OUTER HOUSE, COURT OF SESSION

[2026] CSOH 117

P963/26

OPINION OF LADY TAIT

in Petition of

ZZ

Petitioner

for

orders under the Child Abduction and Custody Act 1985

Petitioner: McEwan; Family Law Matters
Respondent: Party

24 November 2026

Introduction

[1] The petitioner seeks an order for the return of the parties' four children, BB (born in 2014 and aged 12), CC (born in 2015 and aged 11), DD (born in 2018 and aged 8) and EE (born in 2021 and aged 5), to Germany in terms of the Child Abduction and Custody Act 1985 ("1985 Act"). The 1985 Act incorporated into domestic law the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"), to which both the United Kingdom ("the UK") and Germany are signatories. The petitioner is the children's mother and the respondent is their father.

[2] The parties married in 2011 in Syria. They are Syrian citizens. The children BB and CC were born in Syria and the children DD and EE were born in Germany. The

children are Syrian citizens. They resided in Germany from 24 August 2017 (or from birth for DD and EE) until they were removed from Germany by the respondent no later than 8 November 2025. They were habitually resident in Germany immediately prior to being removed. They are presently residing in Scotland. The petitioner did not consent to the children being removed from Germany.

[3] The respondent opposes the return of the children. He contends that he left Germany with the children because they were at risk of serious physical and psychological harm. He relies upon the grave risk exception under Article 13(b) of the Hague Convention.

[4] The children's views as expressed to the child welfare reporter are that they object to being returned to Germany. Accordingly, the court requires to consider in terms of Article 13 of the Hague Convention whether each child has attained an age and degree of maturity at which it is appropriate to take account of their views and whether to refuse to order their return.

[5] The petition was intimated on the Advocate General for Scotland. The respondent and children arrived in the UK by small boat on 8 November 2025. The respondent claimed asylum with the children as his dependents. He claimed asylum on the basis that it was unsafe for him and the children to return to their home country of Syria. He also advised officials that he felt that the children were unsafe in Germany and that that was why he brought them to the UK. The asylum claims have not been determined. Answers have been lodged on behalf of the Advocate General who has not otherwise participated in proceedings. The Advocate General's only interest is to enable her to make representations to ensure that any order does not put the UK in breach of its international obligations.

The issues

[6] The issues for determination are:

(i) whether the petitioner was exercising her rights of custody in respect of the children when they were removed from Germany;

(ii) whether the children object to being returned to Germany and whether it is appropriate for the court to have regard to those views: Article 13;

(iii) whether there is a grave risk that return of the children to Germany would expose them to physical or psychological harm or otherwise place them in an intolerable situation: Article 13(b); and

(iv) whether, in the event of the defences at (ii) or (iii) above, or either of them, being made out, the court should exercise its discretion to refuse to order the return of the children to Germany.

The law

The object of the Hague Convention

[7] The purpose of decision making in this area is summarised by Lady Hale in *In Re E (Children)(Abduction: Custody Appeal)* [2011] UKSC 27; [2012] 1 AC 144 at paragraph 8:

> "The first object of the Convention is to deter either parent (or indeed anyone else) from taking the law into their own hands and pre-empting the result of any dispute between them about the future upbringing of their children. If an abduction does take place, the next object is to restore the children as soon as possible to their home country, so that any dispute can be determined there. The left-behind parent should not be put to the trouble and expense of coming to the requested state in order for factual disputes to be resolved there. The abducting parent should not gain an unfair advantage by having that dispute determined in the place to which [he or] she has come. And there almost always is a factual dispute, if not about the primary care of the children, then certainly about where they should live, and in cases where domestic abuse is alleged, about whether those allegations are well-founded. Factual disputes of this nature are likely to be better able to be resolved in the country where the family had its home. Hence it is one thing to say that the factual context has

changed and another thing entirely to say that the change should result in any change to the interpretation and application of the Hague Convention."

The German order

[8] The German court has made interim orders prohibiting the removal of the children from its jurisdiction and transferring the specific right to determine the children's place of residence to the petitioner. The existence of the German orders is not determinative but they should be given general respect on the basis of comity: *FPS* v *SM* [2024] CSIH 20; 2025 SC 61 at [27].

Article 3

[9] Article 3 of the Hague Convention addresses the circumstances in which the removal or retention of a child is to be considered wrongful. In terms of Article 3, for the children's removal from Germany to be wrongful the petitioner must establish the following:

(i) that their removal is in breach of the petitioner's rights of custody under the law of Germany;

(ii) that the petitioner was actually exercising those custody rights at the time of removal; and

(iii) that the children were habitually resident in Germany immediately prior to their removal.

[10] Rights of custody are defined in Article 5 and include rights relating to the care of children or a right to determine the child's place of residence. The law governing the question of habitual residence and rights of custody is the law of Germany: Articles 31 and 32. The onus for establishing the requirements of Article 3 rests on the petitioner. Once a person has valid custody rights, that person cannot fail to exercise those rights in terms of

Article 3 short of acts that constitute clear and unequivocal abandonment of the child: *AJ* v *FJ* [2005] CSIH 36; 2005 1 SC 428 at para [11].

Article 12

[11] Article 12 provides that:

> "where a child has been wrongfully removed or retained in terms of Article 3 and… less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith."

Article 13

[12] Notwithstanding the provisions of Article 12, the judicial or administrative authority of the requested State is not bound to order the return of the child if it is established:

(i) 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, or

(ii) there is a grave risk that a child's return would expose him or her to physical or psychological harm or otherwise place the child in an intolerable situation.

[13] The respondent advances an Article 13(b) "grave risk" defence. The children have expressed the view that they do not want to return to Germany. The court will order the children's return to Germany unless one of the defences is established and the court exercises its discretion in favour of not ordering return.

The objection defence

[14] In *In re M & another (Children)(Abduction: Rights of Custody)* [2007] UKHL 55; (2008) 1 AC 1288 at paragraph 46, Baroness Hale stated:

> "In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only

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

[15] The approach to child objection cases which has developed in England and Wales applies equally in this jurisdiction: *FPS* (above) at [7]. The objection defence involves a gateway test. Once the gateway of age and maturity is passed, a "child-centric" approach is required which has the welfare of the children as the forefront consideration. That approach was confirmed in the Extra Division decision of *W* v *A and X* [2020] CSIH 55; (2021) SLT 62 at [9] where Lord Malcolm stated:

> "In art.13 cases the age and sufficient maturity test, once passed, is a gateway to the court exercising a discretion, authoritatively said to be 'at large', as opposed to being directed by the Convention to return the abducted child. … A child centric approach is required, with her interests and general welfare at the forefront. The focus is not on the moral blameworthiness of the abducting parent, nor on notions of deterrence. While Convention considerations will always be relevant, the further one is from the main aim of a speedy return, the less weighty they will be. If a child is integrated in the new community it is relevant to consider the effect of a further, and unwanted, international relocation pending the long term decision."

[16] When assessing the weight to attach to the child's views, what matters is whether they are clear and unambiguous and coincide with other relevant welfare considerations and not whether the child appreciates that a return would be for the courts of the state of habitual residence to determine issues of residence: *TS* v *S* (2025) SC 76 at [12].

The grave risk defence

[17] In *AD* v *SD* 2023 SLT 439 at paras [26] to [28], the Inner House considered the proper approach to the grave risk defence in light of the Supreme Court decisions of *In re E (Children)(Abduction: Custody Appeal)* (above) and *In re S (A Child)(Abduction: Rights of Custody)* [2012] 2 AC 257. The following propositions can be taken from *In re E* above at paragraphs 30 to 35:

(i) Article 13(b) is, by its very terms, of restricted application: at paragraph 31.

(ii) The onus is on the respondent to establish the defence: at paragraph 32.

(iii) The risk to the child must be a grave one. A real risk, or the return not being in the child's best interests, will not suffice: at paragraph 32. It must have reached such a level of seriousness to be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. A relatively low risk of death might properly be qualified as grave; whilst a higher level of risk might be required for other (less serious) forms of harm: at paragraph 33.

(iv) An Article 13(b) defence contains two defences. The first relates to the exposure to a grave risk of physical or psychological harm. The second relates to placing the child in an intolerable situation.

(v) "Intolerable situation" means a situation that the child in the particular circumstances should not be expected to tolerate. There is a recognition in an "intolerable situation" defence that every child has to put up with a certain amount of rough and tumble, discomfort and distress as part of growing up: at paragraph 34.

(vi) Article 13(b) looks to the future. It is concerned with the situation as it would be if the children were returned forthwith: at paragraph 35.

(vii) If the risk exists, its source is irrelevant: at paragraph 34.

[18] *In re E* above should not be interpreted as lessening the exacting requirements of the Article 13(b) defence. As held by Lady Wise in *L* v *H* 2021 FLR 60 at [15]:

> "While the case of *In re E* might have impacted on what things might create a grave risk for a child, the strength of the test that must be satisfied to succeed under art.13 remains as exacting as ever. Clear and compelling evidence of a grave risk of substantial harm is required, something much more than the risk inherent in any unwelcome return to the country of habitual residence. It has also long been established that in the absence of compelling evidence to establish that the courts in the requesting country do not have the power to protect the child, the courts of the requested county should assume that they will be able to do so - *C v C* [*(Abduction: Rights of Custody Abroad)* [1989] 1 W.L.R. 654.]"

[19] *In re E* was recently quoted with approval by the UK Supreme Court in *The Petition of DM* [2026] UKSC 32 and the court offered additional observations as follows:

> "75. … what must be established is clearly identified: that there is a grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. That requires prediction, based on the evidence, of what may happen if the child is returned. It does not require a determination that physical or psychological harm will actually occur. Nor does it require a determination that the child will actually be placed in an intolerable situation. Rather, what is required to be established is a risk within the meaning of article 13(b) which must have reached such a level of seriousness as to be characterised as grave.
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> 76 … The question of what is intolerable is therefore an objective one for the court to determine; albeit that it must do so by reference to the particular child and their circumstances. The court must consider whether it is *reasonable* for the particular child in the child's particular circumstances to tolerate the situation on return.
>
> 77.`Fourthly, there is a connection between the nature of the risk and the assessment of whether it is a grave risk within the scope of article 13(b). The more serious or significant the character of the risk, the lower the level of the risk which 'might properly be qualified as 'grave', and vice versa. The Lord Ordinary in this case, at para 6(ii) of his Opinion, contrasted a low risk of death or serious harm with a low risk of minor harm. He stated that 'a low risk of death or serious harm [is] likely to be a grave risk, but a low risk of minor harm [is not] likely to be such a risk.' In

doing so he was faithfully following the observations in *In re E* at para 33 as quoted above.

78. Fifthly, there is a similar relationship between the character of the risk and effectiveness of protective measures. In *In re E*, at para 52, Lady Hale stated: 'The clearer the need for protection, the more effective the measures will have to be.' A particularly high risk of the most severe harm will require to be balanced by more effective protection than a lower risk of either that or of less severe harm. In *AD v SD* [2023] CSIH 17; 2023 SLT 439, Lady Wise, at para 27, described the exercise which required to be carried out in relation to protective measures as involving 'a delicate slide rule type balance to be struck between the assessed risk and the protective measures offered.'

79. Sixthly, in relation to allegations of domestic abuse, a staged approach is commended. The court first asks itself of the disputed allegations 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 it concludes that there would be such a grave risk, 'the court must then ask how the child can be protected against the risk' in the context that 'The appropriate protective measures and their efficacy will obviously vary from case to case and from country to country'. If there are no effective protective measures, then the court 'may have no option but to do the best it can to resolve the disputed issues.'"

[20] Where there are allegations of domestic abuse, a two stage-process is required. In *In re E* above at paragraph 36, it was stated:

"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 co-operation 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."

[21] With reference to *In re E*, the proper approach for this court was authoritatively set out by Lady Wise in *AD* above at [26] - [27]:

"[26] In some 1980 Hague Convention cases where an Article 13 defence such as consent or acquiescence to the removal or retention of children is advanced, the court is required to reconcile, if it can, competing accounts of events given by the respective parties to the proceedings. Normally those accounts will be contained in

> affidavit rather than oral, tested evidence. In the absence of extraneous evidence supportive of their position, the party upon whom the onus rests may fail to establish the defence (*D* v *D* 2002 SC 33). In contrast, since the decision of the UK Supreme Court in *In re E* [2012] 1 AC 144, the position where an Article 13(b) 'grave risk' defence founding on domestic abuse is pled, the court's approach is more nuanced. A staged approach is required, with the court first asking itself of the disputed allegations 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 it concludes that there would be such a grave risk,
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> '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…'. (*In re E*, paragraph 36).
>
> [27] Within the first stage of the assessment, unless there is no *prima facie* case made out at all, it is necessary to evaluate the available material and analyse the nature and severity of the risk to the children. The allegations are assumed to be truthful for the purpose of that exercise. It is that analysis that puts the court in a position then to make a proper assessment of whether the proposed protective measures will be sufficient to address or ameliorate that risk (*In re C (A Child)* [2021] 4 WLR 118, paragraphs 55-59). The importance of that analysis lies in the relationship between the level of risk and the need for protection; a particularly high risk of the most severe harm will require to be balanced by more effective protection than a lower risk of either that or of less severe harm (*In re E*, paragraph 52). So the exercise involves a delicate slide rule type balance to be struck between the assessed risk and the protective measures offered."

[22] In *The Petition of DM* (above) at paragraph 117 the UK Supreme Court stated when considering the interplay between children's views and the Article 13(b) defence (albeit in relation to intolerability) that:

> "If the views of a child have been manipulated so that they are not, or to some extent they are not, authentically their own views, then to that extent very little or no weight should be attached to those views. It is central to a decision as to what if any weight to place on a child's views to determine the extent to which they are authentically their own. …. However, no matter how the child's views have been obtained, a court should do its best on the evidence presented and if the evidence permits, to determine on a summary basis whether and if so the extent to which the child's views are the product of manipulation: see for example *Re X (A Child)* [2026] EWCA Civ 518; [2026] 2 FLR 270. Furthermore, in cases where the child has been abducted some time before, the child might not have had contact with the left behind parent for several months. In those circumstances, the court should use its best endeavours to determine if possible whether the child has a false image of the left behind parent."

United Nations Convention on the Rights of the Child ("the UNCRC")

[23] The respondent invites the court to have regard to Articles 3, 12 and 19 of the UNCRC:

> "Article 3
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> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration…
>
> Article 12
>
> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
>
> Article 19
>
> 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

European Convention on Human Rights ("the ECHR")

[24] The respondent invites the court to consider the importance of the children's family relationships, sibling relationships, current circumstances and the consequences of the proposed return for their family life under Article 8 of the ECHR:

> "Right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Asylum claim

[25] The case of *G* v *G* [2021] UKSC 9; [2022] AC 544 concerns the interface between international child abduction and asylum law. The UK Supreme Court held that a court can consider the merits of the 1980 Hague Convention proceedings, even if the factual issues overlap with the asylum claims, but a return cannot be implemented until the Home Secretary has determined the asylum claim: *G* above at paragraph 165.

Evidence

The petitioner

The petitioner's affidavits

[26] The petitioner swore two affidavits. She is 30 years old and is a cleaner. She lives in Germany. The respondent is 49 years old and did not work in Germany. The parties initially lived together in Syria after their marriage. They relocated to Germany in 2017. The parties have separated. The respondent has been repeatedly abusive to the petitioner.

During arguments, he would become aggressive, punch her, kick her, hit her with a slipper and mop stick and throw objects at her. Incidents were reported to police on 10 September 2023 and on 8 July 2025. The respondent's conduct continued, was on a regular basis and on occasions happened in front of the children. The parties' eldest child tried to intervene. Production 6/37 shows injuries to the petitioner's body. The petitioner is unaware that criminal proceedings against the respondent were discontinued.

[27] From April 2025 to June 2025 the petitioner spent time in Syria and met another man. On her return the respondent installed a video camera in the bedroom to monitor her. On 5 October 2025, the respondent saw photographs of the petitioner without her hijab with a man in Syria. Later that day, the respondent took the three eldest children from the family home. Shortly afterwards, the parties' youngest child was taken with the help of the respondent's family. The petitioner sought police help. She was allowed telephone contact with the children that day. The respondent threatened to show a video of the petitioner with another man to her family if she did not leave the home and hand the children over to him. The petitioner travelled to a cousin's home. She returned to the family home one week later and spoke to the children. The two younger children cried a lot and wanted to go with the petitioner. To placate them, the respondent allowed her to spend time with them but did not allow her to take the children to her cousin's home. Since then, the children have been living with the respondent.

[28] The petitioner was concerned that the respondent was planning to take the children abroad permanently or to leave without her consent. After around two weeks, she filed a further police report and sought help to prevent the respondent leaving Germany with the children. The petitioner disclosed the respondent's behaviour to Women's Shelter staff and was assisted by them. She initiated court proceedings in her Local court in Germany. On

23 October 2025, the court made an interim border restriction order prohibiting the respondent and third parties from taking the children outside Germany and the Schengen states. On 5 November 2025, the court made further orders namely, that the right to decide the place of residence of the children be transferred to the petitioner alone and that the children were to be returned to her care. The petitioner was notified by the children's schools that they had been absent from school for 2 days. The respondent had been notified of the court proceedings.

[29] The British police informed the German police that the respondent had taken the children to England on a small boat at the beginning of November 2025. On 13 November 2025, police told the petitioner that the children had been found in the United Kingdom. The respondent did not have the petitioner's permission to take the children out of Germany. The petitioner last saw the children on 3 November 2025. The respondent threatened that she would never see the children again. On 14 November 2025 the petitioner filed an application with the Central Authority for England and Wales. The English proceedings confirmed that the respondent and children were in Glasgow. The respondent does not have the petitioner's permission to keep the children in Scotland.

[30] The respondent's affidavit speaks to concern about injuries and scars which he believes are consistent with the children's accounts of physical abuse in Germany. The accusations that the children have scars because of the petitioner is upsetting and painful. She cannot see any scars in the photographs. She has never spanked the children or caused them pain or harm. She loves and would never hurt them. She has never struck the child BB nor injured him. She does not remember him having a broken nose or attending a doctor about such an injury. She has been separated from him for approximately 1 year and does not know whether anything has happened to him during that time. The suggestion

that he has suffered an injury to his nose makes her more worried about his safety. The respondent sometimes hit the children on their bodies, smacked their bottoms or pulled their hair.

[31] During the period when the family lived together in Germany, the petitioner only attended her language course while the children attended school. The respondent was not left to care for the children alone. The petitioner travelled to Syria between April and June 2025 for approximately 45 days for dental treatment. The children remained in Germany with the respondent as he refused to allow them to travel. The children hold refugee status, including DD and EE, even though they were born in Germany. The respondent's niece assisted with caring for the children. The petitioner returned to Germany after her treatment to continue to care for the children.

[32] The petitioner is concerned for the children's physical and mental wellbeing as they have experienced the respondent's violence and the respondent has used them to hurt the petitioner. If the children are not ordered to return to Germany, the petitioner fears that the respondent will make it difficult for her to see the children. Since their removal, the petitioner has not spoken to or seen the children.

[33] The respondent claims that he is pursuing immigration and asylum matters through the appropriate UK procedures and that he is seeking protection. There were no concerns about the children's safety in the petitioner's care in Germany, nor are there any present concerns should they return to her care. When the respondent left Syria initially, he travelled to Germany and applied for asylum. After he was granted refugee status, the petitioner, BB and CC joined him in Germany. They held Syrian passports. The respondent applied for refugee status for BB and CC but not for the petitioner. The petitioner does not

have refugee status in Germany. DD and EE were born in Germany. The petitioner understands that the children have refugee travel documents. She has their passports.

[34] Before the children were removed to Scotland, the petitioner took responsibility for most of their care, including their food, hygiene and schoolwork. They relied on her. They were healthy and did not have any medical problems or chronic illnesses. They enjoyed school and spending time playing both at school and outside with neighbours' children. They were happy, had friends and enjoyed activities. The respondent mostly did not join the family on outings.

[35] The petitioner lives in a one-bedroom apartment. If the court orders the children's return, she intends to obtain larger accommodation within the catchment area for the children's former schools and within her rental budget. The children's school and kindergarten places remain open. The children are still registered with their paediatrician. Should the children be ordered to return, the petitioner intends to take time off work to stay with them and help them settle. Her working arrangements as a cleaner thereafter will depend on school hours. If suitable after-school care is available, she would like to continue working full-time. Otherwise, she will arrange her hours around the children's school day to care for them when they return home. She intends to support the children through her earnings and any benefits as paid before their removal and for which she is eligible. The petitioner has family and friends in Germany whom she can ask for support when the children return.

[36] In the event of the children's return, the petitioner will provide them with a safe and loving home; they will be able to return to their education; enjoy their friendships; and spend time together as a family.

[37] Should the children return to Germany with the respondent, the petitioner would seek advice and assistance from the Women's Shelter about proceedings to enforce the German orders.

Other affidavit evidence for the petitioner

[38] Affidavits are produced by AHA (the petitioner's cousin) and HG (the petitioner's friend). Both witnesses reside in Germany. The petitioner's cousin visited the family home on three or four occasions but otherwise maintained contact over the internet. He speaks to the petitioner's caring role for the children and the respondent's more limited role; the positive, loving and close relationship between the children and the petitioner; his willingness to offer help and support on the children's return; and to the petitioner having telephoned him for help when the respondent had assaulted her.

[39] HG met the petitioner in 2025. They maintain daily contact and live in the same neighbourhood. The petitioner told the witness of the respondent's abusive behaviour and that he filmed her at home. The petitioner works hard to have stability. The witness offers any assistance the petitioner may require to care for the children.

Rights of custody and protective measures in Germany

[40] Silvia Katzenmaier is a lawyer who has provided an expert opinion, number 6/16, on rights of custody and protective measures in Germany. Ms Katzenmaier was admitted to the bar in 2002 and has practised exclusively in the field of family law and, in particular, international family law. She is a member of the International Academy of Family Lawyers; contributes to international family law publications; and speaks at international congresses.

[41] Ms Katzenmaier provided an opinion on the following two questions:

(i) Did the petitioner have rights of custody under German law at the date of the children's wrongful removal from Germany to Scotland for the purposes of Article 3 of the 1980 Hague Convention? and

(ii) What protective measures are available in Germany to protect the children against the alleged abuse or the risk of abuse should the Scottish court order the children's return there?

Rights of custody

[42] The question is how parental custody was structured before the children were removed from Germany. The petitioner's local court assumed in its order dated 5 November 2025 that joint parental custody existed. However, the order does not indicate whether the court independently reviewed the legal situation. The court refers to the petitioner's affidavit in which she confirmed that joint parental custody existed. The question of who holds parental responsibility is determined by Article 16 of the 1996 Hague Convention on the Protection of Children ("the 1996 Hague Convention"). As the children BB and CC were born in Syria, pursuant to Article 16(1), parental responsibility is initially determined in accordance with Syrian law. However, pursuant to Article 16(4), from the time of the move to Germany, joint parental responsibility for the children BB and CC has existed and parental custody is held jointly by the parents if they are married. In respect of DD and EE (who were born in Germany) joint parental custody has existed since birth.

[43] Parental custody was transferred to the petitioner by the petitioner's Local court in terms of the interim order dated 5 November 2025, regarding the specific right to determine the children's place of residence. Under German law, it is possible to transfer certain aspects

of parental custody to one parent for sole exercise, while the other aspects remain under joint parental custody. The right to determine the child's residence is expressly part of parental custody. The respondent lost his decision-making authority regarding the children's residence. The parent who has sole custody regarding the right to determine residence generally decides where and with whom a child lives, including any change of residence. Due to the transfer of that right to the petitioner by temporary order, a change in the residence of the children without her consent or subsequent approval was unlawful.

[44] At the time the respondent took the children to England, the petitioner was the sole holder of parental responsibility with regard to the right to determine the children's place of residence; and she had joint parental responsibility with the respondent regarding the remaining aspects of parental responsibility. By taking the children to England and then Scotland, the petitioner's right of custody was violated within the meaning of Article 3 of the Hague Convention. So, the removal was wrongful in the sense of Article 3 and in breach of the petitioner's right of custody.

Protective measures

[45] There are various types of protective measures in Germany, depending on how the children's risk situation is assessed. According to the documents provided, the parties accuse each other of violent assaults and of endangering the children in the other's household. It should be noted that a return to Germany does not necessarily mean that the children must return to a household where they are at risk. In this regard, it is the court's responsibility, prior to issuing a return order, to determine specifically whether a risk exists, what measures are available for the children in such a case, and which measures are appropriate and necessary based on the specific circumstances of the case. It is possible to

contact the German Youth Welfare Office ("YWO") before the children return to Germany. In accordance with section 8a of Book VIII of the German Social Code, the YWO can conduct a risk assessment as soon as the children are in Germany (in which both the children and the parents must be involved). The YWO can then form its own impression of the children on site as well as their home environment and conduct appropriate home visits. It is possible to arrange parenting counselling to address parenting challenges and family conflicts, as well as a parenting support worker to provide individualised support to the children. If necessary, it may also arrange intensive in-home support and assistance with the care and upbringing of the children. If the children require care and support, they may be placed in a day group. The selection of the appropriate support service is based on the family's individual needs and the degree of risk to the children.

[46] If long-term support measures are required in the household of one parent, the YWO may draw up a support plan. The YWO, if it determines that there is a danger to the children's physical, mental, or emotional well-being and that the parents are either unwilling or unable to avert the danger, may initiate family court proceedings. The family court may order various measures, including requiring the parents to avail themselves of the YWO's support services; seeking health care for the children; and issuing a contact ban if contact with a parent poses a danger to the children. If the child's parents are unwilling to cooperate, if necessary the court may terminate parental custody and transfer it to the YWO. The family court may also order that the children be taken into custody if there is a concrete danger posed by the custodial parent, and order their placement with a foster family or a YWO institution. Separating the children from their family requires that less severe measures (including public assistance) are insufficient to avert the danger to the children.

[47] The YWO is state-funded. Child and youth welfare is a statutory public responsibility. Its services are mostly free of charge. Some services require income-based contributions which may be waived in whole or in part in cases of particular hardship.

[48] If a petition is filed with the family court to regulate visitation rights, the court may also take measures to protect the children from harmful visitation contact. It may regulate the location and procedures for the handover of the children and, if necessary, order supervised visitation or restrict or exclude visitation if necessary to protect the children. In the event of legal proceedings, the party with limited financial means is entitled to legal aid, provided subject to certain requirements being met.

The respondent

The respondent's statement

[49] The respondent produced six documents which combined submissions, his statement and his response to the petitioner's submissions and the petitioner's affidavits. He denies the allegations of abuse, neglect, deliberate concealment, and deliberate disobedience of the German order dated 5 November 2025. Rather, the petitioner left the family home voluntarily and was not prevented from having contact with the children. She had travelled earlier to Syria between April and June 2025, leaving the children in the respondent's care. He speaks to the children having experienced violence and burning injuries at the petitioner's hands and being forced out of their home. He speaks to their fears and wishes. His departure from Germany with the children was not an attempt to evade parental responsibilities or to disregard the law but because he sought to remove the children from a situation in which their safety and wellbeing were at risk. Before leaving Germany, he repeatedly sought assistance from the relevant authorities (police and YWO)

concerning the violence and harm suffered by the children. In particular, BB was severely struck in the face by the petitioner, resulting in substantial bleeding from his nose. He contacted the YWO to report what had happened and request protection for the children. He was told that responsibility for protecting the children rested with him. He wanted effective measures to be taken to protect the children. When his complaints were not properly heard or acted upon, he decided to leave Germany with the children to remove them from the danger and prevent further harm.

[50] The children BB and CC told the respondent that the petitioner had burned them. They described the use of hot water, a cigar, and candles in connection with the burning incidents. The petitioner also repeatedly threatened them. The respondent has observed visible marks and scars on the children. Further, he personally witnessed the incident in which the petitioner struck the child BB on his nose.

[51] The respondent rejects any suggestion that he avoided the German court proceedings. He had no knowledge of the court hearing or proceedings. He received no notification, no formal summons and no copy of the decision. He was not given an opportunity to attend the proceedings, present his position or respond to the matters being considered. He left Germany on 31 October 2025. He only learned of the proceedings after arriving in the UK. Furthermore, the German court document states that the proceedings were to end on 30 January 2026 and so the period specified in that document has expired.

[52] While living in Germany, all four children were registered in the respondent's name. He was their father and the person responsible for their day-to-day care and protection. He cared for the children when the petitioner returned to Syria. Before his departure from Germany on 30 January (date stated), he attended the Immigration Office in Berchum because he had reported the loss of his official and medical documents and needed

replacement documentation and necessary identification cards. The Immigration Office refused to provide those cards. He was given only one temporary document valid for 1 month. This significantly increased his concern about his immigration and legal situation in Germany. He became seriously worried that the German authorities might terminate his asylum status and that he would be left without secure official documentation. This added to his uncertainty and concern while trying to protect the children.

[53] Protection of the children must be real, effective and capable of preventing further harm. Their future must not be determined by promises that do not adequately address the reality of what they have already experienced. The respondent's actions were those of a father who sought to protect his children and who continues to accept full responsibility for their care, safety and wellbeing. He opposes the return of the children to Germany. The court must consider the complete circumstances of this case: the actual violence and harm experienced by the children; their expressed wishes; their physical and psychological wellbeing; the respondent's attempts to obtain protection in Germany; the circumstances of his departure; and the lack of notification and opportunity to be heard in the German proceedings.

[54] The children are now living together in Scotland, where they have established stability, continuity and a daily life. The respondent is their primary carer and the person who continues to take responsibility for their care, protection and wellbeing. He will not abandon that responsibility. Returning the children to Germany would place their safety, physical and psychological wellbeing at serious risk and would disrupt the stability they have established in Scotland. The court should recognise the importance of preserving the children's stability, security and continuity of care in Scotland.

[55] In Scotland, the children have a home, attend school or nursery, have access to health services, are developing relationships and connections within their local community and are developing their English language skills. They have established routines. BB, CC and DD communicate that they want to remain with the respondent. BB and CC do not presently want contact with the petitioner. The departure from their previous accommodation took place in urgent and exceptional circumstances. They had to leave following police instructions because of an immediate situation at the property. Life in Scotland is preferable. The respondent has not influenced the children in their views. The children show anxiety and distress at the prospect of their return to Germany.

[56] The German prosecutorial file was closed.

[57] The respondent will comply with the court's directions concerning contact and communication. His concerns relate to protecting the children, taking account of their views and emotional wellbeing.

Other affidavit evidence for the respondent

[58] The respondent produced witness statements from TA and SA. They are the respondent's nephews and live in Germany. TA assisted the respondent at the police station and at the YWO. The respondent denied any assault of the petitioner and reported concerns about the children being mistreated and hit by the petitioner. The witness heard from others that the petitioner hit the children. The witness heard the petitioner shout at the respondent on one occasion. The respondent claimed that the petitioner took the children's passports and residence permits. The respondent alleged that the child BB had been hit and his nose was injured.

[59] SA visited the respondent at the family home in Germany where he observed the respondent caring for the children, helping with homework and meeting their daily needs. The witness observed the petitioner pulling the children by their ears; hitting them on their hands, faces and heads; keeping the children inside their rooms for extended periods; shouting at the respondent and at the children; throwing objects at the respondent; and threatening to contact the police during arguments. The children appeared to be frightened on some occasions when incidents occurred in the home. The respondent reported an incident resulting in injury to BB's nose. The respondent made a report to police about the petitioner being violent to the children. The witness has concerns about the children's safety based on how he saw the petitioner treat them and the children's fear on some occasions.

Children's views

[60] Isabella Ennis KC was appointed as child welfare reporter by interlocutor dated 29 September 2026 to undertake enquiries and to report to the court on:

(i) the children's age, levels of maturity, and capacity to offer views on the matters arising in this case;

(ii) the children's views on return to Germany;

(iii) whether and if so, to what extent, the children's views are independent of parental influence; and

(iv) whether the children appreciate that the purpose of a return to Germany would be for the German court to make a decision as to where their future may lie.

[61] The reporter met with the children with the assistance of an Arabic interpreter. While the interpreter did his best to translate the words used, this was not always possible. In addition, the consequence of their words being translated meant that it was not always

possible for the reporter to pick up on emphasis of language, the nuances of it and generally to interpret what might be meant by statements made, as she would when in English. She has recorded her impressions of some emotional responses, where apparent. Phrases in inverted commas are as relayed by the interpreter. The reporter met the children at their respective schools.

Children's age, levels of maturity and capacity to offer views

[62] As speaking with the children and taking their views were facilitated through the interpreter, it was difficult to assess the level of maturity of each child and their capacity to express their view. The reporter asks the court to bear such a caveat in mind when weighing the views of the children. BB is 12 years old and will be 13 in January. He expressed his views with clarity. The reporter formed the impression that he was as capable as any 12-year-old in knowing his own mind and expressing it. She formed the impression that CC was brighter and shrewder than his older brother. His level of maturity was beyond his chronological age of 11. DD struck the reporter as a young girl who observed and understood much and was intuitive but cautious. EE was a very shy little boy whose understanding of his current position could only be very limited.

Children's views on return to Germany

[63] The children did not want to return to Germany. They expressed the view that they wished to remain in their current Scottish town.

BB

[64] BB had been told by the respondent that the reporter would meet him but not why. He described his current town as "nice" although the weather was "50/50". He enjoyed football and would like to play for a team. He had been about to join a team in Germany but that had not happened as he did not have football boots. He liked his current school and felt that this school was "better" than his last school. He could not give a specific reason. He liked the people here and described himself as "very happy here." He could not name any friends in the town or at school. He had come from Glasgow. He "thought it was because of the neighbours we had in Glasgow. They were going to attack us so the Police moved us here." The respondent told him that.

[65] BB remembered that they had come from Germany. Asked about leaving Germany, he said, "at the beginning I was very sad as I was not able to see my friends anymore and my cousins but now I am getting used to it and talk to them on the phone." He felt that living in Germany was "OK" until they "started having problems; the same stuff. We had problems that led us here." He said that he was:

> "talking about family matters. My mum was not faithful to my dad and there were lots of problems and she wanted to get custody of us but we didn't want that because she was hitting us all the time… Mum was hitting me. I didn't tell anyone because she used to intimidate us."

Asked who had told him that the petitioner wanted custody of him, he said:

> "My dad told me some stuff but stuff I witnessed with my own eyes…She was cheating on my dad. I saw her kissing this person. [This was] in Germany but I can't remember when. My brother is younger than me and he used to see more than I did."

He explained that his parents "used to be good but after it changed it was not good anymore."

[66] Asked about returning to Germany, BB said, "it would be very bad, because I would be away from my Dad." He did not know how he would feel if the respondent went back to Germany too. The reporter explained that the judge in Scotland would not decide with which parent he lived with but whether a judge in Scotland or in Germany should make that decision. BB responded, "Yes, I know but I just want to live with my dad." Asked if he would rather live with the respondent in Germany or his current town, he said that he wanted, "to live here." Asked why he preferred his current town, he said "Because I guess if I went back to Germany there would be a lot of problems." He did not know what the problems would be but he would "get upset." He went on to say, "I told both of them, I told them, I'd ask them to stop fighting. I told my mum not to accuse my dad of stealing money and it was not him because he was out with his brother." His parents "fought a lot." Sometimes it was words. "Sometimes my mum started throwing stuff at my dad and he'd hit her and then leave because she'd given him a headache because she was arguing all the time." Sometimes he would see the arguing and become "really upset and leave and go to outside to the park and play with friends and get better." It was clear that BB was very uncomfortable and hesitant throughout this discussion, plainly trying to recall carefully. BB was much more comfortable talking about his friends in Germany. He had friends at school and was friends with his cousins, of whom he had many. He was not able to keep in touch with friends and cousins himself. He had contact with his cousins through the respondent's telephone.

[67] BB asked the reporter to tell the court that "me and my siblings all want to stay with my dad. I don't want to be with my mum. [The] most important thing is to stay with my dad." Asked where he wanted to stay, he said "I'd love to stay here." He then said:

> "It does not matter which country I'm in so long as I'm with my dad but I'd love to stay here. Even though all my friends are in Germany, I still would rather stay here. Tell him me and my siblings want to stay with my dad. It does not matter which country it is."

He said that he and his siblings had spoken and "they also don't want to stay with mum because she hurts us." He wanted to show the reporter a mark on his arm; a scar that looked a little like a red scratch mark, on his right lower arm above his wrist. He explained that this was caused by the petitioner who had very long and sharp fingernails. This had been "done" in Germany. He seemed upset. It seemed BB, appreciating that the conversation was almost over, wanted to be clear that the reporter knew this information. BB had told the respondent and his cousins about his arm. He seemed upset at the recollection of his cousins and was clearly missing them.

CC, DD and EE

[68] CC and DD wanted to talk with the reporter. EE said nothing, looked shy, smiled and looked to his siblings for reassurance. CC wanted to talk with the reporter alone but the two younger children wanted them all to stay together. They agreed to talk together and then the reporter would speak to CC. CC was their spokesperson and said that they had all been told by the respondent that they should speak to the reporter but they did not know about what.

[69] EE said almost nothing. He sat close to his sister (DD). He looked shy and kept his eyes on the floor or on his older brother (CC). DD was initially chatty, nervous and a bit giggly. She has friends in her class. She likes their current town. The reporter asked the children where they liked living best. DD immediately replied Germany. She was then glared at by CC. Her closed hands, formed into little fists and shot up to cover her mouth.

She looked nervous, giggled then said, "I mean here. I don't want to go back because I love my dad." EE's only contribution was in reply to this question. He said, "I'd like to stay here." DD added, "I'd also love to stay here." All three children missed nothing about their lives in Germany except their cousins. While DD made no further contribution, it seemed that she had more understanding of English than she acknowledged. It also appeared that she had a much greater understanding of why the reporter was there and had things she wanted to say but did not. CC was clearly the leader; he asserted his leadership role; and DD accepted that.

[70] CC was very keen to chat. He was a clear, confident and bright boy. He was the most able and mature of the siblings; more confident and clever than his older brother (BB). He loves football and plays in school. He told the reporter that he understood that she was there to speak, "about my mum. My dad and my mum separated a long time ago. My dad used to take me to school and when he was out, she'd go out and she'd go to her friends." He knew this because, "dad told us. When we'd come back from school with dad, we'd not find her home. She'd leave in the morning and come back about 2pm. Sometimes school finished at 1pm". He said that "one time she kicked us out of the house event *(sic)* though we didn't do anything wrong. We didn't know why. She burns us with candles and she does not let me tell anyone." He expanded that "she used to do a lot of things: indecent things. I've seen her many times with a guy she knows and she'd threaten me so I won't tell my dad." The interpreter advised that "indecent things" did not have an English literal equivalent. He expanded:

> "my dad once knew she shouted at him and he took her phone away. She bought another one: an iPhone 14 and she kept cheating on my dad. She threatened me not to tell dad. She accused him of stealing her iPhone 14 even though he didn't do that. I'd always like to be with my dad. He never stole the iPhone."

[71] CC missed playing in his football team in Germany but explained that he would not have still been playing with this team had he stayed in Germany. School in Germany was "ok" but there were a lot of fights. CC then turned the conversation back to the "indecent things" the petitioner had done. He said as before, "She was cheating on my dad. She'd do like indecent things and I'd know and she'd threaten me. I tried to tell my dad but she threatened me not to tell my dad." He went on to say:

> "problems led to their separation. My dad was sitting with my brother and she hit him with a slipper and she contacted the Police and he [dad] had to stay at his brother's house for 5 days and then he came back."

CC knew as he had been there. The petitioner hit the respondent with the slipper and shouted at him for being angry with BB doing his homework. The petitioner had:

> "been on the phone to her boyfriend and she was not wearing her hijab… I was there and I saw her on the phone without her hijab on… once she was on a video call with a guy and he asked her to turn her back to him and I was in the room and I would not let her do it."

The interpreter explained that the request to turn her back was a request to see her backside.

[72] CC was clear that no one had told him what to say. He repeated, "I like staying with dad." Asked if it mattered in which country he stayed if staying with his dad, his initial answer was, "Germany, like normal". He then immediately changed that to "Now I prefer to live with dad in Britain. I used to love Germany but after the problems with my dad and my mum I don't like it anymore."

Whether and if so, to what extent, the children's views are independent of parental influence

[73] Bearing in mind the caveat above, the reporter formed the clear impression that the views of the children were influenced both indirectly and directly by the respondent. It seemed to her that the motivation of BB and CC to remain in Scotland and with the

respondent was driven by the desire to have a more settled life. Both appeared to have been adversely impacted by the "problems" of their parents' marriage. Some of what they knew of these problems had been relayed to them by the respondent. They were clear and deliberate in explaining that they had been beaten and abused by the petitioner. The context in which this was raised was not within the scope of their discussion with the reporter; she did not explore this subject with them. BB and CC raised it. Both children have clearly witnessed some aspects of domestic violence. Both seemed to want to avoid this family difficulty and the obvious upset of it. Their understanding of these "problems" and responsibility for them derived from an acceptance of the respondent's narrative about the marriage and was from his perspective. They accordingly aligned themselves with him. The expressions of their preference to remain in Scotland, in the care of the respondent and not to return to Germany also seemed to be a desire to avoid this conflict. The reporter draws support for her assessment of influence from two particular observations:

(i) BB and to a lesser extent CC were deliberately reticent about some aspects of their life. For example, while not exploring in any way the journey from Germany to the UK, BB had no recollection of anything before his school in Glasgow (where the respondent and children were located prior to moving to their current home). She considers that this reticence was attributable to the influence of the respondent, either directly or indirectly.

(ii) DD's first and immediately articulated view was that she preferred living in Germany. It was clear to the reporter that CC considered that this was the "wrong answer". DD appreciated that at once from how CC responded to her and backtracked. The children have been talking together about their circumstances. It seems unlikely that DD has not been influenced by her

brothers and in particular CC. It is not suggested that this influence is deliberate or malign but rather that it is part of the sibling dynamic.

Whether the children appreciate that the purpose of a return to Germany would be for the German court to make a decision as to where their future may lie

[74] None of the children seemed to appreciate that the purpose of any return to Germany was to enable a German court to make a decision about their future. They all considered that the present court process (so far as they understood it) was about whether this court would let them stay with the respondent. BB and CC knew that there had been court proceedings about their "custody" in Germany. They were clear that they all did not want to stay with the petitioner.

Conclusion

[75] In the reporter's opinion, while the children have expressed their views, the independence of these views is limited.

[76] The teachers at the children's respective schools provided some information and concerns to the reporter in relation to the children. Principally these are welfare concerns. The child BB was enrolled at secondary school on 2 September 2026 and the younger three children at primary school on 19 August 2026 (7/2). The observations in respect of BB are that he appeared not to have made friends at school; was lonely; and his attendance was 79.63%. That is in contrast to CC and DD who are thought to be settling into school, making friends and whose attendance is excellent. The family is described as receiving a lot of support from school and that the children are high on the school's radar. Concerns were expressed about the children's home circumstances.

Decision

[77] The issues for determination are whether the Article 3 requirements are met, specifically whether the petitioner was exercising her rights of custody at the time of removal; whether either the objection or grave risk defences have been established; and if so whether the court should exercise its discretion to refuse to order the return of the children to Germany.

Article 3

[78] I have little difficulty in being satisfied that the children's removal from Germany was wrongful. It cannot be disputed that the children were habitually resident in Germany immediately prior to their removal. I do not understand that the respondent disputes that the petitioner had rights of custody under German law. There is no contradiction of the evidence of Silvia Katzenmaier that the parties had joint custody rights and that by interim order of the German court dated 5 November 2025, the right to determine the children's place of residence was transferred to the petitioner. Ms Katzenmaier has the qualifications, skill and expertise to offer the opinion which she does and I accept her evidence.

[79] The respondent submits that the court should not confuse the existence of the right of custody with its exercise. Further, he contends that following upon the petitioner leaving the family home (on 5 October 2025 on the petitioner's evidence and on 28 September 2025 on the respondent's submission), she did not exercise her custody rights in the sense that she was physically absent from the children's lives and did not care for them. The respondent's position is not supported in law. In *AJ* v *FJ* above at para [11], it was held that once a person has valid custody rights, she cannot fail to exercise those rights in terms of Article 3 short of

acts that constitute clear and unequivocal abandonment of the child. On the available evidence, there is an apparent dispute as to whether the petitioner voluntarily removed herself from the home and children as asserted by the respondent. In contradistinction to that assertion, the petitioner had some limited contact with the children after 5 October 2025 and made an early application to the local court, obtaining an order prohibiting removal of the children from the jurisdiction and the right to determine the children's place of residence. Such immediate and active steps are inconsistent with clear and unequivocal abandonment. In the short period following either 28 September or 5 October 2025 until the children's removal not later than 8 November 2025, I am satisfied that the petitioner was exercising her right of custody.

[80] When the respondent took the children to England, the petitioner was the sole holder of the right to determine the children's place of residence. Thus, taking the children to England was in breach of the petitioner's right of custody. The removal was wrongful under Article 3. The petitioner held the same right jointly with the respondent prior to the interim order. The respondent claims not to be aware of the German court order transferring the right to determine the children's place of residence. However, the German court record for 5 November 2025 infers the respondent's knowledge of proceedings as he had telephoned the court (6/6.9).

Article 13 defences

[81] Having regard to the available material, I am not satisfied that either an objection defence under Article 13 or a grave risk defence under Article 13(b) has been established. I now set out my reasons in relation to each of the defences.

Objection defence

[82] In terms of Article 13, the court may refuse to order the return of a 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. The court has the benefit of the child welfare report setting out the views of the children who were aged 12, 11, 8 and 5 at the date of the report. The children expressed the view that they did not want to return to Germany. Rather, they wished to remain in their current Scottish town.

[83] The terms of the report allow me to be satisfied that the three older children BB, CC and DD have attained an age and degree of maturity at which it is appropriate to take account of their views. I am not satisfied that is the case in respect of EE. I differ from Miss McEwan in respect of whether DD is of sufficient age and maturity. The reporter described 8-year-old DD as a child who "observed and understood much and was intuitive but cautious."

[84] The court then moves to consider the factors set out in *In re M & another* (above) at paragraph 46:

> "These days, and especially in the light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier."

[85] After a detailed exploration of the children's views, the reporter's clear impression is that their views have been influenced both indirectly and directly by the respondent. She concludes that the independence of their views is limited. The respondent refutes any suggestion that he has influenced the children. The reporter, as senior counsel with

significant experience in such matters, relies upon the following: BB's and CC's anxiety to inform the reporter, out of context, that they had been beaten and abused by the petitioner; their apparent acceptance of the respondent's narrative as relayed to them; their alignment with the respondent; BB's reticence to discuss some aspects of his life; DD's spontaneous response that she preferred living in Germany from which she backtracked in response to CC's disapproval; and the sibling dynamics with potential influence by BB and CC. None of the children appreciated that the purpose of any return to Germany was to enable a German court to decide about their future. So far as they understood it, the present court process is about whether they will be allowed to stay with the respondent.

[86] Further, I have regard to the fact that BB misses friends and cousins in Germany; BB's statement that (i) it does not matter which country as long as he is with the respondent and that (ii) although all of his friends are in Germany, he would rather stay here; CC's initial response that he would live in Germany (which he used to love) if living with the respondent, then immediately changed to preferring to live in Britain; and BB and CC's preoccupation with the petitioner's infidelity.

[87] The observations of BB's deputy head teacher that he appeared not to have made friends at school and was lonely sit oddly with BB's assertion that he liked this school. Any objection to returning to Germany does not coincide with the children missing friends and cousins there. I accept that the perspective of BB and CC is coloured by their exposure to conflict between their parents.

[88] I am mindful also of what was said by Lord Malcolm in *W* v *A and X* (above) at [9]:

> "In art.13 cases the age and sufficient maturity test, once passed, is a gateway to the court exercising a discretion, authoritatively said to be 'at large', as opposed to being directed by the Convention to return the abducted child. … A child centric approach is required, with her interests and general welfare at the forefront… If a child is

> integrated in the new community it is relevant to consider the effect of a further, and unwanted, international relocation pending the long term decision."

[89] The respondent submits that the children have been enrolled in school; access health and other support services; and have begun to establish a routine and life in their present community. The court should consider their welfare and emotional stability in Scotland. He asserts that recent social work involvement identified wellbeing support needs but no child-protection concerns.

[90] However, on the available material, this is not a case where the children are integrated into a new community. Having arrived in England in November 2025, they lived subsequently in Glasgow before moving to their present town. They have attended their current schools only since August 2026 and in the case of BB since September 2026. The children's teachers raise concerns about the children's home circumstances and the respondent's ability to care for the children. BB's current school and previous school in Glasgow have contacted the social work department about support and contact with the family. The petitioner was unaware of the children's whereabouts until they were traced through disclosure orders. She has had no contact with the children for one year. The respondent has not responded to requests for indirect contact. To give effect to the expressed objections would be at odds with the children's welfare.

[91] I cannot conclude that any objection to a return to Germany is authentically each child's own objection. The validity of any objection is undermined by apparent influence exerted by the respondent. Rather than expressing a strong objection to return, the children's true focus appears to be on staying with the respondent. In these circumstances, little weight can be attached to the expressed views and a child-centric approach militates against refusal of a return order.

Grave risk defence

[92] The respondent's case is that the children BB and CC disclosed to him that the petitioner had burned them; they described the use of hot water, a cigar, and candles; he has observed visible marks and scars on the children; BB was struck severely in the face by the petitioner, resulting in substantial bleeding; the petitioner repeatedly threatened the children; the respondent sought assistance to protect the children from the YWO, which assistance was refused; and the children were forced from their home. The respondent relies upon photographs at 7/3 said to be photographs of burn marks, injuries and scars relating to BB and CC. The respondent places considerable store upon the petitioner's absence from the home when she returned to Syria during Spring 2025 and met another man. It is his position that the petitioner later left the home voluntarily. When the respondent was denied protection for the children by the YWO and replacement identity documents, he removed the children from Germany and travelled to the UK.

[93] The respondent's evidence draws some support from his nephews' evidence which speaks variously to the respondent reporting mistreatment of the children by the petitioner; the petitioner pulling the children by their ears; hitting them on their hands, faces and heads; keeping the children inside their rooms for extended periods; the children appearing to be frightened; the petitioner shouting at the respondent and at the children; throwing objects at the respondent; and threatening to contact the police during arguments.

[94] Further, BB told the reporter that the petitioner hit the children all the time; and hurt and intimidated them. BB showed a red scratch mark on his wrist which he claimed had been inflicted by the petitioner's fingernails. CC told the reporter that the petitioner burns the children with candles; and hit the respondent with a slipper. Both BB and CC spoke

about the petitioner's "cheating" on the respondent. CC made repeated references to the petitioner doing "indecent things".

[95] The petitioner denies any abuse of the children or of the respondent; denies the specific allegations; and disputes that the photographs disclose any injuries. Her evidence is that on 5 October 2025 the children were removed from the home; she left the home under duress; and shortly afterwards with the help of a women's shelter sought and was granted interim orders in respect of the children against their removal from the jurisdiction and to be returned to her care. Separately, she had reported the respondent's violent behaviour towards her to the police on 10 September 2023 and again on 8 July 2025.

[96] Clearly there is a factual dispute between the parties and most significantly in respect of whether the petitioner hit and burned the children. I observe that the respondent's statement and those of his nephews have not been sworn and are in informal terms; and that the reporter has concerns about the respondent's influence over and sharing of information with the children. Injuries, marks or scars are not apparent to me on the photographs lodged by the respondent at 7/3. However, the court must approach matters in terms of the two-stage approach as set out in *AD* (above) at [26] to [27]:

> "[26] …since the decision of the UK Supreme Court in *In re E* [2012] 1 AC 144, the position where an Article 13(b) 'grave risk' defence founding on domestic abuse is pled, the court's approach is more nuanced. A staged approach is required, with the court first asking itself of the disputed allegations 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 it concludes that there would be such a grave risk,
>
> '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…'. (*In re E*, paragraph 36).
>
> [27] Within the first stage of the assessment, unless there is no *prima facie* case made out at all, it is necessary to evaluate the available material and analyse the nature and severity of the risk to the children. The allegations are assumed to be

> truthful for the purpose of that exercise. It is that analysis that puts the court in a position then to make a proper assessment of whether the proposed protective measures will be sufficient to address or ameliorate that risk…"

[97] Lest it was thought that the two-stage approach was limited to allegations of domestic abuse, the position was put beyond doubt in *The Petition of DM* above at paragraph 81:

> "In *In re E* this court did not say that the staged approach was confined to allegations of domestic abuse. In *In re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10; [2012] 2 AC 257 Lord Wilson JSC, delivering the judgment of this court, stated, at para 22, that 'at a general level, the [staged] approach commended in *In re E* should form part of the court's general process of reasoning in its appraisal of a defence under [article 13(b)]'. He continued by stating that 'the guidance given in para 36 of *In re E* relates to factual 'disputes' and to resolution of the 'disputed issues.'' ….
>
> 82. However, the staged approach cannot apply to all allegations. For instance, it should not be transposed to an allegation that the taking parent will not return with a child to the requesting state: see *In re R (Children)* [2024] EWCA Civ 1296; [2025] Fam 67 at para 41. In that case Peter Jackson LJ stated that if the court was obliged to take the allegation that the mother would not return with the child as true there would be an obvious risk that the effective operation of the Hague Convention would be hindered."

[98] In the present case the respondent principally alleges child abuse by the petitioner as opposed to domestic abuse. Given that the two-stage approach was developed as a pragmatic response to domestic abuse allegations, the same purpose is served where abuse of a child by a parent is alleged. Such an extension does not defeat the operation of the Hague Convention.

[99] There is a *prima facie* case. I differ from Miss McEwan's oral submission on that point. The allegations are assumed then to be truthful. The court must evaluate the available material and analyse the nature and severity of the risk to the children. In that task, it will be apparent that the allegations are general in nature. They do not specify when the alleged incidents took place, their frequency and against which children. The respondent does speak specifically to BB's nose being struck on an occasion. CC speaks to

the mode of burning being by candle whereas the respondent speaks to the children reporting the use of hot water, a cigar and candles. The present exercise is to assess the nature and severity of the risk. If what is described (assuming it to be true) is repeated conduct involving striking and burning one or more of the children, I conclude that the nature and severity of the risk to the children can properly be characterised as grave. There is an interim order of the German court for the petitioner to determine the children's place of residence and for the children to be returned to her.

[100] While ultimately there may be force in Miss McEwan's submission that the respondent's allegations are fabrications, the emphasis for the court is as expressed in *In re E* above at paragraph 52:

> "Where there are disputed allegations which can neither be tried nor objectively verified, the focus of the inquiry is bound to be on the sufficiency of any protective measures which can be put in place to reduce the risk. The clearer the need for protection, the more effective the measures will have to be."

[101] The court's task is to ask how the children can be protected against the risk. The court has the benefit and reassurance of the evidence of Silvia Katzenmaier. That evidence sets out in detail the panoply of steps and orders which may be taken respectively by the YWO and German court. These can fairly be described as flexible and responsive. The German court was able to respond urgently to the petitioner's applications prior to the children's removal from Germany. While 6/6.9 discloses the view of the German court that the respondent was aware of proceedings (as he had telephoned the court) and chose not to co-operate, there is nothing to suggest that the petitioner is unlikely to comply with any orders of the German court. Rather, the petitioner engaged the assistance of the court at the earliest opportunity and had engaged the police prior to that.

[102] In so far as the children may be returned to the petitioner's care under the interim order of the German court dated 5 November 2025, this court can take steps before the children's return to Germany, as envisaged by Ms Katzenmaier, to notify the YWO of their imminent return. That will ensure that an immediate risk assessment is undertaken and appropriate protective measures, if indicated, can be actioned. The available measures are set out fully above.

[103] The respondent has not led any evidence to demonstrate that the German authorities will not be able adequately to protect the children. It is presumed that the authorities of the returning state can adequately protect children unless demonstrated otherwise: *Re C (A Child)* (above) at paragraphs 58 to 60. The respondent does challenge the efficacy of protective measures. It is his position that the YWO previously refused to act to protect the children. I conclude that it is inherently unlikely that the YWO refused to act upon allegations of physical violence (including burning) against children.

[104] The opinion of Ms Katzenmaier satisfies me that sufficient and effective protective measures will be available, if indicated. In these circumstances, the respondent has failed to establish his defence under Article 13(b).

[105] For completeness, I have considered whether there is a grave risk that return of the children to Germany would otherwise place them in an intolerable situation. The context of that would be exposure to parental conflict. The parties will not resume cohabitation. The German courts will regulate exercise of their respective custody rights and will do so in such a way that does not expose the children to parental conflict. In so far as the children express the common wish to live with the respondent (subject to any influence), an order for their return to Germany does not predetermine what will be the children's living arrangements. While the petitioner in her evidence at [35] to [37] above sets out the available arrangements

for the children's care on return, future care arrangements will be determined by the German court.

[106] In reaching the foregoing decisions, I am mindful of the objects of the Hague Convention as noted by Lady Hale in *In re E* above at paragraph 8:

> "The first object of the Hague Convention is to deter either parent (or indeed anyone else) from taking the law into their own hands and pre-empting the result of any dispute between them about the future upbringing of their children. If an abduction does take place, the next object is to restore the children as soon as possible to their home country, so that any dispute can be determined there. …. And there almost always is a factual dispute, if not about the primary care of the children, then certainly about where they should live, and in cases where domestic abuse is alleged, about whether those allegations are well-founded. Factual disputes of this nature are likely to be better able to be resolved in the country where the family had its home."

[107] Further, it is provided in the HCCH good practice guide at paragraph 14:

> "The second underlying concept is that the wrongful removal or retention of a child is prejudicial to the child's welfare and that, save for the limited exceptions provided for in the Convention, it will be in the best interests of the child to return to the State of habitual residence."

UNCRC and ECHR

[108] The respondent invites the court to have regard to Articles 3, 12 and 19 of the UNCRC and Article 8 of the ECHR. He does not suggest that these provisions replace the specific legal tests under the Hague Convention but asks that the children's rights and welfare are properly considered alongside the requirements of the UNCRC and ECHR.

[109] In *In Re E* above at paragraphs 17 to 18, 26 and 52, the court analysed the inter-relationship between the Hague Convention, the UNCRC and the ECHR. It held that the Hague Convention was designed with the best interests both of children generally and of the individual child as a primary consideration, and so, if the court faithfully applied the provisions of the 1980 Hague Convention, it would also be complying with Article 3 of the UNCRC. Further, it held at paragraph 26 in relation to Article 8 of the ECHR:

> "the guarantees in article 8 have to be interpreted and applied in the light of both the Hague Convention and the UNCRC; that all are designed with the best interests of the child as a primary consideration; that in every Hague Convention case where the question is raised, the national court does not order return automatically and mechanically but examines the particular circumstances of this particular child in order to ascertain whether a return would be in accordance with the Convention; but that is not the same as a full blown examination of the child's future; and that it is, to say the least, unlikely that if the Hague Convention is properly applied, with whatever outcome, there will be a violation of the article 8 rights of the child or either of the parents."

Conduct of proceedings: ECHR Article 6

[110] Standing the respondent's final written submission in relation to Article 6 of the ECHR, it is necessary to refer to the conduct of proceedings. The respondent represented himself and was assisted by an Arabic interpreter. At the first hearing, he was encouraged to and assisted with how to obtain legal representation, in circumstances where he was legally represented in the asylum proceedings. The respondent appeared remotely at the second hearing. The only device available to him to conduct a remote hearing was a mobile telephone. By way of submissions, the respondent produced six extensive documents: four in advance of the second hearing; one in response to the petitioner's oral submissions; and a final written submission when it was not possible to establish a stable connection to hear his oral submission. In being permitted to lodge these, the respondent was afforded latitude as a party litigant. Inevitably, it fell to the petitioner's counsel to assimilate the submissions at shorter notice than the court timetable envisaged.

[111] The respondent confirmed throughout that he could clearly hear the petitioner's submissions and when the court addressed him. The difficulty arose when two separate interpreters could not hear the respondent's oral submissions, despite repeated attempts to improve audibility. The respondent was unable to attend court in person because of the travel distance and his childcare responsibilities. He confirmed in writing that the court

should proceed based on his written submissions (updated in response to the petitioner's case) and should not fix a further oral hearing.

[112] The respondent's earlier written submissions contained his "statements". I have reflected those under the respondent's evidence. Similarly, I have reflected the statements of his nephews. None of the statements were sworn. I have nonetheless taken these fully into account and assessed them. I have taken the written submissions fully into account and addressed them. Those submissions seek independent medical examinations of the children. Standing that I propose to order the children's return to Germany, the appropriateness of such assessments can be considered by the German court.

Disposal

[113] Having found that the children's removal from Germany was wrongful and that neither the objection nor grave risk defences have been established, I propose to order the children's return to Germany. The outcome of the respondent's asylum claims remains outstanding. Before pronouncing a final order, I shall put the case out by order to allow the Advocate General for Scotland to make representations and, as appropriate, to be addressed on practical arrangements for a return.

[114] I shall reserve all questions of expenses meantime.