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FD24P00418

Date: 01 October 2025

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

**THE CHILD ABDUCTION AND CUSTODY ACT 1985**  
**(INCORPORATING THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS**  
**OF INTERNATIONAL CHILD ABDUCTION)**

**THE CHILDREN: AB (aged 14) and CD (aged 10)**

**BETWEEN**

**The Special Guardians (SG1 and SG2)**

**First and Second Applicants**

**And**

**The Mother**

**Respondent**

**Andrew Powell (counsel)** instructed by Dawson Cornwell LLP  
for the First Applicant (SG1)

**Mani Singh Basi (counsel)** instructed by Hopkin Murray Beskine  
for the Second Applicant (SG2)

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

**Re AB and CD (Children) (No 3)**  
**(1980 Hague Child Abduction Convention: Set Aside)**

**JUDGMENT**

**Nicholas Stonor KC sitting as a Deputy High Court Judge**  
**26 September 2025**

## **1. Introduction**

1. This is an application to set aside a return order and to bring an end to proceedings under the 1980 Hague Child Abduction Convention.
2. The return order was made on 06 December 2024, over nine months ago, in respect of two brothers, AB (then aged 14, now nearly 15) and CD (then aged 9, now 10). The order was made on the application of the boys' Special Guardians, their maternal grandfather ("SG1") and step-grandmother ("SG2") with whom the boys had been living in Ireland since 2020. The boys had been wrongfully retained in the North-East of England by their mother (M) in August 2024. The application for a return order had been made on 05 September 2024.
3. M had opposed the application by reference to Article 13(b) ("Harm / Intolerable Situation") and Article 13 ("Child's Objections"). In my judgment (*Re AB and CD (Children) (1980 Hague Child Abduction Convention: Harm/Intolerable Situation; Child's Objections)* [2024] EWHC 3520), I set out the background and my reasons for rejecting M's case and making a return order.
4. M's application for permission to appeal against the return order was refused by the Court of Appeal (Peter Jackson LJ) on 24 December 2024. M then applied to set aside the return order. That application was refused by Garrido J on 29 January 2025. M's application for permission to appeal against Garrido J's order was refused by the Court of Appeal (Peter Jackson LJ) on 31 January 2025.
5. On 20 February 2025, I refused three applications: (1) AB's application to be joined as a party and to be separately represented by a solicitor-guardian; (2) AB's application to set aside the return order; and (3) M's application for CD to be joined as a party with a Guardian appointed on his behalf. In my judgment (*Re AB and CD (Children) (No 2) (1980 Hague Child Abduction Convention: Joinder; Set Aside)* [2025] EWHC 1463) I set out developments since the making of the return order and my reasons for rejecting the applications. I noted that, by that stage, there had been six unsuccessful attempts to implement the return order. These attempts had involved input from a range of professionals: social workers from Y local authority (local to M), the Police, CAFCASS and the Tipstaff.
6. I will set out developments since 20 February 2025 below. In short, they include an unsuccessful attempt to execute a collection order, and unsuccessful attempts to establish regular indirect and direct contact between the boys and the SGs. The boys have continued to express their clear opposition to a return to Ireland. As I have previously noted, this clearly stated opposition reflects a "sea-change" when compared with the positive views which had been expressed by the boys during the run up to the making of the special guardianship order in July 2023.
7. Pursuant to directions given by Keehan J on 22 August 2025, the matter was listed before me for a remote hearing for one hour on 22 September 2025. SG1 did not attend the hearing but was represented by Mr Powell, counsel. SG2 did attend and was represented by Mr Basi, counsel. M attended and was represented by Ms Best, counsel. Each counsel made oral submissions supplementing their helpful position statements. The case papers comprised those which were before me in December 2024 and February 2025 supplemented by documentation relating to developments since then.

8. M argues that the return order should be set aside, and that these proceedings should be brought to an end today, because the boys' strength of feeling is such that there is no realistic prospect of the order being implemented, and the continuation of these proceedings is doing harm to the boys and making it more difficult for trust to be re-built between them and the SGs. SG1 and SG2 are opposed to the setting aside of the return order today. Whilst they concede that there should be some reconsideration in respect of the return order, they invite the court to list a two-day hearing where the matter can be more fully argued with evidence from, at the very least, the CAFCASS officer.
9. I took time to reflect and prepare this judgment. I am once again grateful to all counsel and their respective instructing solicitors for their assistance.

## **2. Developments Since 20 February 2025**

10. AB made two applications for permission to appeal. The first was for permission to appeal out of time against the return order which I made on 06 December 2024. On 07 March 2025, the Court of Appeal (Moylan LJ) extended time but refused permission to appeal. The second was for permission to appeal against my orders on 20 February 2025 refusing AB's applications to be joined as a party and to set aside the return order. On 07 March 2025, the Court of Appeal (Moylan LJ) refused permission to appeal.
11. Pursuant to directions which I made on 21 February 2025, the return order was to be implemented by the end of 09 March 2025. That did not happen. On 14 March 2025, the SGs applied to revive their application for a collection order. On 17 March 2025, McKendrick J made a collection order.
12. On the instructions of the Tipstaff, two Deputy Tipstaff attempted to execute the collection order on 21 March 2025. They were supported by local police officers with a view to ensuring that there was no breach of the peace. The SGs were waiting at a local police station so that they could resume care of the boys if the collection order was successfully executed. The Deputy Tipstaff attended M's home but were told that the children had already left for school. They then attended CD's school where they spoke to CD in the head teacher's office, in M's presence (and in the absence of the police). Their note includes the following: "*[CD] stated straight away that he wasn't going anywhere and that he wasn't going to leave school. He sat on mum's knee and strongly remonstrated that he didn't want to go to Ireland and wouldn't go with the grandparents. We found [M] to be fully compliant with the terms of the collection order. [M] tried very hard to persuade [CD] to accompany us to [AB]'s school. [CD] said no and that [AB] would never agree to go either. [M] tried gentle persuasion and encouraged [CD] to come with her. [CD] refused. By this time, [CD] was standing and crying, visibly shaking, and holding onto the table in the office. Bracing himself against being moved. [The two Deputy Tipstaff] both spoke with him. [M] tried on at least 3 occasions for [CD] to come with her to see [AB], and on one attempt tried to pick [CD] up. [CD] resisted and remained holding onto the table.*"
13. After more than an hour with CD, the Deputy Tipstaff liaised with the Tipstaff who confirmed that under no circumstances should they use any force and that he was satisfied that they had attempted to execute the collection order. After thanking CD and ensuring that he would receive appropriate pastoral support, the Deputy Tipstaff travelled to AB's school.

14. After initially refusing to leave his classroom, AB did speak with the Deputy Tipstaff in a private room. Their note includes the following: “[AB] confirmed that he would not return to Ireland and that he had nothing more to say as he had a solicitor who he had already told everything to. . . . [AB] confirmed he would not leave his school and would under no circumstances ever return to Ireland.” After further liaison with the Tipstaff, the Deputy Tipstaff thanked AB in the presence of his head teacher and confirmed that they would not be removing him from school.
15. On 27 May 2025, SG2 applied for urgent directions with a view to executing the collection order, specifically for the children to be brought to court by M so that they could be collected by the Tipstaff. The matter was dealt with administratively by Harris J who noted the history and directed that the matter should be listed on 03 June 2025 so that the Tipstaff could be present to oversee any attempts to execute the collection order.
16. There were then two hearings before Theis J on 03 June 2025 and 06 June 2025, both in the presence of the Tipstaff. The order made on 06 June 2025 noted that the parties agreed that “*there needs to be a focus on re-building the relationship between the applicants and the children*”. The return order dated 06 December 2024, the collection order dated 17 March 2025 and the application for enforcement of the collection order dated 27 May 2025 were all stayed until further order. Provision was made for contact between the children and the SGs including direct contact in the North-East of England on the weekends of 28 and 29 June 2025 and 12 and 13 July 2025. The matter was then listed to come back before Poole J on 24 July 2025 to consider: “*a) What, if any, further directions are sought regarding implementation of the return order; and b) What, if any, further directions are required regarding the orders relating to the children and the applications / orders currently stayed.*”
17. The SGs travelled for contact on two weekends in accordance with the order dated 06 June 2025. The children did not engage with the contact arrangements. There are factual disputes as to why contact did not take place: the SGs allege that M failed to promote the arrangements; M denies those allegations and makes counter-allegations about the ways in which the SGs conducted themselves.
18. In advance of the hearing on 25 July 2025, statements were filed by SG1, SG2 and M. As reflected in those statements, there was (and is) precious little common ground between SG1 and SG2 on the one hand, and M on the other, and past issues in the adults’ relationships with each other continue to weigh heavily in their respective approaches. At para 19 of her statement dated 24 July 2025, M said: “*I strongly urge the Court to consider setting aside the Return Order so that the boys can be reassured that there will not be any more attempts to force them to Ireland.*”
19. On 25 July 2025, Poole J directed a further report from Ms Daisy Veitch of CAFCASS to address the children’s wishes and feelings in relation to contact, and what practical steps could and should be taken to reinstate contact. The collection order dated 17 March 2025 and the application to enforce it dated 27 May 2025 were dismissed. The return order dated 06 December 2024 was again stayed until further order. Provision was made for such direct or indirect contact “*that the children wish to have with the applicants*”. The matter was listed to come back before Keehan J on 22 August 2025 to consider Ms

Veitch's recommendations, and what if any further steps should be taken *"regarding implementation, or otherwise, of the return order."*

20. Ms Veitch had met the boys at the RCJ on 14 October 2024 for the purposes of her Child Abduction Report dated 25 October 2024. She met them again on 05 August 2025, this time at the CAFCASS office in Central London, and spent about thirty minutes with each of them on their own.
21. Ms Veitch's report is dated 08 August 2025. She notes the views expressed by the boys and the ways in which she sought to test those views with appropriate sensitivity. She described AB's *"wholesale rejection"* of the SGs with AB insisting that his refusal to have contact with them was entirely of his own choosing. CD was similarly categorical in his negativity towards the SGs, though Ms Veitch noted how CD would consistently use 'we' instead of 'I' when talking about his wishes. Ms Veitch commented: *"I think it is likely, as I have said previously, that [CD] has begun to align his views with [AB]'s. They have been one constants [sic] for one another during periods of profound change throughout their childhood, and it makes sense that [CD] would want to protect and preserve this by not contradicting his older brother. I also remain of the view that it is more emotionally straightforward for [CD] to be aligned with [AB] that [sic] to feel alone with a different view."*
22. Ms Veitch noted, as she had done previously, the boys' accounts of physically and emotionally neglectful care from the SGs, which the SGs dispute. Ms Veitch expressed her professional judgment that: *"[AB and CD]'s knowledge of their mother and wider family's dislike of the applicants will have strengthened their existing negativity towards them. This combination has ultimately resulted in them rejecting their grandparents outright."*
23. Ms Veitch suggested that a *"more conciliatory approach"* from the SGs *"may help to soften the boys' attitudes towards them"*. Ms Veitch continued: *"Although there are certainly no guarantees, the children may feel more open to having a relationship with the applicants, if they were to withdraw their application and agree to the children remaining in the care of their mother in England. It is clear to me that the children are affected by the ongoing uncertainty represented by the proceedings, and they are in need of a final resolution to where they will live and with whom."* Ms Veitch encouraged the SGs to reflect on their position.
24. In respect of contact, Ms Veitch recommended *"an openness from all parties to all forms of communication – written correspondence, calls and visits – but in line with the children's wishes and feelings."* Specifically, Ms Veitch considered that M should retain and make available any written communications or gifts which the SGs may send, and that M should *"make it clear to [AB and CD] that they have her emotional permission to miss and want to speak to the applicants, and that she will facilitate and support any calls, texts, gaming or in person contact they would like."*
25. On 22 August 2025, Keehan J directed that the matter should be listed before me given my previous involvement, not least in making the return order dated 06 December 2024. That order was again stayed until further order.

26. To bring matters up-to-date, I note that there are proceedings ongoing in Ireland which were instigated by M. An issue in those proceedings relates to the status (or lack of it) of the special guardianship order. I was told that at a hearing on 03 September 2025, the Irish proceedings had been adjourned until the New Year pending the determination of the proceedings in this court.

### **3. Legal Framework**

27. The court's overriding objective is of course to deal with cases justly having regard to any welfare issues involved (FPR 2010 r 1.1(1)).

28. Dealing with a case justly includes, so far as is practicable -

“(a) ensuring that it is dealt with expeditiously and fairly;  
(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;  
(c) ensuring that the parties are on an equal footing;  
(d) saving expense; and  
(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases” (FPR 2010 r 1.1(2)).

29. The court must seek to give effect to the overriding objective when it exercises any power given to it by the rules or seeks to interpret any rule (FPR 2010 r 1.2).

30. The court can dispense with the requirement for an application notice (FPR 2010 r 18.4(2)(b)).

31. Pursuant to FPR 2010, r 12.52A:

“. . . (2) A party may apply under this rule to set aside a return order where no error of the court is alleged.

. . .

(5) Where the court decides to set aside a return order, it shall give directions for a rehearing or make such other orders as may be appropriate to dispose of the application.

(6) This rule is without prejudice to any power the High Court has to vary, revoke, discharge or set aside other orders, declarations or judgments which are not specified in this rule and where no error of the court is alleged.”

32. FPR 2010, Practice Direction 12F, para 4.1A, provides as follows (**emphasis added**):

#### **“Challenging a return order or non-return order**

##### **4.1A**

If you are a party to a return case and you believe that the court has made an error, it is possible to apply for permission to appeal (see Part 30 of the Rules and Practice Direction 30A).

**In rare circumstances, the court might also ‘set aside’ its own order where it has not made an error but where new information comes to light which fundamentally changes the basis on which the order was made. The threshold for the court to set aside its decision is high, and evidence will be required – not just assertions or allegations.**

If the return order or non-return order was made under the 1980 Hague Convention, the court might set aside its decision where there has been fraud, material non-disclosure or mistake (which all essentially mean that there was information that the court needed to know in order to make its decision, but was not told), **or where there has been a fundamental change in circumstances which undermines the basis on which the order was made.** If you have evidence of such circumstances and wish to apply to the court to set aside its decision, you should use the procedure in Part 18 of the Rules.  
... ”

33. In *Re B (A child) (Abduction: Article 13(b))* [2020] EWCA Civ 1057, Moylan LJ said (**emphasis added**):

“91. I would further emphasise that, because of the high threshold, the number of cases which merit any application to set aside are likely to be few in number. **The court will clearly be astute to prevent what, in essence, are attempts to re-argue a case which has already been determined or attempts to frustrate the court’s previous determination by taking steps designed to support or create an alleged change of circumstances.**”

34. The reason for this “high threshold” was further explained by the Court of Appeal (Hayden J giving the lead judgment) in its decision in *A (A Child) (1980 Hague Convention: Set Aside)* [2021] EWCA Civ 194 at para 48.

35. In *Re B (A child) (Abduction: Article 13(b))* (above), between paras 86 and 90, Moylan LJ provided guidance as to the approach which the court should take when a set aside application has been made. After drawing an analogy with the approach taken in cases where an application has been made to re-open findings of fact in children cases, Moylan LJ said:

“89. I suggest the process, referred to above and adapted as follows, should be applied when the court is dealing with an application to set aside 1980 Convention orders:

- (a) the court will first decide whether to permit any reconsideration;
- (b) if it does, it will decide the extent of any further evidence;
- (c) the court will next decide whether to set aside the existing order;
- (d) if the order is set aside, the court will redetermine the substantive application.

90. Having regard to the need for applications under the 1980 Convention to be determined expeditiously, it is clearly important that the fact that there are a number of distinct issues which the court must resolve does not unduly prolong the process. **Indeed, it may be possible, when the developments or changes relied upon are clear and already evidenced, for all four stages to be addressed at one hearing. More typically, I would expect there to be a preliminary hearing when the court decides the issues under (a) and (b), followed by a hearing at which it determines the issues under (c) and (d). These will, inevitably, be case management decisions tailored to the circumstances of the specific case.**”

#### **4. Discussion**

36. M has not filed a formal application notice. However, neither Mr Powell nor Mr Basi take a point on that. They sensibly concede that M’s wish for the return order to be set aside and for these proceedings to be concluded has been known for several months, and that

their respective clients have not been prejudiced by the absence of a formal application. Pursuant to FPR 18.4(2)(b), and mindful of the ‘Overriding Objective’, I dispense with the requirement for an application notice.

37. It is now over nine months since I made the return order on 06 December 2024. The court has overseen extensive efforts to implement it. Since the return order was made, there have been no fewer than thirteen attended High Court hearings with a further three orders made administratively. The Court of Appeal has refused four applications for permission to appeal.
38. As already noted, prior to 20 February 2025, there had been six attempts involving input from social workers, the Police, CAFCASS, and the Tipstaff. As set out above, a collection order was made on 17 March 2025 but the Deputy Tipstaffs’ concerted efforts to execute it on 21 March 2025 proved unsuccessful. Since June 2025, efforts have been made to rebuild trust through the promotion of indirect and direct contact. Whilst there are factual disputes, the bottom line is that these efforts have proved unsuccessful: they did not result in any meaningful contact nor in any softening of the boys’ resistance. In accordance with the court’s direction, CAFCASS met once more with the boys who both expressed their seemingly unshakeable opposition towards the SGs and a return to Ireland.
39. Against that background, is there any realistic prospect of the return order being implemented in the foreseeable future? On behalf of the SGs, it was suggested that M could be ordered to bring the boys to court so that the return order could then be implemented in her absence. However, this was already tried on 06 February 2025 (see paras 27 and 28 of my second judgment). Mr Powell and Mr Basi were unable to make any other realistic suggestions (which is no criticism of them whatsoever).
40. On the evidence available, including the untested CAFCASS report from Ms Veitch, I am satisfied that there is no realistic prospect of the return order being implemented in the foreseeable future. This conclusion is a development which fundamentally changes the basis on which the return order was made.
41. The SGs concede that the first stage of Moylan LJ’s four stage process (as set out in *Re B (A child) (Abduction: Article 13(b))* (above) at para 89) is met. However, as already mentioned, the SGs contend that the court should list a two-day hearing where matters can be argued more fully and evidence can be heard from, at the very least, Ms Veitch. It was submitted on their behalf that it would contravene their Art 6 ECHR rights to a fair hearing if they did not have the opportunity of cross-examining Ms Veitch. Whilst it is difficult at first blush to see how cross-examination of Ms Veitch would be likely to take matters further, I readily acknowledge that cross-examination can sometimes bring unexpected results and that, even if it did not, the SGs might perceive that the process had been fairer to them overall if they had at least had the opportunity to cross-examine. However, I must consider Ms Veitch’s untested report alongside all of the other evidence in the case and its uniquely vexed litigation history. Furthermore, when considering the SGs’ Art 6 rights, I must also consider the Art 6 and Art 8 rights of the boys and M, and the ‘Overriding Objective’.
42. At para 90 of *Re B (A child) (Abduction: Article 13(b))* (above), Moylan LJ clarified that, “when the developments or changes relied upon are clear and already evidenced” there



may be cases where it would be possible, if atypical, for all four stages of the process to be addressed at one hearing.

43. In my judgment, this is one of those unusual cases where the court can and should address all four stages at one hearing. My reasons are as follows:
- (1) It is highly unlikely that fuller argument and/or the cross-examination of Ms Veitch will alter the conclusion that there is no realistic prospect of the return order being implemented in the foreseeable future.
  - (2) The continuation of these proceedings will bring no benefit to the boys and is likely to do harm by deepening their hostility towards the SGs and making it all the more difficult to rebuild trust in their relationship with them.
  - (3) The continuing stay of a return order which, realistically, will not be implemented in the foreseeable future does not promote the rule of law.
  - (4) Whilst the extensive efforts to implement the return order have been entirely in keeping with the spirit of the 1980 Hague Child Abduction Convention, the continuation of these proceedings now would run contrary to that spirit where (a) proceedings under the Convention are intended to be summary in nature and swift in their disposal, and (b) it is well recognised that the Convention itself should never become an instrument of harm.
44. I am mindful of the high bar on any application to set aside a return order. However, on the particular facts of this case with its uniquely vexed litigation history, and for the reasons I have given, I am satisfied that I should set aside the return order and bring these proceedings to an end today.
45. I hope that welfare arrangements for the boys can be resolved without further litigation. But if there is to be further litigation, then it should take place in England rather than Ireland.
46. I hope for the boys' sake that, in due course, they will once again be able to enjoy positive relationships with the SGs. I endorse Ms Veitch's "light touch" recommendations in respect of contact, and these will be recorded as a recital on the face of my order.

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