Neutral Citation Number: [2026] EWHC 2087 (Fam)

Case No: FD26P00055

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2026

Before :

HIS HONOUR JUDGE STEPHEN SMITH
(SITTING AS A DEPUTY HIGH COURT JUDGE)

- -

Between :

The Father **Applicant**

- and -

The Mother **Respondent**

Re A, M and C (Return to Portugal)

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- -

Ms Ruth Kirby KC and Mr Mani Singh Basi (instructed by **AL Law Associates**) for the **Applicant**
Ms Anita Guha KC and Ms Andrea Watts (instructed by **Goodman Ray Solicitors**) for the **Respondent**

Hearing dates: 29 and 31 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 4th August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE STEPHEN SMITH

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

HHJ Stephen Smith (sitting as a Deputy High Court Judge):

1. On 20 December 2025, the mother travelled with her three sons, A (11), M (9) and C (7) from Portugal, where the children had been habitually resident, to England. She had previously agreed with the father, her husband from whom she separated in 2023, that she and the boys would spend Christmas in the United Kingdom, before returning to Portugal, which had been the family's home since 2022.

2. On 28 December 2025, the mother emailed the father to say that she would be remaining in England, with the children. They remain with her, in England. The father has had sporadic direct contact with them. A presently does not wish to see his father at all.

3. The father had not consented to the retention of the children in England, and on 29 December he issued this application for the summary return of the children under the Hague Convention on the Civil Aspects of International Child Abduction 1980 ("the Convention"). The application is opposed by the mother, relying on Article 13(b).

4. The mother's case is that she would be destitute and unable to work in Portugal, and that she has been subject to emotional and financial abuse by the father. The children are not happy there. They were not flourishing at school, they found the language difficult, they missed their family, and they needed the stability provided only by remaining in this jurisdiction. The mother also relies on the objections of the children, pursuant to the concluding unnumbered paragraphs of Article 13.

5. Article 13 of the Convention provides, where relevant:

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that…
>
> > b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
>
> In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

6. The father maintains that Article 13 is not engaged. He rejects the mother's allegations against him and, in any event, would undertake to provide a number of protective measures and so-called "soft landing" measures to address the mother's concerns. He does not accept that the children's objections are such that the court should decline to make a summary return order.

7. There are therefore two principal controversial issues before the court:

   i) Whether the Article 13(b) grave risk of harm exception is engaged (or put another way, would a return to Portugal be "intolerable" for the children)? and

   ii) Whether any objection by any or all of the children is such that a return order should not be made?

Procedural background

8. Williams J gave initial directions at an *ex parte* hearing on 22 January 2026. The matter was listed for directions before MacDonald J on 30 January 2026, and directions were given for interim contact, and for a wishes and feelings report to be prepared by Cafcass. Permission was subsequently given for the instruction of a part 25 expert to address the position of the mother's immigration status, and prospects of securing residency, in Portugal. The matter was initially listed for a final hearing in April 2026 before Upper Tribunal Judge Mandalia (sitting as a Deputy High Court Judge), but had to be adjourned as the expert report on Portuguese immigration law was not then available. The report and supplementary answers of Mr Joao Perry Da Camara, the expert, were available at the hearing before me.

9. It was against that background that the matter resumed before me for a final hearing on 29 July 2026. I circulated a draft judgment shortly before the hearing to hand it down, on 31 July 2026. This final, approved version addresses the requests for clarification that I received subsequent to that hearing, in addition to addressing post-hearing correspondence concerning the terms of my final order.

The hearing

10. I heard from Emma Huntington, the Family Court adviser, and submissions from Ms Kirby KC and Ms Guha KC.

11. After the hearing, at my direction, I was provided with answers to questions for the Portuguese immigration expert that had arisen during the course of the hearing. Ms Guha and Ms Kirby also provided brief written submissions in relation to what they contended was the import of the further updated advice.

12. I will not set out the entirety of the evidence that I have heard and read, nor the full details of all submissions advanced. I have considered the entire evidential landscape, in the round, and did so before reaching my conclusion. I will refer to the evidence and submissions to the extent necessary to reach and give reasons for my findings, in the course of my substantive analysis below.

The parties' cases

13. Following the separation of the parents in Portugal in July 2023, proceedings in the local family court agreed a shared care arrangement, with the children oscillating between each of their parents' homes on a weekly basis. There was also an agreement that the mother could take the children on holiday to England, pursuant to which the arrangements for them to travel here for Christmas 2025 were made. The Portuguese family court remains seized of proceedings relating to the parties, in particular divorce

and financial remedy proceedings. I am told that under Portuguese law, arrangements relating to children are to be determined first.

14. The mother's case is that she was coerced or manipulated into moving to Portugal in the first place. The father presented it as an amazing family opportunity, whereas, the mother says, the decision was in fact driven by finance and tax considerations. She contends that one of his businesses in this jurisdiction collapsed with significant unpaid debts. The family home in England was sold, and the mother received nothing from the proceeds, despite having contributed, in particular to its renovation. Following the breakdown of the parents' relationship in Portugal, the mother contends that the father has sought to control her financially. He has pursued her for contributions to shared costs in relation to the children with a litigious resolve. She says that he has failed to take her concerns about the quality of the children's education and well-being in Portugal seriously.

15. Moreover, it is the mother's case that her immigration status in Portugal will prevent her from returning in anything other than a time-limited tourist capacity. Her application to renew the residence permit she previously held was rejected on eligibility grounds. She is unable to secure a further residence permit without a job offer or proposed residence; yet without a residence permit, she is unable to secure employment or accommodation. She would therefore have to return to Portugal with the children with a very precarious immigration status that would not permit her to work, and which would not enable her to claim any social assistance benefits. By contrast, in England, she is able to work and is able to provide for herself and the children with ample sufficiency. The children's extended family live close to where she and the children live, they have returned to their previous schools, and have resumed many of their previous friendships where they left off.

16. To her credit, the mother accepts that if this court made an order for the summary return of the children, she would comply with the order, and return to Portugal with the children.

17. Following the children's return to England, there has only been sporadic contact with the father. A does not want to see the father at all, and time spent with the other two children has been very limited. Telephone or other indirect contact has been difficult. The father has to contact the children through the mother, and she has, he says, placed obstacles in the way of his access to the children, even remotely.

18. The father disputes all allegations against him. He denies being emotionally or financially abusive towards the mother. As for the children, they are happy in school in Portugal, and he does not recognise the mother's accounts of their resistance to return. Although there had been some disruption in Portugal when the parties' marriage broke down, his case is that the children were happy and were thriving at school, and socially.

19. The father also offers a range of undertakings in relation to protective measures and soft-landing steps that he is now willing to adopt. Most significantly, his position changed during the hearing. Whereas he had originally been willing to provide the mother with approximately €1700 a month for three months, he undertook at the hearing to provide that sum for 12 months. That would be sufficient to enable the

mother to secure a residence permit, and would provide her with a strong basis to re-establish herself in Portugal once her residence permit was issued.

The children's wishes and feelings

20. Ms Huntington's report dated 19 March 2026 recorded a range of wishes and feelings on the part of all three children. There was a suggestion from M that the father was "angry and shouty", and C added that that was "most of the time". M described the father as "brutal and violent", but A and C are recorded as having immediately countered that he was not. The children had mixed feelings towards the father's new partner, with A depicting a greater sense of affection towards her than his brothers, but adding, along with C, that they did not really get on with her.

21. A described life in Portugal in mixed terms. He liked the weather and the beaches, but said there was not much to do. He would spend time with his father's partner's family, who I infer to be Portuguese, and described visits from grandparents from the United Kingdom to see them while they were there. A did not like the school that he attended, and was afraid that he would fail tests and be separated from his friends. Learning in Portuguese was difficult but got easier. A spoke in warm and positive terms about life resuming back in England; he had been happy at the prospect of being able to stay here. His family are here and he sees them all the time. A finds England better than Portugal because of school, family, and more to do here. He was nervous about his father, and frightened that he may seem annoyed with him for not wanting to return to Portugal.

22. In the witness box, Ms Huntington said that there were steps that she recommended the father could take in order to reassure A of his unconditional love for him. This could include writing a letter to underline his love and commitment to him, and a range of other steps.

23. Ms Huntington observed during her oral evidence that there were elements of A's affection for England, and resistance to returning to Portugal, that were superficial. Other elements were deep-rooted.

24. M reported that he had enjoyed school in Portugal, and that he had found making friends and learning easy. He did not want to engage in a discussion of the best and worst aspects of life there. He was unsure why they had remained in England, and hid his head in his T-shirt when Ms Huntington sought to address the issue in further depth.

25. C reported having lived in "about 20 houses" in Portugal. That is, it is common ground, a far larger number than is actually the case, but over the period that he had been in the country, his parents had moved house while together, and a number of times separately. I was told that the accurate figure was seven, but it is significant that that was C's description of the number of different homes that he had had, or lived in; it demonstrates his perception and experience of disruption. He did not feel positive about school in Portugal; he felt bored, except during breaks and for PE. He felt positive about the move to England, although overall seemed to be reluctant to be drawn in any level of detail about the issue of Portugal versus England.

26. Speaking to her report in the witness box, Ms Huntington said that she felt the children had given a balanced picture of their life in Portugal. They highlighted the positive and negative aspects. She did not consider that they had been unduly influenced, or that

their thoughts and views were not their own genuine reflections. The impression I had was that Ms Huntington was not surprised that A's strength of feeling about remaining in England was the strongest, since he had lived in England for the lengthiest period of time prior to the move to Portugal.

27. The children had been taken to private therapy in Portugal. Ms Huntington addressed the reports provided by the clinical psychologist, Dr S, in relation to each child. Her impression, she said, was that she was most struck by the different parenting styles adopted by each of the parents. Moving from home to home on a week on week off basis meant the transitioning between each, and being subject to significantly contrasting atmospheres and parenting styles, was difficult for them. Coming to terms with the reality of parental separation, and the dynamic that that presented, had led to an adverse impact on the children, and had led to them experiencing periods of emotional instability. Those experiences in Portugal, Ms Huntington said, had to be contrasted with the stability and security that life in England, with all its familiarity, close proximity of family members on both sides, cultural similarity, the children's mother tongue, and all other aspects of familiar family life and the experience of being settled.

The report of Mr Joao Perry Da Camara: Portuguese immigration law

28. Mr Da Camara's initial report is dated 18 May 2026. In brief summary, it looks at an earlier rejection of the mother's attempt to regularise her expired immigration status. The mother had received the notification that certain elements of the application were incomplete, and that further information was required. The mother was invited to rectify those deficiencies before the application was substantively determined. The mother did not respond to that invitation, and the application was rejected.

29. Mr Da Camara did not consider that the rejection of the mother's earlier application on eligibility grounds would harm her prospects of successfully renewing her residence permit in the future. The report concluded that the mother's application was ineligible due to deficiencies in relation to her tax status and other eligibility criteria in Portugal, rather than due to any substantive public policy or similar concerns. The mother could address those concerns and reapply. Mr Da Camara said that Portuguese immigration law provides a relatively favourable framework for the parents of minor children residing in Portugal. In addition to demonstrating the effective exercise of parental responsibilities and similar matters, the mother would have to demonstrate that the father's status in Portugal is lawful (about which there is no question), and that she would have adequate accommodation and a means of subsistence. By way of a subsequent clarification, Mr Da Camara advised that the mother would be able to enter Portugal on a tourist visa, and regularise her status from within the country. At part (f) of the report, Mr Da Camara implied that, by submitting an application in Portugal before the expiry of any residence permit or visitor's visa, the mother would enjoy a right to reside pending the determination of her substantive application. There did not appear to be any impediment to the mother demonstrating that she meets the criteria on a future occasion, and applying substantively once again at that stage of the proceedings.

The law

30. Article 1(a) of the Convention establishes that an objective of the Convention is "to secure the prompt return of children wrongfully removed or retained in any Contracting State…".

31. Whether a child has been "wrongfully" removed is governed by Article 3 of the Convention:

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

32. The substantive obligation upon a Contracting State to return a child wrongfully removed may be found in Article 12 of the Convention; the text is well known, and it is not necessary to cite it here. The substantive obligation to return is subject to a number of exceptions, including the Article 13(b) exception, quoted at para. 3, above.

33. The leading authorities concerning the application of Article 13(b) include *In re E* and *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10, [2012] 2 FLR 442. There are other authorities which I need not set out in detail. In *Re IG (Child Abduction: Habitual Residence: Article 13(b))* [2021] EWCA Civ 1123, Baker LJ summarised the relevant principles in the following terms:

> "47. The relevant principles are, in summary, as follows.
>
> (1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words 'grave' and 'intolerable'.
>
> (2) The focus is on the child. The issue is the risk to the child in the event of his or her return.
>
> (3) The separation of the child from the abducting parent can establish the required grave risk.
>
> (4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish 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 establish how the child can be protected from the risk.
>
> (5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process.

> It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.
>
> (6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have to consider whether the evidence enables him or her confidently to discount the possibility that they do.
>
> (7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.
>
> (8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns and by relying on the courts of the requesting State to protect him once he is there.
>
> (9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance.
>
> (10) As has been made clear by the Practice Guidance on '*Case Management and Mediation of International Child Abduction Proceedings*' issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks."

34. See also *E v D* [2022] EWHC 1216 (Fam), per MacDonald J at paras 29 to 33, *Re A (Children) (Abduction: Article 13(b))* [2021] 4 WLR 99, and the *1980 Child Abduction Convention: Guide to Good Practice*, para. 30ff to which I was taken by Ms Guha KC, in relation to the categorisation and assessment of "grave risk" for the purposes of Article 13b.

35. In relation to a child's objections to summary return, the leading authority is *Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal)* [2015] EWCA Civ 26 [2016] Fam 1. See, for example, para. 69

> "…the position should now be, in my view, that the gateway stage is confined to a straightforward and fairly robust examination of whether the simple terms of the Convention are satisfied in 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 his or her views. Sub-tests and technicality of all sorts should be avoided."

Preliminary observation

36. It is common ground that the children were wrongfully retained by the mother. The criteria for making a return order are therefore established but for the engagement of Article 13 on one or both of the bases contended for by the mother.

First issue: whether Article 13(b) established

37. It is well-established that allegations made by a party seeking to rely on Article 13(b) must only be taken into account at their reasonable highest. The summary nature of proceedings under the Convention means that it is rarely possible to engage in substantive fact-finding exercises. Unless I can confidently discount the allegations made by the mother, I should take them at their reasonable highest for the purposes of my analysis: see *Re IG (Child Abduction: Habitual Residence: Article 13(b))* at para. 47(6).

38. In addressing the allegations made by the mother, I will make brief observations about each allegation individually, before reaching an overall view of all matters in the round. Although I have necessarily had to set out my analysis in some sort of order, I have, of course, considered all matters in the round.

39. The mother contends that she was subject to financial abuse by the father before their departure from the United Kingdom, and that she did not receive any of the equity proceeds from the sale of the former matrimonial home. She also contends that she has been subject to ongoing financial demands to settle her debts to the father. Aside from the mother's witness statements, there is no documentary or supporting evidence before this court concerning the alleged UK-based financial abuse experienced by the mother prior to her departure for Portugal. There are no documents relating to the proceeds of the sale of the matrimonial home.

40. Although there is some documentary evidence that the father has sought to recover some money from the mother while she was in Portugal, taken at their highest those requests were for mother to make her 50% contribution to certain of the children's expenses, such as tutoring and sports activities. The father set out in clear terms and with an appropriate tone the amount he sought from the mother. I accept that, when the mother had not engaged with his requests, the father did refer to instructing his lawyers to recover the amount on his behalf. There is a persistence and formality to the father's requests, which the mother, with her comparatively limited means in Portugal, would have found very stressful. However, that must be viewed against his later email to the mother dated 27 October 2025 (see page 168) to cancel all outstanding debts relating to child maintenance, on the footing that they would continue to contribute on a 50-50 basis.

41. The mother also contends that she was pressurised into reaching a shared care arrangement in proceedings before the Portuguese courts. There is no additional evidence to support this contention. The shared care arrangement concluded between the Family and Juvenile Court in Portugal was reached following a hearing at which both parents were legally represented. It resulted in a 50-50 shared care arrangement, with broader contact arrangements and maintenance details agreed as part of the order. While I accept that the mother may well have experienced subjective feelings of fear and pressure, the objective evidence does not support that conclusion.

42. The other factors raised by Ms Guha on behalf of the mother relate less to the conduct of the father and more to the general in-country circumstances that the mother was in before she left, and to which Ms Guha submits the mother would return. These factors are of course relevant to my assessment since the court must establish what the concrete circumstances would be upon the mother's return with the children. Many of the factors relied upon by the mother in support of her Article 13(b) defence are factors which go to this limb of the analysis the court must perform, rather than allegations of abuse to be taken at their highest.

43. The mother contends that, following her separation from the father, she was earning a minimum wage and was required to devote three quarters of her income to her rent, which left her with insufficient funds for essential expenses. She says that she had to borrow from UK-based family just to survive. There is little evidence of this, but the mother's written explanation is compelling. Again, this is not so much taking an allegation of abuse at its highest, but rather a description of what life was like in Portugal when she was attempting to live as a single woman with substantial responsibility for three young children. The mother of course experienced a significant language barrier in Portugal. I understand that she was later able to secure work as a teacher. She now earns a relatively modest salary as a teaching assistant in England, but also benefits from Universal Credit which provides additional monthly support at a level that is commensurate with her take-home salary, giving her a monthly net income in excess of £3,000. The mother also says that she would not have access to benefits upon her return to Portugal, and so would be without this additional level of support.

44. Ms Guha set out a range of additional factors which she relies on to support the mother's case under Article 13(b). Those factors include the mother's isolation in Portugal without the support of family members, in particular for childcare; the absence of the maternal and paternal family members who now live in close proximity to the children in this jurisdiction; the turbulence the children have already experienced in their short lives, including the separation of their parents, and their parents' new partners and house or home moves in Portugal; the difficulties experienced by the children at school in Portugal, including bullying and poor behaviour control; the strained relationship that the children, in particular A, have with their father; plus, as set out above, the mother's likely financial destitution.

45. The mother also contends, through Ms Guha, that she would not be able to secure a visa. I address the evidence of Mr Da Camara below.

46. Drawing this stage of my analysis together, addressing first the allegations of domestic abuse, I consider that there is insufficient evidence before the court for me to accept those allegations at their reasonable highest. Prior to the move to Portugal, the mother was posting on social media in excited and warm terms about the family's forthcoming

adventure to Portugal. There is no documentary evidence of the father's attempts to evade creditors in this jurisdiction. In relation to the child arrangements concluded in Portugal, there is no basis for this court to conclude that the Portuguese court would have sanctioned an arrangement that had been imposed on the mother by duress. The arrangements took some time to settle down, but eventually coalesced as a 50-50 shared care arrangement, with the father consenting to the children travelling to this jurisdiction with only their mother. I accept that some of the father's correspondence with the mother about her liability for some of the children's expenses did have a litigious tone to it. On the material before me, that is indicative of parental conflict, rather than abuse. On 27 October 2025, the father wrote to the mother to state that he was willing to write off all previous debts to him, seeking her commitment to meet future expenses on the previously agreed 50-50 basis.

47. As set out above, however, properly understood the mother's case does not rest primarily, or even predominantly, on the father's alleged abuse, but rather the circumstances that she says will characterise her life and living arrangements in Portugal. In this respect, it is necessary for the court to examine in "concrete terms" the likely reception the mother will face in Portugal.

48. The mother's residence permit in Portugal has elapsed. I accept that she faces a considerable hurdle in seeking to re-establish her immigration status without an offer of work or prospective accommodation. That said, the report of Mr Da Camara, and his subsequent clarifications, paint a relatively positive picture of the mother's respective ability to secure a residence permit. Absent the financial assistance of the father, I accept that the mother would in all likelihood struggle to meet the eligibility criteria. However, at the hearing, through Ms Kirby the father undertook to meet the mother's accommodation and maintenance costs for a period of 12 months. This was a considerable improvement on his initial soft-landing offer. Initially, the father proposed to meet the mother's rent payments for three months, with an additional maintenance payment for the first three months period, followed by monthly payments of €800 until the mother would be able to secure employment and an income of her own. That initial offer would plainly have been insufficient for the mother to secure a residence permit. On the basis of the advice of Mr Da Camara, I conclude that the mother would be able to make a successful application to re-secure a residence permit. The father will be able to help her secure accommodation in country, and will be able to provide her with evidence of the required subsistence that will, on the material before me, be capable of satisfying the requirements of Portuguese immigration law. In addition, Mr Da Camara stated that the Portuguese authorities would look favourably on an application made by the parent of a minor child lawfully resident in Portugal, and there are a number of routes available to the mother in that respect.

49. In concrete terms, it would be open to the mother to apply for a residence permit on an out of country basis, that is to say from within the United Kingdom, through Portuguese consulate facilities. Mr Da Camara advised in clarifications that were submitted to me shortly after the hearing that the mother could travel to Portugal on a standard 90 day Schengen visa and apply within the country to regularise her status. She would be able to travel to Portugal, entirely lawfully, and seek to regularise her status in-country. Mr Da Camara advised that there would be no disadvantage to the mother from seeking to adopt that approach. There appears to have been an issue relating to the mother's previous tax records, but nothing before me suggests that that is an insurmountable

obstacle, and the initial "refusal" of her earlier application was, in fact, an eligibility query that the mother was provided with the opportunity to address before a final decision was taken, which she failed to do resulting in the application being refused.

50. I note the post-hearing submissions of Ms Guha concerning Mr Da Camara's updated advice, namely that an in-country application made while present with a Schengen 90-day visa would not extend that initial period of validity pending consideration of the application. I accept that this may mean that the mother has to leave Portugal for a further 90-day period before being able to return. During this time her application for a residence permit would remain under consideration.

51. I therefore find that, with the father's assistance, the mother would be able to secure a long-term residence permit. She would be able to accompany the children back to Portugal and remain with them for approximately three months. It is not clear whether the permit would be granted within that three-month period, although I note that the mother's application to renew her previous residence permit involved a visit to the Portuguese immigration authority in September 2025 (see para. 5 of the mother's statement dated 10 April 2026), which resulted in the draft decision of rejection being sent to her on 4 March 2026. That suggests a processing time of several months rather than the years feared by the mother. Mr Da Camara's report states that there is a statutory obligation for applications to be determined within 90 days, but delays do occur. I find that an application which meets the eligibility criteria is more likely to be dealt with within a period of months, rather than years.

52. Turning to the mother's financial situation, she previously worked in Portugal. She had a range of roles from low-paid, low-skilled roles, to working as a teacher. At its height, her salary was in the region of €1700 net monthly. With the assistance of the father for the first 12 months, as confirmed at the hearing, the position that the mother would be in, at least for the first year, would be comparable in financial terms to that which she enjoys in England.

53. The concrete situation, therefore, is that, upon being granted a residence permit, the mother would have access to accommodation, maintenance support from the father, and the ability to work in Portugal. She will be able to secure an income which will be comparable to that which she achieved previously, just as she was able to upon returning to this jurisdiction. Upon the regularisation of her status, the mother would be entitled to a range of Portuguese benefits on a basis that is intended to be equal with the entitlements enjoyed by citizens of Portugal (see Mr Da Camara's report at point 1, page 392).

54. The father has proposed a number of protective measures upon the return of the mother with the children. He has agreed not to pursue any criminal or civil case against the mother for the wrongful retention of the children in England. He has agreed to fund the return flights for the mother and the children. He has agreed not to attend the airport upon the return of the mother and the children. I find that these undertakings will be honoured by the father.

55. There are other protective measures proposed by the mother that are not accepted by the father. He does not agree to the mother's request to vary the Portuguese court order which requires the care of the children to be shared on a 50-50 basis. This, in my judgment, is less of a protective measure, but more of an in-country welfare issue. No

safeguarding concerns have been raised in relation to the father; the concerns of the children, at their highest and properly understood, relate to a difference in parenting style.

56. The father has not agreed to return a car to the mother which he retained following their separation. I understand that the family had two cars, and each parent retained one car. The father does not wish the mother to have a second car. She does not, I understand, retain ownership of the car that she was initially provided with, and so will have to secure an alternative form of transport in Portugal upon her return.

57. The father does not agree to fund the children to attend international school, nor does he agree to funding private therapy with the children's previous therapist, Dr S.

58. I should also address the likely attitude of the father to the children (and the mother) upon their return. Although I have found that the mother's subjective concerns about the father are not objectively well-founded, I nevertheless accept that she will be operating under a significant subjective fear and anxiety about the prospect of an enforced return to the very city she sought, with the children, to flee. The reality of that situation is that the mother (and possibly the children) will be operating under a significant cloud of fear, anxiety and uncertainty.

59. One feature of Portuguese life is that the father is unlikely to amend his robust parenting style. His approach to parenting matters, and disputes with the mother, has been picked up by the children, and has been reflected both in their outline comments to Ms Huntington, and also in their therapy sessions with Dr S.

60. For example, Dr S reported that C said the following in relation to the father, at page 126 of the bundle:

> "The paternal figure (father) is perceived as an authority figure and is experienced as demanding, strict, inflexible, and aggressive. He is felt to be emotionally distant, with marked feelings of emotional deprivation within the relationship and a strong desire for closeness, presence, and affection. C expresses a sense that he must be perfect and cannot make mistakes in order to be accepted/loved by the paternal figure."

61. A's comments to Dr S on this issue were as follows (page 135):

> "The paternal figure (father) is perceived as a figure of authority and power, being experienced as strict and emotionally distant. There is a limited perception of his affective and protective role, with the father being perceived as emotionally unavailable and "angry," giving rise to feelings of emotional deprivation within the relationship, alongside a strong desire for closeness, presence, and affection."

62. Similar comments are repeated throughout the reports, and Ms Huntington formed a similar impression.

63. The concrete circumstances of the children's return will therefore be as follows.

i) First, the mother will, in time, be able to secure a residence permit.

ii) Secondly once in-country, the mother and the children will have the benefit of accommodation and maintenance funded by the father. Once the mother's residence permit is in place, she will enjoy access to social assistance benefits on the same basis as Portuguese citizens.

iii) Thirdly, the mother will be able to work once her residence permit is secured. The combination of her income potential, the father's financial support for up to 12 months, and her access to social assistance benefits mean that she will not experience the financial difficulties that she experienced previously, and which she fears at this time. The mother will continue to receive a passive income from her UK-based small business. This is modest but not irrelevant.

iv) Fourthly, the father's robust parenting style will continue. A remains estranged from his father, and does not want to see him. The other children have a complex attitude towards and relationship with the father. (Pausing here, the father has had limited contact with the children since they were retained in the United Kingdom, so it is hardly surprising that the relationship between the father and his sons, in particular A, has acquired a degree of complexity.)

v) Fifthly, the father will be able to take steps to reassure his children, in particular A, of his unconditional love towards them, following the advice of Ms Huntington. I consider that he will seek to do so.

vi) Sixthly, the mother's subjective fear of the father will continue.

vii) Seventhly, the children will be without the support of their wide extended family, and the community links that they have forged in England following their return. This will lead them to experiencing further feelings of being unsettled.

viii) Eighthly, the children's exposure to parental conflict will continue. If nothing else, the children know that their mother wants to stay here, whereas the father is seeking to compel their return. They fear the consequences from the father of disappointing him through being unwilling or – if this court so orders – unable to return.

ix) Ninthly, the children will be able to resume education in Portugal. This is likely to be impacted in a detrimental sense by their absence from Portugal, their fading linguistic skills, and falling behind academically. They will find school even harder than they did previously. I accept that there are instances of the children feeling left out and bullied in Portugal. I also accept that the mother (and to an extent the father) had concerns that their own concerns were not being dealt with appropriately in Portugal. There does appear to be a different cultural approach in Portuguese schools to dealing with issues of bullying and conflict in the playground than perhaps may be the case, or expectation, in this jurisdiction.

x) Finally, I accept that the regular visits from members of the maternal and paternal family to Portugal will continue. It is an attractive place to visit, and the

> children have benefited from regular visits from the grandparents. In light of the supportive nature of the extended family, there is no reason to conclude that that would not continue. If anything, it would increase.

64. Viewed in the round, I do not consider that these factors, uncomfortable as life may be in Portugal, at least initially, demonstrate that the Article 13(b) threshold is met. There is no risk of "physical harm" for the purposes of Article 13(b), and I do not consider that the factors set out above, even taken cumulatively, meet the psychological harm test, or demonstrate that the children would otherwise be placed in an intolerable situation.

65. Although I consider the prospects of the mother securing a residence permit to be good, there is a possibility that it would not be renewed, or that the application would not be successful. The analysis above in relation to the concrete situation that would await the children upon their return would be undermined significantly in the event that the mother was not able to secure a residence permit.

66. In the event that the mother's residence permit application is not successful, I consider that the children would face an intolerable situation, since they would be required to be split from their mother pending the Portuguese court's approach to any relocation application that the mother would have to pursue remotely from this jurisdiction (or within the confines of a 90 day Schengen visa).

67. Dr S's summary of the children's approach to their mother and her maternal love for them, and her manner of parenting, by implication underlines the impact on the children in the event that their mother would not be allowed to remain in Portugal while they were being made to live with their father. For example, in relation to C Dr S said (page 126):

> "The maternal figure (mother) is perceived as the primary affective and protective figure, and as the person to whom he feels closest emotionally. She is described as calm, affectionate, present, and as someone with whom he feels secure in sharing his emotions. Emotional dependence and a desire for stability within the relationship are observed. She is also perceived as facilitative and permissive, with limited recognition of her authority role."

68. Drawing this analysis together, I find that, provided the mother is able to return to Portugal with the children on a secure immigration footing, the soft-landing measures proposed by the father are such that there is no "grave risk" that they would be exposed to "physical or psychological harm" or otherwise placed in an "intolerable situation". I have reached this conclusion in relation to each child individually, and all three children collectively.

69. But for consideration of the objection of the children, which I consider below, I would make a return order, dismissing the mother's reliance on Article 13b. The return order itself would have to be conditional on the mother securing a residence permit. I note Ms Kirby's submissions that the mother would be incentivised to sabotage her own application, as she submits was the case following the 4 March 2026 letter. I consider

this issue may be dealt with by a suitably worded conditional order which requires the mother to engage with the Portuguese immigration process in good faith.

Second issue: children's objections

70. In determining whether the children's objection exception is engaged, I must take into account the purpose and objectives of the Convention, and the principles of international comity which underpin it. Properly understood, the purpose of the Convention is not to determine child arrangements or specific issue disputes of the sort present between the mother and father in these proceedings. Rather it is to decide which jurisdiction should be responsible for the determination of those issues.

71. See, for example, *B v B* [2014] EWHC 1804 (Fam) per Mostyn J at para. 2:

> "The Convention does not provide that the parent who is left behind should, on the return of the child, have contact or access in any particular way. The Convention does not provide that, when an order for return to the child's homeland is made, the child should stay there indefinitely. All the Convention provides is that the child should be returned for the specific purpose and limited period to enable the court of her homeland to decide on her long-term future. That is all it decides."

72. Any exceptions to the Convention must be construed and applied against that purposive background. The "abducting parent" should not ordinarily be able to usurp the child arrangements procedures of another contracting party to the Convention by taking matters into their own hands. The parties to the Convention would have been well aware that the regime requiring the *summary* return of children to the other jurisdiction would, in all likelihood, result in disruption, and occasionally deep-rooted objection, on the part of the children concerned.

73. I consider that the "gateway" to engaging the children's objection exception is, in principle, capable of being engaged. The most significant objection is from A. I consider that, at 11 years old, it is appropriate to "take account" of his views. A's position is that of an objection, rather than a mere preference or wish.

74. As set out in the report of Dr S, A views his father as an authoritarian figure, seeking to force his return to Portugal.

75. I have considered Ms Huntington's report. She records strongly held feelings on the part of A, resisting his return. In the witness box, Ms Huntington ascribed significance to A's broader experiences as part of his objections in this regard; these include instability, parental conflict, emotional disruption. I accept that there are many reasons why A resists returning to Portugal.

76. Set against that, the report of Dr S does not record A's desire to return to England as a significant feature of his emotional and psychological presentation at the time. There were a range of complex factors relating to A's presentation at the time but, significantly for present purposes, they did not expressly relate to a desire to return to England. Ms Huntington observed in the witness box that Dr S's reports appeared to demonstrate a range of factors contributing to the children's complex emotional

presentation, deriving mainly from being exposed to parental conflict, experiencing instability and moving from one home to another, and the emotional distress that would have caused.

77. In this respect, there does appear to have been something of a modification, or development, in A's wishes and feelings in relation to returning to Portugal following his retention in England. That is hardly surprising. In contrast to the position in Portugal, A's "here and now" involves close proximity to many members of his extended family, on both sides, friends, familiar school, linguistic expertise, and all the benefits that come from growing up in the same location as he spent the early years of his childhood.

78. A will, I find, be aware of some of his mother's concerns about returning to Portugal. He will be aware of the decision that she took, against the wishes of the father, to remain in this country in defiance of his wishes. That will have manifested itself emotionally in A as a facet of the parental conflict which, according to Dr S, has led to such significant emotional disruption already. It will have underlined his desire to remain in the United Kingdom.

79. Having taken into account these objections, and bearing in mind their apparent provenance, I must now determine whether those objections are such that I should dismiss this application for the summary return of all three children. I take the following factors into account.

80. First, although I have decided that it is appropriate to take A's objections into account, the weight that they attract must be viewed in the context of his age. At 11 years old, A's wishes and feelings will necessarily be driven by his experience of his immediate surroundings. When he was in Portugal, although not entirely happy (see the report of Dr S), he is not reported by Dr S as having yearned for a return to the United Kingdom. Now that A has remained in England he wishes to stay, but that appears to be a position that has formed and crystallised in the time that has elapsed following his return to this jurisdiction. I accept that he reported to the mother at earlier stages in 2025 that he wanted to return. The mother herself, of course, wanted to do so. It is hardly surprising, as I have already observed, that A has followed the lead of his mother, with whom he has such a warm, loving and dependent relationship in that respect. At para. 68 of her report, Ms Huntington said that A, "conveyed an awareness of some of his mother's negative feelings about Portugal."

81. In addition to A's objections to returning to Portugal crystallising following his wrongful retention England, I consider that some of the observations that he made to Ms Huntington could only have come from remarks that his mother had made. Of course, I approach this issue with the degree of caution because I have not heard from the mother (or the father) in evidence, but on the material before me, the strong impression that I have is that the mother's negative attitude to returning to Portugal is likely to have influenced the attitude of children, in particular A. For example, he explained to Ms Huntington (para. 30) that his mother had had to take on additional work due to her lower earning ability in Portugal, and that he saw her less when she was there. Those are grown up topics and considerations which an 11 year old boy is likely to have picked up from his mother. The overall picture that emerges, is that, although A has genuine objections to returning to Portugal, the chronology of those objections emerging (that is, following his return to England), and the content of A's

observations about what life in Portugal would be like if he did return, is such that his mother would have had a significant influence in A forming those objections.

82. There is little positive evidence of the mother seeking to encourage A to maintain and develop his relationship with the father (as is the case in relation to all children) while in England. Direct contact has been minimal. Remote contact has been largely unsuccessful. A does not want to speak to his father or have any relationship with him, which is a strong position for an 11 year old boy to adopt. This is illustrated by the approach to contact adopted by the mother. For example, there are emails in the bundle from the mother to father in which she appears to be adopting a restrictive approach to the children having direct telephone contact with him. In an email exchange dated 9 January 2026, very shortly after the wrongful retention, she said to the father, that the children would be available to speak to him that evening "**if they want to**" (emphasis supplied), and later said in a subsequent email that, "I'll pass the phone over, and you can chat with all three of them if they want to." That was in the context of declining to pass on A's changed telephone number to the father.

83. Secondly, I have already outlined some of what are often termed "Hague Convention considerations" when determining the objection of the child; the Convention is not primarily a welfare device, but rather a means to determine which jurisdiction should determine issues relating to the welfare of children. It is a Convention that is underpinned by principles of comity and mutual recognition. This jurisdiction must assume that the courts in Portugal will be equally as adept at addressing the complex welfare considerations that would be inherent to any application the mother were to make in that jurisdiction for a return of the children. This court, of course, is not determining whether the children should remain in England or Portugal in the long term; my task is to determine which jurisdiction should make that decision, within the context of an international framework which has been agreed precisely to resolve jurisdictional and forum disputes of this nature. For the Convention to have its intended effect, and so to deter unlawful abduction and removal by other persons, it is important that the exceptions to making a summary return order are construed narrowly, and by reference to the overall object and purpose of the Convention.

84. Thirdly, I wish to clarify that there are many positive features for A and the two remaining children to returning to Portugal. Their mother would return with them, and, assuming the previous shared care arrangement resumes, the children would spend at least half of their time with her. The precise arrangements will, of course, be a matter for the Portuguese courts. If the father follows Ms Huntington's advice to the father on how to restore his relationship with A, the process of restoration is likely to mean that immediate shared care may well not be appropriate. The precise details are a matter for the Portuguese courts if the parents cannot agree.

85. A described many of the positive features directly to Ms Huntington: see paras 19 and 20 of her report. The activities enjoyed by A include spending time at the beach, being active, particularly being in the water (including water sports, such as the skim boarding and surfing), enjoying playing pool and football at the father's house. A has friends in Portugal, and he has integrated in the local community to the extent that he spends time in friends' homes, and they in his. He would spend time with his father's partner's family, with whom he gets on. His paternal grandparents are frequent visitors, and he particularly enjoys spending time in Portugal with his father's father. His mother's mother, the maternal grandmother, visits at least monthly, and they got on very well.

Although A expressed a degree of anxiety about attending school in Portugal when speaking to Ms Huntington, at para. 21 she describes how he began speaking in negative terms about school in Portugal, before saying that he liked to go to school there, that he had ample free time, and enjoyed playing with his friends. He played football at a club twice weekly. The Portuguese school reports for all three children are positive.

86. C was reluctant to be drawn in conversation with Ms Huntington about whether he wanted to return to Portugal (see para. 69); Ms Huntington said that her sense was that he wanted the dispute to be resolved by the adults. M, for his part, has spent most of his life in Portugal. Ms Huntington said that he depicted an integrated life there, with family and friendships. He missed his school in Portugal, along with his friends. He wished to avoid discussing the circumstances of the retention, and was unable to engage in depth with Ms Huntington to discuss this issue. He did not say that, given a "magic wand", he would want to remain in England. See para. 70.

87. Drawing this analysis together, I conclude that, having taken account of A's objections, I do not consider that they are such that it is appropriate to exercise the court's discretion not to make a return order. The weight attracted by A's objections must be tempered by reference to his age and the sequencing of their development. The Hague Convention considerations outlined above are powerful. There are many positives to returning to life in Portugal, as set out above. Although there is a complex relationship between A and his father, Ms Huntington described (para. 28) that A, in fact, misses the father and had the insight to appreciate that it was likely that his father would miss him, too. C was reluctant to be drawn into the discussion, and for M, life in Portugal represents most of his life. A return to Portugal would allow the children to restore their relationship with their father, returning to their old school, friends and community, living with their mother, or as part of a shared care arrangement with the father. The children would (as is common ground) be able access state-funded therapy in Portugal to assist with processing the disruption and parental conflict to which they have been exposed. Significantly, a return order would not take the children away from the mother. She would accompany them. Many of the concerns that legitimately troubled her previously will be less significant, in light of the father's soft-landing measures, including financial support.

88. I appreciate that this will be upsetting for the mother (and, perhaps in the short to medium term, A and his siblings). Nothing in this judgment is intended to address where the children should live. It may well be that the courts in Portugal in due course conclude that the welfare of all three children is such that they should return to England, to the family and community that they know and love here. But equally, the Portuguese court may not. What is clear, however, is that in light of my analysis above, that question is not, at this stage, a matter for this court.

89. I therefore conclude that the objections of A and the other children is not such that I should decline to make a return order.

Postscript: post-hearing developments

90. In the course of being invited to approve a final order, I was invited by Ms Kirby and Mr Basi to vary the requirement for the return order to be conditional upon the mother securing a residence permit in Portugal. Mr Basi helpfully outlined a number of authorities which, he submitted, militated against a conditional return order being made.

Ms Kirby conveyed to me the product of the father's own post-hearing research which, she contended, demonstrated that a residence permit would be likely to take 60 days to secure.

91. I decline to amend the decision in this respect. I prefer the evidence of Mr Da Camara about what happens in practice rather than the Portuguese Consulate's published service expectations.

92. Moreover, my substantive analysis of the concrete situation that would await the children was conducted on the footing that the mother would return with a secure immigration status. My analysis of the children's objections has been conducted on the basis that they would be returning with their mother enjoying a non-precarious immigration status, thereby guaranteeing her nearby presence upon their return. The impact of their objections would be thrown into sharp relief if the mother was to return only on the basis of a tourist visa, with no certainty for the post-90 day period. The mother is such a huge part of the children's lives. Returning without the sure knowledge that she will always be there with them would be unpalatable for the children, especially A, and would mean that his objection would have attracted far more weight than at present. I note that there are examples of return orders being made on a conditional basis. See, for example, *M v F, U, A* [2022] EWHC 214 (Fam) in which Peel J made a return order which he stayed pending the removing parent successfully obtaining a residence permit (for, as it happens, Portugal).

93. I am also required to rule on when the return order should take effect, upon the mother securing a residence permit. I consider that a long-stop of 7 days would be appropriate. Three days (as proposed by the father) would not be enough time. Fourteen days (as proposed by the mother) would be too long, given the lead-in time. Seven days is an appropriate compromise.

Conclusion

94. Returning to the two principal controversial issues identified at the outset of this judgment, the answers to the two questions posed are as follows:

    i) The Article 13b exception is not engaged; the return of the children will not expose them to an intolerable situation; and

    ii) The objections of the children are not such that the court should decline to make a return order.

95. I therefore grant the father's application for the summary return of all three children. That order is conditional upon the mother securing a residence permit for Portugal, and in order to be able to rely on that conditionality, the mother must in good faith make all reasonable efforts to secure a residence permit. I will also order the father to undertake to adopt the soft-landing measures above. I do not make this return order conditional on the father securing a court order in Portugal reducing the current shared care arrangement to a lives with/spend time with order in favour of the mother and father respectively. That is a paradigm example of the sort of in-country welfare determination that the court in Portugal can be expected to make, upon (or even before, if the parents are so advised, and provided those courts accept jurisdiction) the return of the children.

96. That is the judgment of the court.