurred when CG was a toddler and that he became upset in a public setting when a limit was placed on his behaviour. She describes it as a common reaction by a young child and states that there was no physical contact, no aggression and no abuse involved.
- [45]** AG also recalls on his visits to his father in Abu Dhabi, several times when the Claimant was either screaming at CG or speaking to him in a degrading manner and constantly verbally abusing him. AG said that as a teenager he found her behaviour towards CG disorienting and because of this he later refused to interact with her and also refused to visit the Defendant in Abu Dhabi. AG said he was troubled by her treatment of CG and his (AG's) own inability to help.
- [46]** What is clear is that the Yas Marina Hall incident was an isolated incident involving a very young child. There is no evidence of any injury arising from it nor is there any evidence of any complaint or intervention arising out of this incident. Of particular significance is the Defendant's response. There is no evidence that he took any steps at the time to remove CG from the Claimant's care or to raise any formal concern or complaint with the relevant authorities concerning her parenting. On the contrary, the evidence shows that CG remained in the Claimant's care thereafter without dispute and the Defendant agreed to her migrating to the UK with the children, while he remained in Abu Dhabi, and would visit the family during the contract break periods. This behaviour is inconsistent with a parent having serious concerns about the welfare of any of the children, and in particular CG.
- [47]** A proper analysis of the evidence reveals that the allegations of abuse detailed by the Defendant and his sons, including CG and KG, indicate that the Claimant had some serious challenges dealing with CG. It is important to note that from November 2024 the Defendant had concerns about the Claimant's treatment of CG and that was his reason for contacting the Cheshire East Council Child Services about the children's welfare. He complained that only CG was interviewed. The Claimant did not challenge this piece of evidence.

[48] The Court must now consider the Claimant's evidence. The Claimant denied that she subjected the children to abuse. She stated that she has never struck or physically harmed them and that her parenting involved structure and discipline. She accepted that there were occasions when she raised her voice and that she separated the children during conflict. She explained that any such separation was brief and intended to manage behaviour.

[49] I consider the methods utilised by the Claimant for separating the children during conflict resolutions as already discussed above, as being potentially harmful. The Court also considers her acceptance that there were arguments in the home, that she at times raised her voice at the children as part of her strategies in disciplining them.

[50] These findings must be considered in their proper legal context. The Court is not engaged in a full welfare enquiry but is concerned with whether the high threshold under Article 13(b) has been met. In **Re E (Children) (Abduction: Custody Appeal)** [2011] UKSC 27 at [33]– [34]:

“Second, the risk to the child must be ‘grave’. It is not enough, as it is in other contexts such as asylum, that the risk be ‘real’. It must have reached such a level of seriousness as to be characterised as ‘grave’. Although ‘grave’ characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or really serious injury might properly be qualified as ‘grave’ while a higher level of risk might be required for other less serious forms of harm.

Third, the words ‘physical or psychological harm’ are not qualified. However, they do gain colour from the alternative ‘or otherwise’ placed ‘in an intolerable situation’. As was said in Re D, at para 52, ‘Intolerable’ is a strong word, but when applied to a child must mean ‘a situation which this particular child in these particular circumstances should not be expected to tolerate’. Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate.”

[51] Further, at [36], the Court recognised the approach to disputed allegations:

“Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk... Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues.”

[52] Applying that approach, even if the allegations made by CG and KG are true, the conduct alleged does not give rise to a grave risk of harm or an intolerable situation. Further, there is no evidence to suggest that any identified risk could not be addressed by appropriate protective measures in the UK.

[53] Based on the evidence presented, particularly the children's accounts, I do not find that the matters raised have attained the level required to establish a grave risk of harm or an intolerable situation to warrant a refusal to return the children. While there are matters of concern, they do not meet the Convention's threshold and can be properly addressed in the country of habitual residence. The Claimant indicated an intention to seek help from child services to assist her with the challenges of dealing with CG.

Cheshire East Council Child and Family Assessment

[54] The Cheshire East Council Child and Family Assessment is very important as it was conducted while the children were in the UK. That report was produced in the context of a safeguarding referral and included a Section 47 Enquiry under the Children Act 1989. The Assessment indicated that the concerns which led to the referral included allegations relating to the Claimant's care, issues of discipline and the incident involving CG and the Claimant on March 3, 2025. Those matters and others relating to the welfare of all 3 children were considered by the relevant authorities as part of the assessment process. A Section 47 Enquiry is initiated where there are concerns that a child may be suffering or is likely to suffer significant harm and therefore represents a formal and structured investigation into the welfare of the children. The reason for the Section 47 Enquiry in this instance was because the Defendant had unlawfully removed the children from the UK without the Claimant's consent.

[55] What is significant was the outcome of the Assessment. The report indicated that during the investigation, the children presented themselves as safe and that their needs were being met. Interestingly, CG complained that KG gets physical with him, but the Claimant does not care what KG does to him. CG further complained

that the Claimant gives more attention to the other children and he gets all the blame for problems between himself and KG. It is obvious that sibling rivalry and the usual conflict between children in the home was present. There were no findings of neglect or abuse. The concerns which had been raised were assessed and did not result in any conclusion that the children were suffering or likely to suffer significant harm in the Claimant's care.

[56] The Assessment further revealed the children's own accounts at that time. While referring to arguments within the home, CG indicated that he felt safe. KG similarly did not identify any harm beyond being shouted at when he misbehaved. RG indicated that she was happy in the home environment. These accounts are contemporaneous reports given while the children were still living in the UK. The assessment also indicated that, but for the removal of the children from the jurisdiction, the outcome would have been no further action, with recommendations for support in managing behaviour. This is a material finding. It demonstrates that the concerns identified were considered capable of being addressed through family support and did not require protective intervention.

[57] It also appears that the confrontational relationship between the Claimant and the Defendant has negatively affected the children. It is of great significance as gleaned from the assessment, that the Claimant had recognised that there was a serious issue in her relationship with CG and she needed professional help to assist her in dealing with him. It is also to her credit that she sought help in October 2024 by contacting KG's school safeguarding representative to discuss matters relating to KG's emotional welfare in the home in the context of the parents' separation and its impact on the children. These actions indicate a parent who recognized the challenges being faced and was proactive in seeking solutions to assist in improving the home environment for the welfare of the children.

[58] When that material is considered alongside the strength of allegations now advanced by the Defendant, there is a clear inconsistency. As pointed out by Counsel for the Claimant, the Defendant relies on allegations of neglect, harm and

intolerable treatment. Those same or similar concerns were the subject of a formal safeguarding process in the UK and did not result in any further action being taken by the authorities except when the defendant unlawfully removed the children and it was felt that they would suffer emotional and psychological harm from his actions.

[59] I do not treat the Assessment as determinative of the matter. However, it is highly relevant. It represents an independent assessment conducted at a time when the children were living in the Claimant's care. It also provides a contemporaneous account of their circumstances. I therefore can agree with Counsel for the Claimant that it does not support the contention that the children were exposed to harm or neglect on a level that rises to grave risk of exposing them to an intolerable situation if they are returned to the UK in the Claimant's care.

[60] Counsel for the Defendant submitted that limited weight ought to be attached to the assessment on the basis that the interviews conducted on April 2, 2025 were brief, lasting approximately five minutes, that the children were not interviewed separately, and that such a process would not have allowed for a thorough assessment or the development of trust, particularly having regard to the description of CG as "*introverted and shy*." It was further submitted that the report lacks specificity, in that it refers to concerns regarding CG's behaviour without identifying the behaviour in question or the steps taken to address it.

[61] It is noted that the assessment states that the children were seen on March 7 and April 2, 2025. It does not state the length of the interviews with the children, but it does reveal that during the visit the Defendant was downstairs and the children were upstairs and they were unable to tell how he interacted with them. It therefore begs the question as to how the Defendant was able to determine whether the children were interviewed individually or whether the interview was completed within 5 minutes. It should also be observed that in the Assessment both the Claimant and the Defendant expressed concern about CG's behaviour and how he related to the Claimant and her chastisement and discipline of him.

[62] While it is accepted that the Assessment lacks detail in certain aspects, particularly in relation to CG's behaviour, I believe that this can only reduce its evidential value on those specific issues, and I accept that this affects the weight to be attached to it. The apparent brevity of the interviews is a matter which limits the depth of the Assessment and the extent to which the children's individual experiences could have been fully explored.

[63] However, I do not accept Counsel's submission that these matters render the Assessment unreliable or of little weight. The Assessment must be considered in its proper context. It was prepared by a statutory body in the UK having oversight of children's welfare matters at a time when the children were residing there, and it forms part of the contemporaneous evidence available to the Court. The document is of great importance in assisting the Court to appreciate the environment in which the children resided in with the Claimant and as such the limitations identified would only affect its weight.

OCA Report

[64] I also considered the Investigative Report prepared by the Office of the Children's Advocate. That report was prepared while the children are in Jamaica. It contains the accounts of the children as to their experiences in the Claimant's care and provides insight into their current views and feelings.

[65] The report indicates that CG expressed significant dissatisfaction with the Claimant's parenting and treatment towards him. He described her as harsh and his account reflects a strained relationship with the Claimant and a perception that he was treated unfairly. KG's account is somewhat similar but does not provide the same level of detail or severity as that of CG. RG's account is materially different as previously outlined.

[66] The Court accepts that the OCA report provides a useful account of the children's current feelings and perceptions. However, as argued by Counsel for the Claimant, it must be considered in the appropriate context in that it was prepared after the

children had been living with the Defendant for a period of several months and after their removal from their habitual residence. It is not a contemporaneous safeguarding assessment of the conditions in which the children were living in the UK.

[67] When the accounts contained in the OCA report are compared with the Cheshire East Council Assessment, there is significant difference. The assessment indicated that the children presented as safe, that their needs were being met and that there were no findings of neglect or abuse. The OCA report therefore must be weighed alongside the other evidence, including the earlier East Cheshire Council assessment and the affidavit evidence. The OCA report reflects dissatisfaction, conflict and the children's current perceptions, but does not establish a grave risk of harm or an intolerable situation if the children are returned to the UK.

[68] Counsel for the Defendant also relied on the account in the OCA Report in which CG stated that "*he lived in an abusive home with his mother, and he thought that was normal until he started living with his father,*" submitting that this demonstrates that the child perceived his circumstances as abusive but did not recognise them as such at the time. CG's statement must be considered alongside the entirety of the evidence. As already noted, the OCA report identified serious inconsistencies between CG's account as conveyed to their investigator and his account provided to the social worker in the UK. However, even if true, I am not satisfied that this statement meets the threshold under Article 13(b).

[69] The Convention deliberately limits the scope of this Court's enquiry. As made clear previously in the authorities, the Court is not engaged in a full welfare assessment. The question is whether one of the limited exceptions under Article 13 has been established. Considerations of welfare, in the broader sense, are for the courts of the children's habitual residence.

[70] I also considered the incident in which the Defendant is said to have placed the Claimant's neck in a headlock. The Claimant's evidence is that the Defendant restrained her in that manner during an altercation between the parties and that

this occurred in the presence of the children. She exhibited a letter dated July 22, 2022 from KG's school in the UK, in which there was a record of concern dated 18 April 2022 where KG reported to his class teacher that "*daddy grabbed mummy by her throat*" and that "*daddy almost went to jail*". He further stated that this had happened the day before and that his father would not be returning home.

[71] That account is consistent with the Claimant's evidence that there was a physical confrontation between the parties. It is inconsistent with the Defendant's attempt to minimize the incident. The contemporaneous evidence also indicates that a report was made to the police in relation to a battery in which it was alleged that a female was placed in a headlock. It is significant that the Defendant sent an email shortly after the incident, in which he apologized for his conduct though he did not specify what the conduct was. Nonetheless the reasonable inference to be drawn is that the Defendant was referring to the same "headlock" incident as the email was sent the day after the case was closed. That communication is certainly inconsistent with the position the Defendant now advances before this Court.

[72] The evidence indicates that the incident involved a violent and physical altercation between the parties which was witnessed by at least one of the children. It is very disturbing that such conduct took place in their presence. This, I believe along with the many arguments which have been taking place between the parties in the presence and hearing of the children, the aggressive posture, along with the contemptuous display by each party towards the other in the presence of the children, is potentially damaging to the children. Their animosity towards each other is evident in the videos and the voice notes exhibited to their affidavits and in their emails. I believe these have caused or are likely to cause significant psychological harm to the children.

[73] The affidavit of SD, a family friend, also supports the Claimant's account. She described the home as "*safe, warm, and nurturing*" and stated that the children were "*emotionally secure, happy, and well-adjusted.*" She further stated that she

never observed or suspected any form of harm. Her evidence is based on regular contact over several years.

- [74] I considered the Defendant's evidence in which he seeks to challenge SD's evidence. The Defendant denies that the children each had their own rooms, disputes the extent of SD's involvement with the children and asserts that she could not assess their well-being. He further suggested that the children would not have confided in her.
- [75] I have considered those assertions carefully. However, I do not accept that they materially undermine SD's evidence. Her affidavit is based on repeated contact with the family over a period of years. She describes visiting the home regularly and interacting with the children in different settings. Her evidence is not limited to what the children may have told her. It is based on her own observations of their presentation, behaviour and general well-being. I also noted that the social worker found that the Claimant lived in a 4-bedroom house and that CG had his own room, while the other 2 children shared a room.
- [76] More broadly, the Defendant's evidence also raises issues concerning the parties' relationship, including disputes over property, transportation and decision-making. Those matters reflect conflict between the adults, and they do not establish that the children were exposed to a grave risk of harm in the Claimant's care.
- [77] As pointed out by Counsel for the Claimant, although aspects of the evidence may give rise to concern about the children, that is not the end of the enquiry. I must go further and consider whether any such risk can be addressed by protective measures in the state of habitual residence.
- [78] In **Re E (Children) (Abduction: Custody Appeal)** [2011] UKSC 27, the Supreme Court made clear that, where a risk is identified, the Court must consider whether there are measures which can be put in place in the requesting State to mitigate that risk so as to enable the safe return of the child. The existence of effective

protective mechanisms is therefore a significant factor in determining whether the Article 13(b) threshold is met.

[79] That approach has been applied in this jurisdiction in **DW v MB** [*supra*], where the Court emphasized that even where allegations are made which, if true, could give rise to risk, the Court must go further and consider how that risk can be managed. At paragraph 58, the Court, adopting the approach in **Re E (Children)** [*supra*], stated that:

“36 There is obviously a tension between the inability of the court to resolve factual disputes between the parties and the risks that the child will face if the allegations are in fact true. Mr Turner submits that there is a sensible and pragmatic solution. Where allegations of domestic abuse are made, the court should first ask whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then ask how the child can be protected against the risk. The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country. This is where arrangements for international cooperation between liaison judges are so helpful. Without such protective measures, the court may have no option but to do the best it can to resolve the disputed issues”.

[80] The Court further emphasized that *“the burden is on the defendant to not only raise this defence but to prove... that no measures can be put in place to ensure the safety of the minor.”*

[81] I agree with the submissions of counsel for the Claimant that the evidence demonstrates that the UK has established and functioning child protection mechanisms. The assessment done by their child services agency indicated that concerns relating to the children were referred, assessed and addressed through the appropriate statutory framework, including a Section 47 enquiry. It further indicated that, where necessary, support and monitoring could be put in place. There is no evidence before me to suggest that those mechanisms are inadequate or unavailable. On the contrary, the evidence demonstrates that they have already been engaged in relation to this family. In those circumstances, I am satisfied that such concerns are capable of being addressed within the protective framework available in the UK.

[82] In consideration of these matters, the Defendant's case does not establish a pattern of conduct or a level of harm capable of meeting the threshold set out in **Re E (Children)** [*supra*], **Re C** [*supra*] and **T.B. v J.B.** [*supra*]. The Claimant's evidence, supported by SD, the Cheshire East Council's assessment and the Section 47 Enquiry provides the framework and mechanisms to manage the issues which have arisen.

[83] In those circumstances, I find that the Defendant has failed to establish that the return of the children would expose them to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation.

ISSUE II: Should the children's objection be taken into consideration in deciding whether they should be returned to the UK?

[84] Article 13 of The Hague Convention:

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.

[85] The principles applicable to the "child's objection" exception under Article 13 are well established. The Court must determine whether the child objects to being returned and whether the child has attained an age and degree of maturity at which it is appropriate to take account of those views. Even where those conditions are satisfied, the Court retains a discretion as to whether to order a return.

[86] In **re D (a child)** [2006] UKHL 51, Baroness Hale stated at paragraph 57:

"As any parent who has ever asked a child what he wants for tea knows, there is a large difference between taking account of a child's views and doing what he wants. Especially in Hague Convention cases, the relevance of the child's views to the issues in the case may be limited. But there is now a growing understanding of the importance of listening to the children involved in children's cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reason for failing to hear what the child has to say than it is for refusing to hear the parents' views." (Emphasis mine.)

- [87] In **Re M (FC) and another (FC) (Children) (FC)** [2007] UKHL 55, Baroness Hale made clear at paragraph 46 that taking account a child's views does not mean that those views are determinative and that the Court must consider, among other things, the nature and strength of the objections and the extent to which they are authentically the child's own or influenced by others.
- [88] In **Re S (A Child) (Habitual Residence and Child's Objections) (Brazil)** [2015] EWCA Civ 2, the Court emphasised that an objection must be more than a mere preference or wish and must be directed to a return to the country of habitual residence. That distinction is central.
- [89] The Defendant's counsel submitted that CG and KG have expressed clear and sustained objections to returning to the UK and that they have attained an age and degree of maturity at which those views ought to be given significant weight. Counsel relied heavily on the OCA Report, submitting that it reflects the children's own voices and demonstrates that their views are firmly held. It was further submitted that the consistency of what is said by CG and KG supports the conclusion that their objections are genuine and should be given significant weight. Counsel also relied on **Re M** (*supra*) and argued that once the threshold is met, the Court may properly refuse a return.
- [90] The Claimant's counsel on the other hand submitted that what is reflected in the evidence does not amount to objections within the meaning of Article 13 but rather preferences. Counsel relied on **Re S** [*supra*], submitting that an objection must be directed to returning to the jurisdiction and not simply a wish to remain in a preferred environment. It was further submitted that the Court must carefully examine the circumstances in which the views were formed, including whether they are independent, particularly in light of the Defendant's conduct in limiting communication between the Claimant and the children.
- [91] I accept the Claimant's submission that the court must distinguish between a preference and a true objection. That distinction is well established in the authorities. I also agree with the Defendant that the children's views must be taken

seriously and not lightly dismissed. However, I do not accept that consistency alone is sufficient to elevate those views to objections within the meaning of Article 13. Nor do I accept that **Re M** (*supra*) requires the Court to treat such views as determinative. The Court must still assess their nature, strength and independence.

[92] Turning to the evidence, I rely on the OCA report and the assessment by the UK authorities to help determine this issue. The OCA Report indicates that CG “*reported that he loves living in Jamaica and he wants to remain in the country with his father*” and that KG similarly “*wants to remain in Jamaica with his father.*” CG described life in Jamaica as “*definitely better*” and stated that he is “*much happier and is in a positive home environment,*” while KG stated that he “*likes life better in Jamaica than in England.*” I accept that these views are genuinely held. However, they are expressions of preference.

[93] The OCA Report further indicates that “*CG seemingly has a more strained relationship with his mother*” and that he reported that he was being abused. Importantly, it also records that CG’s account of the incident involving the police “*varied from the account his mother gave to the Social Worker in England.*” It is noted that CG’s teacher found no sign of injury to CG’s head but only four thin scratches on one arm. From all indications the matter was investigated by the relevant authorities in the UK and from the evidence it appears that it was the intervention of DG which led to CG not being removed to a Children’s Home. This reveals that there are indeed very serious issues between the Claimant and CG that required urgent attention. The Claimant has said that this attention was being scheduled when DG removed the children from the UK preventing CG from obtaining this urgently needed help.

[94] The recommendations of the OCA Report are also significant. It indicated that counselling and other psycho-social intervention are required and that the family requires support. I accept those recommendations. It supports the conclusion that what emerges from the evidence is the result of strained family dynamics.

- [95] The Claimant's evidence is that her ability to communicate with the children has been limited since their relocation to Jamaica. She indicates that her calls are frequently unanswered and that contact was inconsistent. The Claimant exhibits multiple screenshots showing repeated attempts to contact the children, many of which went unanswered. I accept that evidence.
- [96] The Defendant, in response, while he agrees that several times there were missed or unanswered calls from the Claimant, has provided various explanations for them. However, I do not accept that those explanations adequately address the pattern disclosed. They are at variance with the evidence and do not demonstrate that he has taken active steps to ensure regular and meaningful communication between the Claimant and their children. While he asserts that he facilitates contact, the evidence suggests that communication occurred under very limited and controlled circumstances. Interestingly the same complaint that the Defendant had when he was in Abu Dhabi, that the Claimant was restricting and controlling his telephone access to the children, has now become the Claimant's complaint.
- [97] The tone of the Defendant's e-mails is aggressive and confrontational towards the Claimant. I have listened to various voice notes, and I have also read the screenshots, the majority of which strongly indicate that the Defendant was supervising and restricting telephone communication between the Claimant and the children. The voice notes revealed that in most of them, the children were never allowed to communicate with their mother without the interruption of either the Defendant or one of his relatives. The Defendant could be heard interrupting the conversations on several of the calls, telling the Claimant that if she continued with her "*emotional manipulation of the children*" he was going to end the call and there would be no further communication between her and the children.
- [98] Even during the Claimant's visit to Jamaica, the interaction between her and the children does not appear to have been as open or as unrestricted as might reasonably be expected. This was consistent with the broader pattern disclosed in the Claimant's evidence. I, however, take note of the fact that CG told the Child

Protection and Family Services Agency officer that he did not want to speak with his mother.

[99] When the OCA Report is considered in this context, it is clear that the children's views were formed while residing with the Defendant in circumstances where communication with the Claimant was extremely limited in accordance with the Defendant's dictates. The Court questions why was it necessary for the Defendant to only turn on the phone during the period which the Court allowed access to the Claimant? What if the children wanted to speak with the Claimant outside of those times? The Report does not address that issue. On one occasion the Claimant could be heard telling the Defendant to give the child the phone and he insisted that he was trying to calm the child and refused to accede to her request and shortly thereafter terminated the call.

[100] Having analysed the communications between the Claimant and the Defendant together with the utterances coming from the children during their sojourn with the Defendant in Jamaica, I believe that his views have infiltrated the children's minds and have overtaken their childlike opinions. He has prevailed upon the frailties of the relationship between CG and the Claimant and through his control of the communication process, almost severing contact with the Claimant, the children have become solely dependent upon him, with CG and KG now having a preference to remain in Jamaica. I note here that RG wants to return to the UK to live with her mother.

[101] It is interesting to note that CG told the OCA investigator that he thinks his mother misses them in her own way and that he "*kinda miss her too but I do not want to live with her.*" It shows here ambivalence in his attitude towards his mother. An analysis of the voice notes indicate that the Defendant has given the children information to influence them wanting to remain in Jamaica and living with him. CG and KG feared that if they return to the UK the Defendant will not be able to visit with them as he would not be allowed to enter the country after a certain date. I note that counsel for the Defendant made submissions on the issue that her client

will not be able to visit the children in the UK and if the relationship between CG and the Claimant deteriorates the Defendant would not be in the UK to intervene and CG might be placed into state care.

[102] There is no doubt that the Defendant has a good relationship with his children and that he loves them but the case before the Court is not about those issues. I find that there is a real possibility that the views expressed by CG and KG have been influenced, at least in part, by their current environment and the level of control exercised by the Defendant over their communication with the Claimant. The tone of his conversations certainly suggests this. This does not mean that their views are not genuinely held. However, it affects the weight to be attached to them. The Defendant did not permit open communication between the Claimant and the children and so it is more probable than not that the views expressed by the children were not entirely their own. It seems to me on a balance of probabilities that they reflected the Defendant's views.

[103] As it relates to CG, his evidence reflects dissatisfaction with his relationship with the Claimant and a preference for his current circumstances. I also note that both the Defendant and CG expressed the view that, had the Defendant not returned to the UK and intervened following the March 2025 incident, CG may have been removed to a children's home. This is a serious allegation, and I note that the Claimant has not directly addressed it, notwithstanding that it was raised in the Defendant's First Affidavit filed in July 2025.

[104] As it relates to KG, his evidence similarly reflects a preference for remaining with the Defendant and dissatisfaction with aspects of his home environment in the UK. While his views are noted, I consider that the weight to be attached to them must be carefully assessed having regard to his age and level of maturity. Looking at the children individually and collectively, their experiences are not uniform. Even though CG and KG perceive differences in their treatment, the evidence reveals that CG objects to returning to the UK.

[105] CG is of the age and maturity for his views to be taken into consideration. The Court accepts that he objects to returning to the UK. However, being guided by Baroness Hale's dictum in *Re M* (supra) and having considered all the evidence presented the Court is uncertain as to whether his objections are authentic. The Court will therefore not exercise its discretion to refuse to return him to the UK because his views may have been influenced by his father. Furthermore, I do not believe that KG has attained an age and degree of maturity at which his views should be given much weight. I do not believe that RG has any objection to being returned.

[106] The evidence suggests that the Claimant treats the boys differently from RG. It also suggests that she is experiencing difficulty in managing CG and has not, to date, been able to do so effectively on her own, which may explain her decision to seek assistance and her willingness to engage in the Solihull Approach.

[107] The evidence further suggests that CG has significant difficulties in his relationship with the Claimant. Their relationship appears strained and he expresses discomfort with the prospect of living with her. However, it also appears that, since his time in Jamaica, his views may have been reinforced by the limited interaction he has had with her.

[108] In all the circumstances, while there are clearly serious challenges, I am not satisfied that the objections expressed by CG and KG can be regarded as wholly independent and free from significant influence by the Defendant. I therefore decline to exercise my discretion to refuse an order for the return of the children to the UK.

Whether the children are settled in Jamaica?

[109] The Defendant also relies on the position that the children are now settled in Jamaica. Article 12 of The Hague Convention provides that where a period of more than one year has elapsed from the date of the wrongful removal or retention to the commencement of proceedings, the Court may refuse to order the return of the

child if it is demonstrated that the child is now settled in his or her new environment. Where, however, the application is made within that one-year period, the Court is required to order the return of the child, subject only to the limited exceptions under Article 13.

[110] I accept that the children have established a degree of routine and familiarity in Jamaica. However, the relevant period between their relocation in April 2025 and the commencement of these proceedings does not exceed the one-year period contemplated by Article 12. In those circumstances, the question of settlement does not arise as a bar to return the children.

CONCLUSION

[111] Having considered the totality of the evidence, the reports, and the submissions of counsel, I am not satisfied that the Defendant has established either of the exceptions relied upon under Article 13. The allegations advanced, do not meet the threshold required to establish a grave risk of harm or an intolerable situation.

[112] As it relates to the children's views, while CG and KG have expressed clear preferences to remain in Jamaica, I am not satisfied that KG's view amount to objections within the meaning of Article 13, nor that they are of such weight or independence as to justify a refusal to return. As stated earlier, I do believe CG has objections to being returned to the UK, but the Court is not convinced that they are his independent views. I therefore resist the Defendant's request to refuse to order the children's return. The Convention proceeds on the basis that issues of welfare are to be determined by the courts of the children's habitual residence, and I am satisfied that the courts of the UK are both willing and well equipped to address any welfare concerns which have arisen in this case. In all the circumstances, the Defendant has failed to discharge the burden required under Article 13, and the children are to be returned to the jurisdiction of their habitual residence.

Delay in Delivery of Judgment

[113] This judgment is delivered more than ten (10) months after the filing of the claim on 23 May 2025, a period which regrettably exceeds the timeframe prescribed by the statute (see Article 11 of the Convention) within which judgments of this nature ought to be delivered. The Court sincerely apologizes for this delay.

[114] The delay arose from a number of factors. The Court was required to hear an interlocutory application, following which submissions were received from both parties and a ruling delivered. Further time was taken in relation to the involvement of the OCA, as well as the preparation, completion, notarization, and transmission of affidavits by the Claimant to her Attorney-at-law in Jamaica. Thereafter the matter was scheduled for hearing with the filing of submissions, and later oral rebuttal submissions were heard. These matters, cumulatively, contributed to the lengthy delay in the final disposition of this case. The Court again expresses its regret for the time taken to complete the hearing of the matter.

ORDERS

[115] In the circumstances, the court makes the following orders:

- 1) The United Kingdom is the place of habitual residence for the minors, CG, KG and RG.
- 2) The Defendant is to hand over all the children's travel documents to the Jamaica Central Authority by 4:00 p.m. on April 20, 2026.
- 3) The Defendant will hand over the three children to the Claimant at the offices of the Jamaica Central Authority by 12 noon on April 28, 2026.
- 4) The cost of the tickets for the return of two children will be covered by the Defendant while the cost of the ticket for the other child will be covered by the Claimant.
- 5) The Defendant is to have daily electronic access to the children between the hours of 5:00 p.m. to 7:00 p.m. UK time.

- 6) The Claimant is referred to undergo parental training and counselling to assist her in dealing with the children and any report prepared in relation to these sessions should be forwarded to the Defendant by the Claimant and or the counsellor.
- 7) The Claimant and the children shall obtain counselling and the reports in relation to these sessions should be forwarded to the Defendant by the Claimant and or the counsellor.
- 8) The children shall be referred for counselling immediately upon their return to the UK and any report in relation to the counselling should be forwarded to the Defendant by the Claimant and or the counsellor.
- 9) A report concerning the children shall be submitted to the Cheshire East Council Children and Family Services to facilitate an investigation and the implementation of any necessary remedial measures.
- 10) The Jamaica Central Authority shall serve the Cheshire East Council Children and Family Services a copy of the OCA's report and the court order by April 22, 2026.
- 11) The Claimant's attorney-at-law is to prepare, file and serve the order.