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Neutral Citation Number: [2023] EWFC 297 (B)
Case No. FD22P00365

IN THE FAMILY COURT
IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985
AND IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF
CHILD T (A BOY)
CHILD H (A BOY)
CHILD E (A GIRL)

Date: 28 April 2023

Before:
HER HONOUR JUDGE McKINNEL

BETWEEN:

A MOTHER

Applicant

-and-

A FATHER

Respondent

Ms Sam King KC and Ms Shárin Diegan for the Applicant Mother
Mr Alex Verdan KC and Mr Nicholas Anderson for the Respondent Father

Final Hearing dates :
Reading and father's C2 application dated 17 March 2023 (refused): 22 March 2023
Evidence : 24, 27, 28 March 2023

Closing submissions : 29 March 2023
Draft Judgment circulated : 19 April 2023
Judgment handed down on 28 April 2023

Her Honour Judge McKinnell:

Overview : background, applications and parties' positions

1. In April 2022, Child T, Child H and Child E (“the children”) flew to America with their father. At the time, Child T had just turned 9, Child H was 7 and Child E was 5. The children were supposed to return to their mother’s care at the start of May 2022. They did not return to England until the end of May 2022 following a High Court order obtained by the mother. The father alleged that the mother had physically abused the children causing extensive bruising. When the children returned to England, they remained in their father’s care and their time with their mother was either supervised or, more recently in the run up to the final hearing, supported. Child T has spent very little time with his mother since his return to England.

2. The Court’s ability to fully consider the written evidence in support of, and against, the father’s allegations was limited by the time available at short interim hearings. It was open to the parents to agree interim arrangements. It is only at the final hearing that the Court has the ability to read and consider all the written evidence and hear the oral evidence relied on (and tested in cross-examination) by the parties. The parents have been unable to resolve this matter by agreement. The Court has to decide whether the children should move to live with their father, his wife and their children in America or return to live with their mother in England.

3. To their credit, both the mother and the father are clear that the children must remain living together (whether in America or in England) as a sibling group of three. Neither of the parents argue that the children should be split up, for example with Child T going to live with the father in America whilst Child H and Child E live with the mother in England.

4. In this judgment I am unable to refer to everything that I have read and heard. However, I have taken it all into account. The appearance of any particular matter at any particular stage in this judgment should not be taken as significant because I write this judgment having read, heard and considered all the written and oral evidence and the parties’ submissions and having had the opportunity to reflect on all that I have read and heard. This judgment must be read as a whole.

5. The primary application before the Court is the father's application for permission to remove the children permanently from the jurisdiction. He wants the children to live with him, his second wife and their children (including the children's two half siblings) in America. The father says that he cannot live in England. He has suffered harassment whilst living within a close, conservative religious community in England. His wife does not want to live in England. All, or most, of her family are in America. She described living in England as being her prison.
6. The mother's application, which was first in time, was for the return of the children who had been wrongfully retained in America. The mother opposes the father's application to relocate the children to the USA. She wants the children to return to live with her in England. She says that whilst she would find contact in the USA very difficult if the children moved to live there, she would try her best to make it work. She says that her presence in the religious community in America as a divorced woman, accused of physically harming her children and of being mentally unwell, would be very difficult and an unpleasant experience.
7. Both the parents and the children are devout members of a conservative religious community. They are all bilingual. They speak English although it is not their primary language. There is no doubt that the mother and the father love their children. The children are delightful, intelligent, polite, shy children who love each other, their half siblings and their parents. They will undoubtedly have found all that has happened to them in the last year confusing. Everyone needs these proceedings to end. The family needs to move forward. Relationships need to repair. The children need to know where they are going to live.
8. The parents married in 2011. They were both young. The mother was 20. The father was 18. Their marriage was an unhappy one. The father blamed the mother for the marriage not working. The mother said that they both share responsibility for the breakdown of their marriage. The children were born during the course of the parents' marriage.
9. The parents separated in 2017. The children remained living with their mother in England. The parents agreed spending time arrangements in May 2018. The father moved to live in America in May 2018. The parents divorced religiously in June 2018. The father remarried in America in July 2019. In January 2020, the parents agreed revised spending time arrangements. In December 2020 the father's contact with the children in America started. During that first visit to America in December 2020, the father saw a bruise on Child E's bottom and photographed it. The children were returned to their mother's care and continued to live with her in England. During that time, no concerns were raised about the mother's care of the children. The

children attended school/nursery. They were seen by doctors, dentists, therapists and an osteopath, all arranged by the mother. In October 2018, the father arranged for a private tutor to provide additional tutoring for, and to keep an eye on, Child T and Child H during school time at their school. The private tutor told the father that the children were well looked after by their mother. Child T (the oldest child) found his father's departure particularly difficult. He missed his father. Child T is particularly close to his father.

10. When the children left England for America in April 2022, the plan was that they would spend time with their father's family in America and in Australia. On 11 April 2022, whilst the children were in America, the father noticed bruises on the children when he was bathing them.
11. On 12 April 2022, the children travelled with their father from America to Australia as planned. They arrived in Australia on 14 April 2022.
12. The father's evidence is that he had five conversations with Child T about the bruises. They all took place whilst the children, their father, his wife and their children were staying with the paternal grandparents in Australia. The father said that two of those conversations took place on 18 April 2022, two on 19 April 2022 and one on 23 April 2022. All the conversations took place in the children's first language. The first conversation was not recorded. The other conversations were recorded by the father but not all of the recordings are complete recordings. The father provided transcripts of the recordings translated into English.
13. The father's evidence was that during his recorded and transcribed conversations with Child T in Australia, the children and others (both children and adults) were present in the paternal grandparents' home. The father's wife's evidence was that she went in and out of the room during the first late night recorded conversation on 18 April 2022. The paternal grandfather was heard speaking to the father in the fifth recording, which took place on 23 April 2022. The father's evidence was that people were moving around the house as normal when he spoke to Child T. No doubt, during the late night conversations there was less movement in the house because people were asleep. During the first recorded conversation, Child T suggested going to bed. The father continued with the conversation.
14. The father took a number of photographs of the children's bruises on various dates, namely 19, 20, 23 and 26 April 2022. The children were also photographed by medical professionals in Australia on 29 April 2022. The father even photographed one of the children being photographed by a professional in a clinical setting on 29 April 2022. I am not sure why the father considered that necessary or helpful. The children are shy children, used to modesty, not used to showing their bodies to

others. It must have been deeply uncomfortable for them to be repeatedly seen, spoken to and photographed by professionals. The mother says that it was abusive and part of the father's case building/evidence gathering. In his evidence, the father said that he now regrets some of the things that he did. He says that he relied on advice that he was given at the time. He said that that advice came from a number of sources including his own father and from a New York lawyer. In cross-examination, the father said that he was "*not getting good advice.*"

15. The father took the children to see a number of different professionals about the bruising. The children saw an Australian GP on 20 April 2022. The Australian GP did not complete a body map. No referral was made for a child protection medical. The GP did not say that the bruises were likely to have been caused by inflicted injuries. The Australian GP's letter dated 29 April 2022 refers to what Child T "*disclosed*" to the father. Child T does not appear to have spoken to the Australian GP. In his oral evidence, the father confirmed that the children did not say anything to the GP. Nine days after the children saw the Australian GP, the father took the children to be examined and photographed by A&E doctors at a hospital in Australia. That examination took place on 29 April 2022. The hospital recommended that the children have blood testing. The father was offered appointments that day and the next day (to take account of a Holy Day) but did not take them up.
16. On 26 April 2022, and whilst still in Australia, the father contacted Dr R in America and reported what Child T had told him about the bruising. The father arranged for Child T to see Dr R over Zoom on 27 or 30 April 2022 (the date is not clear). When that Zoom appointment took place, Child T was in the paternal grandfather's house in Australia. The father says that he was in a different room to Child T. During the Zoom appointment with Dr R (who was in New York), A minister of religion E acted as an interpreter because Child T spoke in his first language.
17. The children travelled from Australia to America with their father on 2 May 2022, arriving on 3 May 2022. The father mentioned the bruises to the mother for the first time during a telephone conversation on 3 May 2022, over three weeks after the children had left her care.
18. The father took the children to see Dr O in America on 4 May 2022. The father says that he took Child E to see Dr O because Child E had a sore throat. Dr O ended up examining all three children. By then, it was 24 days after the children had left their mother's care. Dr O reported multiple bruises on all children, healing at different stages, and dated the bruises as having occurred between four to six weeks previously. Dr O was the first medical professional who, having examined the children, supported the father's belief that the mother had caused the bruising to the children.

19. The photographs taken by the father and by professionals show additional bruising to the children since the first photographs were taken. That later bruising occurred whilst the children were in the father's care. The mother does not allege that the father caused that later bruising.
20. Also on 4 May 2022, the father took the children to see an American social worker. A member of a religious community liaison council was present and interpreted from the children's first language to English. A full body assessment was conducted of all three children. No excessive marks or bruises were seen on the children. The children did not make any "disclosure" of physical abuse. The children confirmed that they had "no fear" to return to their mother's care. The father was advised to return the children to their mother in England.
21. On 10 May 2022, the mother made her High Court application for the children's return. The American social worker wrote a letter dated 10 May 2022 stating that the children need to be returned to England by 11 May 2022.
22. There was a hearing before Mr Justice Keehan on 12 May 2022. The father sought, and obtained, an adjournment. There was a further hearing before Mr Justice Keehan on 19 May 2022. Various directions were made including that the mother may attend the children's medical appointments. The father was ordered to return the children to England by no later than 4pm on 2 June 2022. An interim child arrangements order was made in favour of the father. Contact with the mother was directed to be supervised.
23. On 24 May 2022, the mother made a C100 application seeking a child arrangements order with her as the primary carer.
24. On 31 May 2022, the children were returned to England and remained in the father's care. The children have remained in the father's care since then.
25. In June 2022, there was an incident at the dentist when both parents attended Child T's appointment. The mother says that, in the presence of Child T, the father insisted that the mother should not be in the room with Child T because she was not safe. The father and his wife have a different account of that incident. The father and his wife have since made appointments for the children without consulting or notifying the mother. When she gave her evidence, the father's wife did not see anything wrong with that. She said that most of the children's appointments were made by the father and confirmed that this was done without reference to the mother.

26. There was a further hearing before Mr Justice Keehan on 29 June 2022. An independent social worker (“ISW”) was instructed as a single joint expert to provide a s.7 report. The proceedings were transferred to the Family Court and re-allocated to a Circuit Judge. Contact remained supervised. A school report order was made.
27. On 11 August 2022, the local authority prepared a s.47 report which did not substantiate the father’s concerns that the children had experienced physical harm in the mother’s care. The local authority closed its involvement with the children.
28. On 3 September 2022, the father applied for leave to remove the children to the USA.
29. Following transfer and re-allocation, all the hearings at the Family Court have been before me. There have been three hearings before me. They were the Directions Hearing on 16 September 2022, the Dispute Resolution Appointment (“DRA”) on 6 December 2022 and this Final Hearing which started on 22 March 2023.
30. At the directions hearing on 16 September 2022, I made directions relating to the father’s application to relocate, including extending time for the ISW’s report to enable the father’s relocation application to be included in the s.7 report. The time for the ISW’s s.7 report was extended to 25 November 2022. I listed the DRA and the final hearing at the September 2022 hearing.
31. The ISW’s s.7 report is dated 28 November 2022. In his report, the ISW recommended that the children should be returned to live with their mother. The father did not accept the recommendation so a final hearing had to be listed for the Court to determine the father’s relocation application.
32. At the DRA in December 2022, I changed the arrangements so that Child T and Child H could go to the mother’s home from the school bus rather than from the father’s home. That arrangement worked better for Child H because it resulted in him spending time with his mother. Child T was able to remain on the school bus and carry on to his father’s home if he was not willing to get off at his mother’s home. I encouraged the father to step up his parenting to get Child T to spend time with his mother. There was little, if any, change in Child T’s willingness to spend time with his mother. I changed contact from supervised to supported contact and encouraged the father to agree to move towards a more natural arrangement before the final hearing, with the children spending time with their mother without a contact support worker being present. That did not happen. I was told at the conclusion of closing submissions on 29 March 2023 that the father now agreed to there being no third person present supporting contact between the mother and the children.

33. Another aspect of the chronology that needs to be set out is that relating to the mother's mental health. It has been a feature of the parents' relationship, both whilst they were married and after they separated. It has been a feature of this case and it is certainly a feature of the father's, his wife's and his brother's view of the mother. The following events are part of that chronology.
34. In 2016, the father obtained a report from a graphologist in the Middle East who apparently diagnosed the mother as having a borderline personality disorder ("BPD"). The father says that the graphologist was also providing the parents with marriage guidance counselling. The mother agreed that they did see a marriage guidance counsellor in the Middle East. The graphologist's report was not available at the final hearing. I struggle to see how a graphologist/marriage guidance counsellor is qualified to make a diagnosis of a BPD. The graphologist/marriage guidance counsellor's report and diagnosis (which I have not seen) carries no weight in this Court. The mother did not get a copy of that report until 12 July 2017. She said that she did not know that the father had even commissioned it.
35. After the parents separated, the father told the mother's family that the mother was mentally unwell. The mother's family believed the father. It was not until later that the mother was able to persuade her own family otherwise.
36. In April 2017, the mother started engaging in therapy sessions with a Chartered Clinical Psychologist. Between 25 April 2017 and 5 December 2017, the mother had 16 sessions with her.
37. As already mentioned, the mother received the graphologist's report on 12 July 2017. On 11 December 2017, the Chartered Clinical Psychologist, reported her professional opinion that the mother does not have a BPD. That report also sets out, amongst other things, a telephone call that the Psychologist received from the father on 14 August 2017 which, according to the Psychologist's report, ended with the father putting the phone down on her. According to her report dated 11 December 2017, before that telephone call with the father ended, the Psychologist "*explained to [the father] that [she] understood that [the mother] had been misdiagnosed as having borderline personality disorder by a person not qualified to make such a diagnosis and that [she] saw no evidence for this label.*". The Psychologist's report is from 2017. It records a conversation between the father and the Psychologist on 14 August 2017. That took place long before the children's trip to America in April 2022 and long before these proceedings began. The Chartered Clinical Psychologist is not an expert instructed in these proceedings. She is, however, professionally qualified to diagnose whether a person has a BPD or not. The Psychologist's report carries far more weight than that of the graphologist/marriage guidance counsellor.

38. Despite the father being informed about the Chartered Clinical Psychologist's clear view in August 2017, on 14 February 2020, the father's brother wrote to the religious court in England stating that the mother was diagnosed with BPD. He did so in response to the mother's claim that the father owed her money. In his letter to the religious court, the father's brother said: "*...This harassment is unacceptable and we ask the religious court to put a stop to this.....[The mother] will never stop as is the nature of women with BPD. And unless decisive action is taken by the religious court we'll keep on being harassed by her and her family.*". In his evidence, the father said that when the mother asked him for money, he asked his brother to deal with it. His brother wrote to the religious court on his behalf.
39. On 18 February 2020, 2 ½ years after the father's telephone conversation with the Psychologist, the father's "counter claim" in the religious court stated: "*My ex father-in-law needs to take responsibility for his daughter and face the consequences of marrying off a daughter with a pre existing mental illness. I am also requesting a refund of the £13,444.44 paidfor therapy trying to cure my ex wife of a condition that she had before marriage.*". The father continued to allege that the mother was mentally unwell.
40. During the recorded conversations with Child T in Australia on 18 April 2022, the father told Child T a number of things, including that the mother is "crazy", "mad", "sick" and "not well". He told Child T that the mother cannot be helped. When Child T asked whether a specialist doctor or an American doctor could help his mother, the father replied that "*it won't help.....They are good doctors but they can not help such a person.*". The father also told Child T that "*living with such a person is very scary*" and would disturb his studies.
41. The parties have prepared a detailed and helpful 13 page chronology for the Final Hearing which I incorporate into this judgment. I have set out the main events above.
42. I am grateful to the advocates for their detailed and helpful written opening and closing submissions. The two page schedule of photographs taken, which was prepared during the hearing, has been very helpful. I have been greatly assisted by the advocates' hard work, excellent advocacy and comprehensive representation of their respective clients.

The Law

43. The law is straightforward. Relocation applications, whether internal or external, are welfare applications. The welfare of each of the children is the Court's paramount consideration. The Court is bound by the welfare checklist contained in s.1(3) of the

Children Act 1989. The children's wishes and feelings must be considered but they are not determinative. The Court must undertake a global holistic analysis, considering the advantages and disadvantages of each option. The court should not make an order unless it is better for the child(ren) to make an order than to not make an order. Both parents seek an order. Making no order, when the orders sought are for the children either to live in the USA or in England, is not an option in this case.

44. If a party makes an allegation that the Court needs to determine, that party must prove it on the balance of probabilities, namely more likely than not. If there is a dispute of facts, it is either proven or it is not. The Court cannot sit on the fence and say that it might have happened. Findings must be based on evidence, not suspicion or speculation. The Court has to consider the evidence in the context of all other evidence. The Court should not consider a piece of evidence on its own. All the evidence is admissible notwithstanding its hearsay nature. Hearsay evidence is given the weight that the Court considers appropriate. The Court can consider written evidence even if the party does not come to court to give that evidence. However, if someone does not come to Court to give evidence, that person cannot be asked questions if their evidence is disputed. In addition, the Court will be unable to see that person to assess and decide whether they are telling the truth or not. The Court has to decide how much importance to give to that written evidence.
45. The evidence of the parties is important. When a party or witness gives oral evidence in court, the court has a chance to assess whether that person is telling the truth. The oral evidence has to be considered against all the evidence and I remind myself of the fallibility of memories and of oral evidence. The content, consistency and probability of oral evidence has to be considered against all the other evidence. As Peter Jackson LJ said (on 20 September 2021) in ***Re B-M (Children: Findings of Fact [2021] EWCA Civ. 1371***, although *"no judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence"*, in family cases *"a witness's demeanour may offer important information to the court about what sort of person the witness truly is, and consequently whether an account of past events or future intentions is likely to be reliable."*
46. The court has to remember that if a witness lies about one thing, it does not mean that they lie about everything. People lie for lots of different reasons. They might be embarrassed, they might think it makes them or their case look or sound better and so on.
47. The expert's job is to provide an opinion. The court's job is different. The court decides the case having considered all the written and oral evidence. The expert does not decide the case. The ISW is the only Court appointed expert in this case.

He did not hear the oral evidence of the parties and their witnesses. He was not asked to and was not expected to. He was referred to some of the oral evidence given when he gave his own evidence. It is for the Court to consider all the evidence and make the necessary decisions based on all the evidence.

48. The parents and the children have Article 8 rights to a private and family life. The Court can only interfere with those rights if it is necessary, proportionate and in the best interests of the child(ren). The parents have been unable to resolve this matter by agreement. They both look to the Court to make the decision about where their children should live. It was agreed at the close of submissions that the parents would discuss contact arrangements once they knew the outcome of the father's application to relocate.

The evidence

49. The written evidence is contained in the core bundle ("CB", 394 pages), the supplemental bundle ("SB", 389 pages) and the contact reports bundle ("CRB", 936 pages). They have been updated during the hearing with the last updates to each of the three bundles dated 27 March 2023. The SB contains a number of documents that did not need to be included. I have read all the documents in the CB and the SB. I have not read all the documents in the CRB, nor do I need to. Not all of the documents in the bundles were referred to in the hearing. That is often the case at final hearings.
50. I heard evidence from six witnesses over three days. They were:
- (1) The father, on Friday 24 March 2023;
 - (2) The father's brother, on Friday 24 March 2023;
 - (3) The father's wife, on Monday 27 March 2023;
 - (4) The mother, on Monday 27 March 2023;
 - (5) The tutor employed by the father but called as a witness for the mother, on Monday 27 March 2023;
 - (6) The ISW who prepared the s.7 report, on Tuesday 28 March 2023.

The Witnesses

The Father

51. The father clearly loves his children. He spoke about the children thriving in his care and getting on well with each other and with their half-siblings and step-siblings. He said that they were doing well at school. He did not agree with Child E's school report or her form teacher's view that Child E was very clingy when she returned to school in England from America. I found the father's response to that report

surprising. It would be perfectly understandable if Child E was clingy on her return to England. The s.47 report also recorded that. Child E was only five. She had been away from her mother for a while and would have expected to return to her mother's care after her holiday abroad with her father. It must have been very confusing for a young girl, who had always lived with her mother, to return to England and to school but not go home to her mother. Having heard and considered all the evidence, it is clear to me that the father did not accept that school report because it was a report that did not say what he wanted it to say. It may have been possible that Child E was settled in the father's home but clingy at school. The father's response was to disagree with the report, despite not having been at school with Child E.

52. The father spoke a lot about the harassment that he and his family has experienced within the religious community in England. My impression was that he seemed to get more upset about that than he did when he described the bruises he saw on the children. The father spoke of the harassment he experienced when he left his marriage to the mother. He blamed the mother for the breakdown of their marriage. He blamed the mother and her family for the harassment he and his family had received from others within the religious community in England. There is no doubt that the father and his family have experienced harassment whilst living in England, including pornographic pictures being sent to the father's phone and the father and his wife being shouted/screamed at in public. The mother denied responsibility for it, condemned it and said that she had no control over it. The father's evidence was that the children have been impacted by the harassment too.
53. The father struggled to say anything positive about the mother. He spoke about the mother providing the children with food, clothing and getting them to school. Early on in his cross-examination, the father agreed that the children love their mother. Later on in cross-examination, the father said that he firmly believes that Child T *"does like his mother."*
54. The father accepted that he should not have questioned Child T as he did. He said that he regretted the way he asked the questions and the language he used. He said that *"a lot of things were said that should not have been said."* He also agreed that he should not have subjected the children to repeated examinations and being photographed as he did. He accepted that the most concerning bruise on the children was to Child E's tummy and that Child T was clear in the recorded conversations that Child E got that bruise when she bashed herself. The father accepted that it would be difficult to prove that the mother caused the bruises. In his evidence, it was not clear to me (or to the mother's legal team) that the father was not seeking a finding(s) that the mother had caused the bruises to the children.

In his evidence the father said that he was “*not sure*” whether the bruises were caused by the mother deliberately. During cross-examination by Ms King KC, the father said that he believed that the mother had been beating the children up regularly.

55. The father spoke about the bruise on Child E which he photographed in December 2020. He said that he satisfied himself that it was safe enough for the children to return to the mother’s care following that visit. He accepted that there were a number of months after he moved to America when he did not see the children. He saw no difficulty in either his brother or him telling the religious court that the mother had a BPD. He said that he would be content for the mother’s contact in America to be unsupervised and unsupported.
56. The father was unable or unwilling to consider how difficult it might be for Child T to retract what he had said or how embarrassed Child T might feel about what he had said to the father. As far as the father was concerned, Child T had told the truth. The father continues to believe that Child T has told the truth, despite knowing about, and having been cross-examined about, all the difficulties associated with his questioning of Child T and the repeated medical examinations and photographing he subjected the children to. The father maintains that view despite the views of a number of professionals (medical and social workers) who assessed the children at arms’ length and did not support the allegations that the bruising was caused by non-accidental/inflicted injuries.
57. Having considered all of the evidence, my overall impression of the father is that he is a man who listens to what he wants to hear but who dismisses the views of those who do not fall in line with his opinion that the mother is mad, unwell, crazy and abusive. The father has a strong sense of how he has been mistreated by the religious community in England but he has no insight into the impact of his own false allegations against the mother. He has continued to allege that the mother is mentally unwell. The evidence does not support his allegations. Having considered all the evidence, it is clear to me that the father’s view is distorted. His vision is clouded. I did not find him to be a particularly reliable witness. He has not acted in the best interests of his children. It is, however, clear to me that he loves his children and wants them to move to live with him in America.
58. The father’s proposals relating to Child T set out in his solicitors’ correspondence dated 14 February 2023 came late in these proceedings. They were understandably not taken up by the mother. The contact supervisor hardly knows Child T. Her role is as a contact supervisor/supporter, and to stray into other areas leads to a blurring of roles. The therapist proposed by the father previously advised the father to keep the children in America. Therapy is often not recommended whilst children are in

proceedings. It is often said (understandably) that children need to know where they are going to live before meaningful therapy can begin. It is, however, positive that the father is thinking about ways in which he can help Child T. The ISW said in his evidence that the father needs to give Child T permission / his blessing to have a relationship with the mother. The ISW's evidence was that *"If he is not given permission, [Child T] will be harmed throughout his childhood and likely into his adult years. It is likely to affect his relationship with his mother and with his siblings."*

The father's brother

59. The father's brother clearly supports the father. He described seeing his brother unhappy in his marriage to the mother. The father used to share an office with him and told him about the difficulties in his marriage. Like the father, the father's brother blamed the mother for everything – the breakdown in the marriage and the harassment that he and his own children have experienced in the religious community. He said that there was a time when relationships had improved and he had received a cake from the mother's brother. However, things had deteriorated since the father retained the children. The father's brother said that he was no longer able to attend his place of worship. He spoke of the father's second wife being shouted at in public and how that was unheard of in the religious community.
60. The father's brother told the Court that he was going to America with his family for a trial period to see whether they could move there permanently. He told the Court that the children's school had been praying for the mother's success in these proceedings. When she gave her evidence, the mother said that she heard about that for the first time when the father's brother gave his evidence. The father's brother laid everything at the door of the mother and her family.
61. The father's brother saw nothing wrong with accusing the mother of having a BPD in his letter to the religious court. He agreed that he brought it up to stop the mother asking the father for money after the father had remarried. When it was suggested in cross-examination that it was not a particularly attractive tactic/approach, the father's brother seemed unconcerned and said that it worked because the mother did not pursue the money. He continues to believe that the mother is mentally unwell but was careful to say that he is not medically qualified to make a diagnosis. That did not stop him making the false allegation to the religious court in February 2020, long after the father had been told by a qualified psychologist that the mother did not have a BPD.
62. The father's brother has the same negative views about the mother. He believes that the mother is mentally unwell/unstable. His loyalty is towards the father. He

complained about being on the receiving end of false allegations but saw no difficulty in making them against the mother.

The father's second wife

63. The father's second wife described herself as "*a social butterfly*." In many ways, she was very positive and upbeat. She said that whilst she was an outgoing person, living in England was like living in a prison. It was clear that she found life in England, waiting for these proceedings to conclude, difficult. She said that her social circle was small but that the children were happy. She spoke lovingly about the children. She denied that the stress of these proceedings and the harassment experienced by her and her family has had any impact on the children. She said that the children did not pick up on the adults' challenges and difficulties in the community. I found that hard to believe. Children often pick up much more than adults give them credit for and there is no reason to believe that these children are any different. They are intelligent children and they have been through a lot. They are bound to pick up on some of what is going on around them, however hard the adults try to protect them. I am sure that her household is a happy one. The ISW said that it was. However, I do not accept that the children are entirely shielded from all that is going on.
64. On the one hand, the father's second wife told the Court that she did not get involved in these proceedings, yet on the other hand she told the Court that she had listened to almost all of the recorded conversations between the father and Child T. She accepted that she went into and out of the room when the conversations were taking place in Australia. She also told the Court that she had asked the father about his evidence at this final hearing after the father had finished giving his evidence. Sensibly, the father refused to discuss his evidence with her because she was a witness who was going to give evidence.
65. Having considered all the evidence, my assessment is that the father's second wife underplayed the difficulties that the mother would experience as a divorced woman visiting her children in the close religious community in America. Her evidence was that it would not be harder for the mother than it would be for the father. In contrast, when he gave his evidence, the father accepted that it would be harder for the mother than for him. I found the father's evidence on this issue to be more credible than that of his second wife.
66. The father's second wife's household is a busy one. She has two children from her first marriage. She has two children with the father. She is also looking after the three children involved in these proceedings. In her evidence, she said that she is "*not herself*" as a result of all that is going on. She spoke about how she has had to change her son's nursery. She spoke of getting stares when she is out and about in

the community. The mother said that she also gets stared at by some people in the community. Both the father's second wife and the mother spoke about the children and their families being the subject of discussion and gossip. The mother's evidence was that the community has moved on and that the harassment has reduced. The father's evidence was that the harassment was not as bad as it had been. The father's second wife did not seem to agree with that.

67. When the father's second wife was asked what the present view was in her household about the mother's mental health, she said : "*my present view is that there is something wrong. The way [Child T] described it was unbearable.*"
68. I found aspects of the father's second wife's evidence surprising. When she was asked whether it struck her that what the father was saying to Child T during the recorded conversation on 18 April 2022 was totally inappropriate, she answered "no". She said that she did not focus on what the father said to Child T. I found that surprising bearing in mind the father was telling his nine year old son that his mother was "*mad*", "*crazy*", "*sick*" and "*not well.*" The father's second wife said that when she listened to what Child T said, she cried "*on and on and on.*" When she was pressed on this in cross-examination and was asked whether she would think it bad if another person told her child that she was crazy, had ruined their life, had tricked them and would assault them, she accepted that "*if you are telling that to a child, it's terrible.*" When she was asked by Ms King KC whether it would be terrible to then not correct it, the father's second wife said "*the way you said it, it is terrible.*" She then accepted that it would be likely to make a child fearful. When the father's second wife was asked about the ISW's assessment that the mother would be devastated if the children moved to live with the father in America, she said that she strongly disagreed. She also disagreed with Child E's school's evidence that Child E was clingy and found it difficult when she returned to England from America.
69. When she was asked whether she would be prepared to stay in England, the father's second wife said "*No, absolutely not.*" She was entirely honest about that. When she was asked about the children not liking the contact supervisor being with them in the community, she said that she did not know if the children found that embarrassing. I was surprised that she did not know about the embarrassment that the children experienced as a result of the contact supervisor/supporter being present with them in the community. Having considered all the evidence, I find that the children were embarrassed.
70. When the father's second wife was asked about the incident at the dentist on 8 June 2022, she told the Court that she told the social worker (she later said the contact supervisor) that the mother was unsafe. The father's second wife initially said that Child T was not present. She later agreed that Child T was "*in the room the whole*

time.” There was an inconsistency in the father’s second wife’s evidence. Again, having said that she was “*not much involved in the court proceedings*”, she then said : “*when I read Ms [U]’s report, I was shocked and horrified.*” The father’s second wife was referring to Ms U’s witness statement dated 15 November 2022, which she had clearly read.

71. The father’s second wife said that both she and the father had made dental, eye and “*general check- up medical*” appointments for the children without telling the mother. She did not invite the mother to attend a medical appointment after Child E suffered a burn to her arm from a cheesy pizza. She saw nothing wrong with any of that.
72. The father’s second wife clearly supports her husband. She wants to return to America with all of the children as soon as possible. There were some inconsistencies in the father’s second wife’s evidence. She showed little, if any, insight into the mother’s situation. She struggled to see the harm in what the father said to Child T during the late night recorded conversation which she heard parts of. She saw everything through the eyes of the father and her. The father’s second wife could only see the problems in the father’s questioning of Child T, and the allegations made by the father against the mother to her own son, when she was asked how she would feel if they were said to her children about her.
73. Like the father and his brother, his second wife thinks that there is something wrong with the mother’s mental health. I got the clear impression that there would be little, if any, consultation with the mother about the children if the children moved to live with the father and his second wife in the USA. The father and his second wife have not consulted the mother about medical appointments for the children during these proceedings, whilst there has been a level of Court oversight. Having heard her evidence and considered all the other evidence, including the father’s, I have little confidence that that lack of consultation with the mother will improve if the children are living with the father and his second wife in the USA.

The mother

74. Having considered all the evidence, including the mother’s oral evidence, my assessment of the mother is that she is woman with a great deal of insight and emotional intelligence. Her evidence was fair, balanced, measured, reflective and child focused. The fact that she is able to put her children’s interests above her own concerns when she said that she would not want the children’s time with their father to be supervised or supported (whatever the outcome of these proceeding), having experienced supervised and supported contact herself, reflected well on her. I found the mother’s evidence to be entirely credible and completely honest.

75. The mother sees the father's actions as premeditated, intentional or, at the very least, opportunistic. Despite her views about the father's actions, the mother spoke about how important it is for the children to have their father in their life. I believed the mother when she said that she would continue to promote the children's relationship and time spent with their father. The mother's ability to do that has already been tested. She has a proven ability to agree to the children spending time with their father, both in England and abroad and for significant periods of time. She has already done that including at a time when the father had a poor view of her and of her mental health. It was when the children were on an agreed 3 ½ week holiday with their father in April 2022 that the settled, and previously agreed, living arrangements unravelled.
76. The mother described how she was "*quite degraded, quite humiliated and pretty beaten*" when she started seeing the Psychologist in 2017. The mother clearly found those sessions helpful.
77. The mother described a successful and positive ice-skating trip with the children on about 8 March 2023, which was when she last saw Child T. She spoke about Child T gliding backwards and forwards to her on the ice and about how natural and normal it must have seemed to an outsider looking on. She spoke about how Child H had taught her to play chess at the father's suggestion. She spoke about a recent occasion in her home when Child E said that she had forgotten that the contact supporter was there. She described how the children were embarrassed when they were seen out and about in the close religious community with the contact supervisor, who stood out as someone not from the same community. She said that when Child H comes to her house from the school bus, there are never any problems with Child H spending time with her but that when the children come from the father's home (or on one occasion the father drove over to deliver some antibiotics), it is more problematic.
78. When she was asked about whether Child T would be viewed as a whistle-blower, the mother said that she did not think that anyone would put the blame on a child. She said that it was the father, not Child T.
79. During cross-examination by Mr Verdan KC, the mother readily accepted that the harassment suffered by the father and his family was appalling. She agreed that it was probably unprecedented in the religious community. She did not agree that the majority of people in the community took her side. She said that she got stares too. She said that she experienced rumours from as far away as the USA that she was mentally unwell. She said that the school praying for her success was "*terrible*" but said it was one class, not school sanctioned, and that she heard of it for the first time when the father's brother gave his evidence. She did not think it was indicative of

the community and said that the teacher “*did something very wrong.*” The mother readily agreed that it was “*disgusting and appalling*” that someone had sent the father pornography. She said that she had checked the number of the person who sent that material but that it was not someone that she knew. She said that there will “*always be lurid and disgusting people in the community.*” The mother did not see every incident of harassment or poor behaviour as being indicative of the community. She said that “*individuals make decisions.*” The mother believed that the harassment of the father and his family had lessened. She said that in the local community their story had moved on. She spoke about there having been seven or eight divorces since theirs. She said that theirs was “*not the biggest story in the community*”.

80. The mother did not shy away from her view of the father’s actions. She said that she and her family thought that her ex-husband has “*behaved wickedly towards the children.*” She did not agree that her family was the influential presence in the community depicted by the father. She said that her father was a quiet, respected man and that you “*would need to look hard to find my father.*” She said that her brothers did not keep up with gossip.
81. The mother’s evidence was that she thinks that the father “*loves his children but is blinded by his hatred of me.*” She readily agreed that it was normal for the father to ask about the bruising. She accepted that the father would have been worried about it. She said that she would have asked the children about it. She accepted that her children were generally truthful and well-behaved. However, she was adamant that the father’s allegations against her are malicious and false. She was clear that Child T said what he said because the father led him to say it. She described how the word “*bruise*” is now “*like a taboo.*” She said it is “*a dirty word now. The children associate the word bruise with something I have done. I have not done it.*”
82. The mother’s explanation for Child E alleging that the maternal grandparents and the mother had hit her was that Child E has been in the same environment as the father, his second wife and others, and that conversations in that environment are not private. The mother agreed that she has put a cream/antiseptic on the children when they are hurt but said that that was not related to any slap.
83. The mother agreed that the father’s home, place of worship and schools in America would not be strange environments for the children. She agreed that the father had burned his bridges in the community in England. She readily accepted that the father and his wife’s view was that it would be very difficult for them to stay in England. She readily accepted that the children love their half-siblings and that it would be a significant loss to them if their half-siblings returned to America. She readily accepted that Child T would be affected the most. She said that she had

looked into support for the children. She was clear that her relationship with Child T needed to be repaired. She recognised that it is fractured. The mother recognised that it would be difficult for Child T to return to her care, she spoke of their being “*an important transition*” rather than “*just coming home*”, but said that it would be worse for Child T to grow up thinking that without a third party around, the mother would smash his head against a wall. Having experienced supervised and supported contact, the mother did not want the father’s time with the children to be supervised or supported.

84. The only part of the mother’s evidence that I do not agree with was her belief that Child E’s headmistress was put up to report as she did. Of the two school reports, one prepared by Child E’s form teacher and one prepared by Child E’s headmistress (who was new to the school and to Child E), I consider it likely that Child E’s form teacher’s report will be the most reliable. As her form teacher, interacting with her more and on a daily basis, the form teacher would know Child E better. As the headmistress, [name redacted] would have had less interaction with Child E and would not know her as well. However, I consider it unlikely that a professional head teacher would act on another person’s direction (effectively a hired gun) as the mother suggested.

85. Having considered all the evidence, I accept the mother as an honest and credible witnesses. She was certainly more emotionally attuned than the father, his second wife or his brother. She had greater insight into the impact of these proceedings on the children. She made appropriate concessions. She accepted that she called the father’s wife a bitch and apologised for doing so. She was willing to make contact work, whatever the outcome, and I believed her evidence on this. The mother was an impressive witness.

The private tutor

86. The private tutor told the Court that he was employed by the father to spy on the children and report back to the father. The private tutor saw nothing of concern when he worked with the children. He said that when he told the father this, the father let him go.

87. The private tutor is not a member of the religious community. It appears that no-one in these proceedings appreciated that until he said it during his oral evidence. The private tutor is a religious teacher (the head of religious studies at his school) and sees himself as a mediator. He gave evidence about a conversation he had with the paternal grandfather, and separately with the father, in which the father’s wish to take the children from their mother’s care was discussed. That evidence is broadly consistent with the father’s previous concern about the December 2020 bruise on Child E, which the father photographed at the time. It is also consistent

with the father's and his family's view that the mother was abusive, mentally unwell and unsafe. I found the private tutor to be a credible witness and his evidence about the basis on which the father hired him is consistent with the father's views of, and attitude towards, the mother.

88. In his evidence, and with the assistance of the Court arranged interpreter, the private tutor clarified that the translation of the native word to "offer" (which appears in his text dated 22 December 2022 to the father) was not an accurate translation. The native word can mean "offer" or "suggestion". I am satisfied that the more accurate translation of the word in that text was "suggestion" not "offer."

The ISW

89. The instructed independent social worker is a highly experienced ISW. He has been a member of the High Court Cafcass team. He was the single joint expert put forward by the parties and approved by the Court (Mr Justice Keehan). I have read, heard and considered all the evidence and, having done so, I find his s.7 report to be balanced, considered, child focused and reasoned. During cross-examination, the ISW's recommendation that the children return to live with their mother remained unchanged.
90. The ISW described cases involving communities as more complex. He described this case as "*highly unusual*." He agreed that features of this case make it particularly complex and difficult. He described how he felt eyes upon him when he went into the community and the schools. He was very conscious that he was there as an outsider. He described the community as very polarised in respect of this matter and considered it very likely that the father had suffered the harassment he complained about. He described that level of harassment as "*appalling, unprecedented*." He described the sending of pornographic material to the father as "*shocking, beyond the pale*." He described the children as "*hypervigilant to being observed*" and believed it reflected their experience of supervised and supported contact. The ISW's recommendation in November 2022 was that contact should no longer be supported and that Child T should be spending time with his mother.
91. The ISW spoke highly of the children's care in the father's and the mother's households. He described both parents as proud and supportive of their children's academic achievements. He described a happy and busy household in the father's home. He described a happy and calm household in the mother's home. He admired the mother's strength, resilience and quiet determination to get the children back. He described how the mother whizzed around the kitchen to make Child E's favourite soup – broccoli and cauliflower. He described the father as "*engaging... a competent father... genuine, determined, clever and kind*." When he

was told that the father maintained in his oral evidence his belief that the mother was a ritualistic abuser, the ISW's view was that that "*does not bode well.*" He said that it "*did not speak well of contact in the USA at all.*"

92. The ISW described the children as "*lively, bouncy, slightly mischievous children.*" He said that any parent who saw bruises on their children would want to know what caused them. His view was that why else would the father bring himself to court if he was not worried about his children. However, his evidence was that the father gave the appearance of going "*safeguarding shopping.*" He described the opinions of the medical professionals in the USA (which was based on what the father had reported to them) as "*very high end ritualistic abuse*". He described the photographs taken of the children as "*hideously traumatic.*"
93. The ISW's evidence was that the father is able to meet the children's physical and educational needs. He said that the father had demonstrated his capacity to care for the children in quite difficult circumstances. He spoke about how former partners often accuse the other of having mental health problems after relationships break down. It was not uncommon. He did not see this case as a parental alienation case.
94. The ISW believed that the mother would promote the father's contact with the children. His sense of her was that she saw the role of the father within the community as really important. He considered it very unlikely that the mother would allow the children to grow up "*dissing their father.*"
95. The ISW saw Child T as a child who had "*broken ranks*" and who had "*pointed the finger at his mum.*" He said that you needed to look at why Child T was saying that he wanted to go and live with his father in America. The ISW believed that Child T missed his father a lot when the parents separated. He thought that Child T had suffered emotionally and that Child T did not want to lose his father again.
96. The ISW was most concerned about the need for Child T's relationship with his mother to repair. He said that the children's "*fundamental relationship*" was with the mother. He described their relationship with their half and step siblings as "*collateral.*" He was clear that the children's relationship with the mother needed to be fixed and that, once that was fixed, relationships with others could be looked at. The ISW described the children's relationship with their mother as "*the most important relationship*" and said that "*it has to be the launch pad for other relationships. You can't go through life with the relationship with the mother so awry. It won't serve them well.*" In effect, the ISW said that it would be very harmful to Child T if Child T left for America thinking that his mother was a dangerous abusive mother who could not be trusted to keep him safe. He said that wherever Child T lives, he is going to need help.

97. The ISW recognised the change that would take place if the children now returned to live with their mother. He recognised the loss which the children would suffer if they were separated from their half-siblings and the father's second wife's children, but he was clear that the children's relationship with their mother was more important than their relationship with their half or step siblings.
98. The ISW considered it "*inescapable*" that the mood in the father's household could not be hidden from the children. He described it as "*a mood, a feeling, a sadness.*" He said that it was likely that the children would pick up on the father and his second wife feeling harassed.
99. The ISW described his interviews with the children as not his finest. The children were very quiet and shy. They were reluctant to speak to him. When he met Child E at school, Child E was inconsolable as she sat on the head teacher's lap. When he met Child E later at the mother's house, Child E became more comfortable around him and at one point touched/held his hand. The ISW said that what the children alleged to him was "*absolutely lightweight.*" The father was not present when the ISW spoke to the children. The ISW agreed with Ms King KC that when the children spoke to the American Social Worker in the absence of the father and said that they were not fearful of returning to the mother's care, that was a particularly significant comment.
100. The ISW was confident that the religious community in England would not hide safeguarding issues. He spoke highly of the designated safeguarding teacher at the boys' school. He also said that Child E's headteacher had made her views known, even knowing the strength of feeling in the community. The ISW was confident that Child E's headteacher would report any concerns that she had in the future. She had spoken up so far. The ISW considered it "*very unlikely*" that any safeguarding issues would be covered up.
101. I found the ISW's evidence to be fair, balanced, child focused and realistic. He referred to the positives in both parents, in the father's second wife and in both households. He recognised the difficult dynamics in this case. He was sympathetic to both parents' situations and he took account of the harassment suffered particularly by the father and his family. He recognised the impact of the Court's decision, whichever way it went, on the unsuccessful party but his focus was on the welfare of the children. The ISW's assessment remained that it was in the children's best interests to return to live with their mother in England. Even taking the father's concerns at their highest, the ISW considered that the risks could be adequately safeguarded if the children lived with the mother in England.

102. In his oral evidence, the ISW was open to both sides' questioning. In my judgment, that does not undermine his credibility or his conclusion (that remained unchanged) that it was in the children's best interests that they return to live with their mother. The ISW did not have the benefit of hearing all the evidence but he dealt with it fairly when it was put to him in questioning by the parents' respective advocates. The ISW's view was that this matter was finely balanced but his recommendation that the children return to live with the mother and remain with her in England was reasoned and clear.

Findings

103. It is not necessary to determine every dispute between the parties. I make findings on the issues that I consider are necessary to be determined. The findings that I make in this judgment are made following consideration of all the written and oral evidence. As the trial judge, I have the advantage of considering all the evidence. My findings are made on the balance of probabilities, namely more likely than not.

104. In his closing submissions, the father informed the Court through his counsel that he did not invite the Court to make findings about the physical abuse allegations. The father's position was that he believes Child T was telling the truth and he believes that the mother has physically abused the children. However, he sees the difficulty the Court will have in making those findings on the evidence, so he does not invite the Court to make them.

105. I consider it necessary that I determine the allegations of physical abuse. They were the basis of the father (a) retaining the children in America, (b) persuading the Court that the children should live with him in England whilst those findings remained undetermined and (c) persuading the Court that the mother's time with the children should be supervised and later supported. The allegations against the mother, which were made in less than ideal circumstances, and which the father continues to believe are true, have led to the children living with their father, rather than being returned to their mother on 3 May 2022 as had previously been agreed. They have led to the children's time with their mother being supervised or supported in the last 11 months or so. They have had an obvious and significant impact on the children and the parents and their respective families. Unless and until they are determined, they will continue to overshadow this family, be the source of rumour and innuendo and are likely to drive decisions made and actions taken by the parents and others as the children grow up. Of course, I recognise that the findings I make may not be accepted. That is a risk in any case.

However, to conclude these proceedings without determining the serious allegations made against the mother would, in my judgment, be wrong.

106. The children need to know whether their mother is the abusive, mad, harmful mother that the father says and believes she is.

Is the mother mentally unwell and/or does she have a borderline personality disorder?

107. I find that the mother is not mentally unwell and does not have a BPD. The Chartered Clinical Psychologist saw the mother for 16 sessions over a period of 7 ½ months in 2017. Whilst the Psychologist is not a court appointed expert in this case, and quite properly I did not hear from her, she is professionally qualified to make a clinical diagnosis of BPD. She saw the mother long before this case began and over a considerable period of time. Her clear view in 2017 was that the mother does not have a BPD. The graphologist's report (which has not been produced) and the father's, his second wife's and his brother's views about the mother's mental health and supposed clinical diagnosis have no credible evidential basis. The father and his brother complained about the harassment they suffered and the impact of false allegations being made and spread around the community. However, they saw no difficulty in sharing their own baseless and false allegations about the mother's mental ill-health and diagnosis. They showed a concerning lack of insight on this issue. The mother was far more insightful and emotionally attuned than the father, his wife or his brother. There was nothing in the mother's evidence, presentation or demeanour to support the allegation that the mother is mentally unwell or that she has a BPD. The unseen graphologist's report is of no evidential value whatsoever. Graphologists and/or marriage guidance counsellors have no business making diagnoses of BPD. There are no medical or other professional records or opinions that support the allegation that the mother is mentally unwell or has a BPD. There are no records of any engagement with any professional services or organisations (including the children's schools, doctors, dentists, therapists, police, community leaders) which support the allegation that the mother is mentally unwell or has a BPD.

Has the mother physically abused the children?

108. I find that she has not. More likely than not, the bruises seen by the father on the children and shown on the numerous photographs were as a result of normal play and activities by three active and boisterous children. Child E had obvious scrapes to her knees. Children often scrape their knees. The mother's evidence was that she applied antiseptic cream to her children when needed. In one of the recorded conversations, Child T spoke about the mother applying a cream after the children were slapped by the maternal grandparents. Child T was clearly confusing

his stories. It would be odd to apply antiseptic cream to a slapped/hit area when skin is unlikely to have been broken (and there was no suggestion that any slap broke the skin). It would be perfectly normal to apply antiseptic cream to a scrape on a knee or broken skin in other areas. The photographs clearly show bruising to the children's lower legs/shins. These are areas that often get bruised when children run around and play. The children also undertook long haul flights where they were in confined spaces. They could have accidentally bashed themselves as they moved around on the planes. The suggestion that the mother has bent down to cause those bruises and scrapes to the children, including to Child E's lower legs and knees, is simply not credible.

109. It is telling that the children suffered additional bruising whilst in the father's care in America/Australia. No-one suggested that those later bruises were as a result of physical abuse by the father. The father was offered blood tests for the children in Australia. He did not follow that up either in Australia, America or in England. When the children were assessed by the social worker in America, and were spoken to with the assistance of a community member interpreting, the children did not make any allegations of physical abuse. They confirmed that they had no fear of returning to their mother in England.

110. Although the father suspected that the mother had caused bruising to Child E in December 2020, he did nothing about it other than employ a private tutor to keep an eye on the children. The private tutor told the father at the time that the mother was caring for the children well.

111. Whilst the children were living with their mother over the years, they were seen by a number of professionals (including doctors, dentists, therapists, osteopath, school and nursery staff), friends and family. No-one raised or reported any concerns about the mother's care of the children. They were doing well at school. They are polite, well behaved children. Child T struggled after his father left. The mother arranged for Child T, and later Child H, to see a therapist. The private tutor kept an eye on the boys at school. His evidence to the Court (which I accept as truthful) was that the mother looked after the children well. There is no credible evidence that the religious community has hushed up any abuse. Whilst the father sought to portray himself and Child T as whistle-blowers, there is no credible or reliable evidence that there was anything untoward to blow the whistle on.

112. In the recorded conversations between the father and Child T, the father told Child T that the mother was a number of things, including mad, crazy and abusive. The father clearly led Child T into making the allegations of abuse. Whilst the father questions why Child T made the allegations in the first place, the Court does not

know what the father said to Child T in the first unrecorded conversation. Based on all that I have read and heard, the likelihood is that if there was an initial unrecorded conversation as the father alleges, the father drew the allegations out of Child T and developed them as he did in the later recorded conversations. I have no confidence in the father's evidence that the allegations came first and unprompted from Child T. More likely than not they were led and encouraged by the father from the outset. The father believes the mother to be mentally unwell, unsafe and abusive. He blames her for everything and does not hold back in expressing his views about her.

113. It is clear from the recorded conversations that the father both led and developed the allegations made by Child T during those sessions. Even then, Child T's account is inconsistent and confused. The allegations became more serious as the father's recorded questioning progressed. At the start of one of the recorded conversations, Child T said that his mother did not hit Child H. By the end of the recorded conversation, Child T was saying that his mother beat and hurt them all regularly with Child H being slapped every day. The father's questioning clearly tainted the allegations. The transcripts highlight the inconsistencies in what Child T was saying to the father. They also show inconsistencies between what Child T said to the father and what he said to other professionals. At one point in his recorded conversation with the father, Child H said that the mother was last angry a week before A Religious Festival, which fell on *[date redacted]* in March 2022. As I set out later in this judgment, that places the bruises outside the timeframe identified by Dr O. At another point in the recorded conversation, Child T said that there were daily assaults. The mother's written closing submissions contain an accurate analysis of the difficulties, inconsistencies and exaggerated claims (for example the biting allegations and the allegations relating to Child E) in Child T's recorded conversations with the father. I agree with that analysis. In his evidence, the father tried to brush those off as "*small inconsistencies*". They clearly were not. The father did accept that "*not everything [Child T] says adds up.*" He was right about that.

114. During the first recorded conversation, Child T was a tired young boy, away from home, back with his father who he missed and adored, and was being questioned at length about bruising, whilst getting very clear messages from his father that his mother was to blame because she was mad, abusive, unsafe, violent and would disrupt his studies. At times, Child T questioned his father. At one point Child T suggested that they go to bed. He was tired. He had just turned nine. He had travelled from England to America and then on to Australia in the space of a few days. Instead of being left to rest and adjust, the father carried on questioning Child T and said things to Child T which likely poisoned Child T's mind against his mother. How could they not? The language used, and the accusations made by the father against the mother, in the recorded conversations with Child T in Australia are

shocking and shameful. It is likely that what the father said to Child T in private was no better. The father did not hold back in the recorded conversations with his young son. He was vocal in his views about the mother in public at the dentist on 8 June 2022. He has said things without any regard to Child T's presence, age and vulnerability. The father's actions have had a clear impact on Child T's view of, and relationship with, the mother. The mother's evidence about the incident at the dentist was credible and I believed her. It is consistent with the father's long held views about the mother. Those views were made known to Child T in the clearest possible terms by the father he loved, missed and did not want to lose again.

115. On any view, the way in which the father questioned Child T was clearly wrong. No-one expected the father to conduct an Achieving Best Evidence ("ABE") compliant interview. He had no reason to know the ABE guidelines at the time. However, any reasonable parent would know that it would be wrong to suggest/say the sort of things that the father said to Child T about the mother and that it would be wrong to subject a young and tired child to the intense, leading, suggestive and relentless questioning seen in the recorded conversations. In all the circumstances, the Court cannot rely on the allegations made by Child T in the recorded conversations with the father. They are clearly contaminated and unreliable. The father now accepts the evidential difficulties with those recorded conversations. Child T is not to blame for any of this. Once the allegations were drawn out, it would have been very difficult for Child T to withdraw them. The fact that they were not repeated to professionals when the father was either not present or not in the same house as Child T is telling.

116. The father's suggestion that Child T did not tell the ISW about the alleged abuse because Child T may have forgotten it over time, having lived in a safe environment with the father, was both surprising and lacked credibility. If the mother had regularly abused the children as Child T eventually alleged, more likely than not Child T and Child H would remember it. If Child T had forgotten about the abuse as the father suggested, it does not explain why Child T has refused to spend time with his mother. When Child H and Child T spoke to the ISW, the accounts they gave (and, in Child H's case, whispered) of what happened to them in the mother's care were very different to the allegations made by Child T in the recorded conversations. When he spoke to the ISW, Child T described falling off the bed when his mother moved her leg. Child H whispered that he did not say that his mother hit him. The fact that Child H whispered his responses suggests to me that Child H knew that what he was saying would not be well received in his father's home. Child H told the ISW that his mother had hit Child T once but could not give details. He said that he had not seen his mother hit Child E. Child H's account did not come close to the allegations made by Child T during the recorded conversations Child T had with

his father in Australia. There was no mention of daily beatings and abuse. The father's suggestion that the children may have forgotten about the daily beatings is not credible.

Why did Child T make the allegations?

117. Child T is a boy who is very close to his father. He missed his father when his father left the marital home. No doubt he missed his father and felt his loss when his father moved to America. No doubt he missed his father when his father did not take up contact for eight months or so after the father moved to America and before he remarried. Child T looks up to his father. He wants to be with his father. He does not want to lose his father again. Child T was clearly drawn into the allegations by the father's questioning and by what the father told Child T about the mother.

118. It is clear to me, and I find, that Child T made the allegations against the mother because he was led to do so by the father. Child T was questioned at length. He eventually said what it was clear the father wanted to hear. Child T was tired. He wanted to go to bed. His father continued with the questioning, allegations and suggestions. It is notable that when Child T made allegations to professionals, the father was either present or close by/in the same home. However, when Child T was spoken to in the absence of the father (to the America social worker and to the ISW), Child T did not repeat his allegations. When speaking to the America social worker in the absence of the father, Child T, Child H and Child E showed no fear about returning to live with the mother. Earlier the same day, but when the father was present, Dr O reached very different conclusions. For reasons which I refer to later, Dr O's report is of no evidential value. When speaking to the ISW in the absence of the father, Child T referred to an occasion when he was told to get off his mother's bed and when the mother moved her leg, he fell down. That account was very different to the allegations Child T made to the father in the recorded conversations of being beaten, slapped, kicked, bitten and stamped on. I am in no doubt that the father drew the allegations out of Child T, having told Child T terrible things about his mother including that she was abusive, mad, unsafe and devious.

Were the repeated questioning, medical examinations and photographing of the children harmful to the children?

119. I find that they were. In his oral evidence, the father said that he regrets the repeated photographing of the children. He agreed that it would have been very uncomfortable for the children, particularly when strangers/professionals were involved. The mother said it was abusive. I agree with the mother. It was abusive. It was unnecessary. It was harmful. It should not have been done. The father is an intelligent man. The father may well have been "*in total shock*", "*devastated*" or "*lost*" as he described in his oral evidence, when he first saw the number of bruises

on the children when they arrived in America. It does not explain why the father continued to subject the children to repeated questioning, medical examinations and photographing in America and in Australia.

120. On any view, what the father said and did during the earlier recorded conversations with Child T in Australia was both shocking and wrong. It is shocking that the father has not corrected any of that. As far as Child T is concerned, the father believes, and has told Child T in no uncertain terms, that the mother is mad, crazy, devious, uncaring, violent, scary, unsafe and going to disrupt his studies. The harm continues.

Was the father expert shopping in Australia and America?

121. I find that he was. The father sought the advice of a number of medical professionals. He disregarded the advice that he did not want to hear and moved on to the next expert. When he did not get the answer he wanted, he moved on to another professional. If the father was concerned to get to the truth, why did he not speak to the mother? Why did he not stop his enquiries when it was clear that professionals did not support his belief that the mother had inflicted the bruises on the children? The father carried on until he eventually found a medical professional, Dr O in America, who examined the children and supported the father's allegations.

122. However, there are a number of obvious difficulties with Dr O's report. The father appears to accept that now. It is well known in this jurisdiction that bruises are notoriously difficult to date. I doubt that any respected medical expert instructed in family court proceedings in this jurisdiction would have reached the same conclusions as Dr O. The report prepared by Dr O does not meet the standards required of a court appointed expert. Of course, Dr O was not appointed as an expert in these proceedings. It is notable that Dr O's commentary for each child is identical. It does not reflect a thorough assessment of the children or even an assessment of the children in the absence of the father. The Court can attach no weight to Dr O's report. It was, however, just what the father had been searching for.

123. It is notable that Dr O's time frame (four to six weeks) does not fit with Child T's account of the last occasion that his mother hit him. In his recorded conversation with his father, Child T said that the last time the mother was angry was a week before A Religious Festival. In 2022, A Religious Festival fell on [date redacted] March 2022. That would place the last episode of anger at around [date redacted] March 2022. That would have been [number redacted] weeks before Dr O saw the children. By the time they saw any medical professional, they had been on two long international flights from England to America and then on to Australia. By the time

they saw Dr O, they had been on their third long flight from Australia to America. They were aged 9, 6 and 5 at the time. As I have said earlier in this judgment, most children have bruises on their bodies. It is part and parcel of being an active child. The children have been described as active, boisterous children. Most of the bruises on the children were in areas where bruises are often found and are normally associated with accidental bruising – legs, arms etc. No doubt, the children were active and playful in the period before they left home to travel to America. They were then in restricted areas in an aeroplane’s cabin on three long haul flights before they were seen by Dr O. They suffered further bruising whilst in the father’s care in America/Australia. The most reliable examinations were carried out by the A&E doctors at the Hospital in Australia and by the American social worker. Neither of those examinations supported the father’s allegations that the bruising was the result of injuries inflicted by the mother.

124. The father also now sensibly accepts the difficulties in relying on the content of Dr R’s interview of the children.

Was there a series of unfortunate events?

125. I find that there was not. At the very least the father was opportunistic. At worst, the father has always planned to remove the children from the mother’s care. The father has clearly felt mistreated by the religious community in England following the breakdown of his marriage to the mother. Having read, heard and considered all the evidence, I understand why the mother may believe that the father has been evidence building from the start. However, on balance, I consider it more likely than not that the father saw the bruises in April 2022, decided that they must have been inflicted by the mother, did not bother to speak to the mother either directly or through an intermediary to see if there was an explanation for the bruises and set about pushing his own narrative onto his son, drawing Child T into the father’s theory that the mother was mad, bad and unsafe. The father then tried to build a case that would enable him to keep the children with him in America for good. I am certain that the father thought that the children would remain in America. He underestimated the mother’s strength and resilience. He only returned the children to England when the High Court ordered him to. He returned the children to England but he continued to assert that the children had been physically abused by the mother. He did not expect to be in England nearly a year later waiting for these proceedings to take their course. The father now relies on the fact that the children have been living for him for nearly a year in support of his application, but he does not now seek findings about the alleged abuse. He has continued to insist on a professional supervising or supporting contact despite knowing that the children find this embarrassing. The children’s embarrassment has been raised before me at previous hearings. I do not accept that there have been a series of

unfortunate events as the father suggests. The father has made conscious decisions along the way that have led to where we are today. Those decisions have been driven by the father's continuing baseless beliefs about the mother's mental ill-health and perceived risk to the children. They are in line with his ongoing damaging narrative about the mother. It is clear to me that when the father embarked on his course of action which has led to this contested final hearing, he had no idea that it would result in him having to return the children to England and move his then pregnant wife and America based children to England for 10 months or so. I have to wonder why the father continued to insist on supervised and later supported contact if, at the final hearing, he was not going to seek findings about the abuse allegations. The material relied on by the father has been available to him throughout these proceedings. The father's actions have resulted in the children seeing their mother in unnatural circumstances and is likely to have reinforced any belief they have, or have been given by the father and/or his family, that the children are only safe with their mother if there is a third person supervising or supporting their contact. That is what the father's second wife told the person at the dentist, not knowing whether they were a social worker, the contact supervisor or an employee/manager of the dental practice. The father would do well to take responsibility for decisions he has made over the last year or so.

Why does Child T not want to see his mother?

126. There are a number of reasons why Child T might not want to see his mother. He may feel embarrassed about what he said in America and Australia. He is probably struggling to understand all that has happened to him and his siblings over the last year or so. He may feel guilty about his siblings living away from their mother. He may feel scared of his mother or of what might happen if he returns home to her. He clearly wants to live with his father in America. However, his view of his mother and his relationship with his mother has been negatively impacted by the terrible things that the father said (and has not corrected) about his mother during the recorded conversations in Australia. It is telling that when Child T went ice-skating with his mother and siblings last month, he was able to glide back and forth on the ice to his mother and, according to the mother, anyone looking on would have had no idea that the family had become so fractured. I found the mother's evidence on the ice-skating trip credible and I accept it as truthful.

127. The father has never corrected Child T about what was said during the recorded conversations in Australia. It is not surprising that Child T does not want to spend time with his mother, who he has been told is crazy, mad, has no feelings for him, tormented his father, is sick, has a smile that is worthless, cannot be cured, is scary to be around, will disturb his studies, will kick anyone who says that she is not well, hides her true self, is not normal, is the only mother amongst his friends like

that and will be put in prison. The list is long. It is shocking. It is disturbing. It is bound to have affected Child T's view of his mother. In his oral evidence, the ISW was surprised to hear that the father had not corrected all of that. It drew the ISW closer to the mother's theory that the father's conduct had been more sinister.

Is the mother responsible for, or able to control the harassment that the father and his family has suffered in the religious community in England?

128. I find that she is not. The mother told the Court that she checked the phone number of the person who sent pornographic images to the father. It was not a number she recognised or had. The mother told the Court that the first time she heard about the school class praying for the mother's success in these proceedings was when the father's brother gave evidence about it in Court on 24 March 2023. I believed the mother's evidence. She was a credible and truthful witness. Having considered all the evidence, I believe that if the mother had the power/ability to control the harassment levelled at the father and his family, she would have done so, not least because it was likely to improve matters for her and the children.

Is the father likely to support the mother's contact with the children if the children move to live with him in America?

129. I find that he is not. His view of the mother remains the same. He continues to believe that she is mentally unwell. He sees her as a risk to the children. He believes that she has physically abused the children. Child T has spent very little time with his mother whilst he has been living with his father. Child T's relationship with his mother needs to repair and the father has been unable or unwilling to improve that during these proceedings. Things are unlikely to improve once the spotlight of proceedings is removed. The father has not corrected what he told Child T during his recorded conversations in Australia nearly a year ago. The father and his second wife see nothing wrong with the children's medical and dental appointments being made and attended without any reference to, or consultation with, the mother. They have disregarded the agreement about the mother attending the children's medical appointments set out in recitals to the Court Order dated 19 May 2022 made by Mr Justice Keehan. In their oral evidence, they saw nothing wrong in that. I found it odd that the father's second wife twice said of the mother, when discussing contact arrangements if the children moved to the USA, : "*she will always be their mother.*" It struck me as dismissive of the mother's hands on role in the children's lives and of her parental responsibility. The father's second wife did not see the mother's position as more difficult than the father's as a divorced woman in the religious community. To his credit, the father did. The father and his second wife present a united front. They both see the mother as someone who is mentally unwell, or not quite right, and unsafe. It is concerning that during these proceedings, Child T, a boy of nine, has hardly seen his mother. The father's

ability to promote contact when the children are outside proceedings and living in America is untested and, having considered all the evidence, I consider it unlikely that the father will promote the children's contact with their mother if they move to live with him in America. He still believes that the mother is crazy, mad, has beaten, hit, kicked, bitten and jumped on the children on a regular basis. He continues to blame the mother for everything.

130. I also consider that there is currently a significant risk that if the children go to America, or indeed abroad, to spend time with the father and his family, Child T will be reluctant to return home to the mother and that this will result in further disruption to the children including further proceedings.

The welfare checklist : s.1(3) of the Children Act 1989

- (a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);**
- (b) His physical, emotional and educational needs;**
- (c) The likely effect on him of any change in his circumstances;**
- (d) His age, sex, background and any characteristics of his which the court considers relevant**
- (e) Any harm which he has suffered or is at risk of suffering;**
- (f) How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;**
- (g) The range of powers available to the court under this Act in the proceedings in question.**

131. Child T clearly wants to continue to live with his father. He wants to move to America. He is the oldest of the children but he is still a nine year old boy without any real concept or understanding of the impact of a move to America at this time. He cannot be expected to understand the implications of leaving his mother, his maternal family, his school and community ties to live in America. He cannot be expected to understand the impact of leaving when his relationship with his mother is so fractured and damaged and framed by a false narrative and false allegations. Child T would move to America and live in the belief that his mother has beaten and abused him and that he is not safe in her care. That is likely to adversely affect his emotional development and his ability to enter into and build other healthy relationships, both as a child and as an adult. It is also built on a falsehood. If Child T moves to America, his relationship with his mother is unlikely to repair. He will be thousands of miles from his mother and living in a household and experiencing an environment where his mother is seen as crazy, dangerous and deceitful. Child T's wishes and feelings are undoubtedly based on his desire not to lose his father again. His father has also told him how terrible, sick, unsafe, scary and bad his mother is.

Child T is likely to feel embarrassed about having said things about his mother that are not true. He is a deeply conflicted child. He will come to know that he will not be blamed for all that has happened. He was a child in all of this and he was clearly led by his father who should have known better.

132. Child H and Child E both want to return to live with their mother. They were happy living with her before and they are happy spending time with her now. The contact supervisor/supporter is not a natural presence. It reinforces the message that the children are not safe unless there is someone present to monitor the mother. The children want to be together. They also love and want to spend time with their half-siblings. Their relationship with their mother, and the need for that to return to a normal relationship without supervision or support, is more important than their relationship with their half-siblings.

133. The children need to have safe and loving relationships with both of their parents. They are part of the rich but insular religious community. Family, religion and education are important parts of their lives. They are shy children, used to modesty, who feel uncomfortable when they stand out from their close community. They need to be able to develop healthy relationships based on truth and trust. They need the adults around them to put them first and for their parents to prioritise the children's welfare over any negative feelings they may have about each other.

134. The children have lived with their father and his family for nearly a year. Moving back to live with their mother will clearly be a significant change. However, they will be returning to the home, community and family relationships that they knew and enjoyed before their trip to America last April. The children have been kept away from their mother's care because of the allegations made by the father, which he no longer seeks finding about. If the children moved back to live with their mother, they will undoubtedly miss their father, their half siblings whom they adore, the father's wife and her two older children. The father and his wife have made a life for themselves in America and they have decided to return there whatever the outcome of these proceedings. It is likely that the mother will continue to promote the father's role in the children's lives and contact, as she has done in the past.

135. A move to live in America would also be a significant change for the children. They have holidayed in America but they have never lived there. The father's home, America, the religious community and their American schools are familiar to them. Children are adaptable. The children have adapted to living with their father and his family in England. They are doing well at school. Child H and Child E see their mother regularly. Other than the last year, the children have never lived apart from their mother. They have never lived in a different country to their mother.

136. A move to America would involve a change in schools, a change in country, a change in their home environment. It would be a significant change from their life in England with their father and his family. They would move into a bigger religious community in America and would move close to family members who they do not know as well as their family in England. Of course, they will be able to develop those relationships and links within the USA. They would continue to live with their father and his family. They clearly love him and he loves them. The children have a close and loving relationship with their half-siblings but their relationship with their mother is more important. A move to America would mean that they would be far away from their mother and unable to see her or spend time with her as they have been doing to date. Child E would be “*psychologically crushed*” if she had to move away from her mother. Child H would undoubtedly find it difficult. Child T may well feel happy to leave for America but there will be longer term consequences to such a move that he (as a child of nine) simply cannot understand, or be expected to understand. The mother would visit the children in America but that would be very different to the life they had with their mother before the April 2022 trip. If the children move to live in America, the impact on their relationship with their mother will be profound and long lasting. It could have a negative impact on their relationships as they move into adult life. The younger children may blame Child T for the fact that they do not live with their mother. The father and his wife may not promote contact or the mother’s role in the children’s lives. The mother may not be consulted about the children’s health care (as has already happened during these proceedings). She may not be consulted about their education and other important events (including religious events) in their childhood. If the father continues to believe that the mother is mentally unwell and a risk to the children, there is a greater chance that contact will break down. The father’s proposal is that the children see their mother once a month, with the mother’s travel and accommodation costs being paid for by the father. Those proposals on paper are untested. I do not share the father’s confidence that they would result in the mother seeing the children regularly. In these proceedings, the mother has hardly seen Child T despite them both living in England.

137. Both parents are able to meet the children’s religious and cultural needs as members of the same religious community. The father can meet them in America. The mother can meet them in England.

138. The children were, and will continue to be, safe in the mother’s care. The mother cared for them over the years without any professional concerns. The children were seen by doctors, dentists, therapists, an osteopath, the private tutor arranged by the father, teachers, friends, family and members of the close-knit

religious community in England. The mother promoted their contact with their father. She waved them off for a three week holiday to America and Australia. The children have only been living with their father for the last year because of the allegations he has made in these proceedings and now seeks no findings about. The family has been torn apart by the allegations. The children's lives have been disrupted. The parents' and their families' lives have been adversely affected. The mother's relationship with Child T has suffered. The mother's contact with her children has been professionally supervised or supported at the insistence of the father. The children's lived experience over the last year is not representative of their (or their parents') normal family life.

139. The mother is able to meet the children's physical, educational, emotional and psychological needs. Child T will find it difficult to move back to his mother's care and will need support, including from his father, in making that return to his mother's care work as smoothly as it can. The Court has no magic wand. It cannot rewind the clock. The father must take responsibility for his decisions whether made on advice or not. The mother has already considered therapeutic support for Child T and Child H. She has arranged that in the past. I am in no doubt that she will put the children first in all that she does. Even if the allegations were true, the ISW considers that the risks could be safely managed in this jurisdiction. The children attend school. Child E's headmistress is likely to speak up and out if there is any evidence of abuse. The boys school has a strong and reliable safeguarding teacher. The children will continue to attend dental, medical and other appointments with professionals as they did when they previously lived with the mother. The father's evidence that the religious community would close rank and keep any abuse within the community is speculative and has no evidential basis. When the children were spoken to by the America social worker on the same day as the father took them to see Dr O, the children had no fear about returning to their mother's care having lived with her all their lives. They have now lived for around 11 months with the father in a household in which the mother is seen by the adults as a mentally unwell child beater. It would not be surprising if the children picked up on that. It is not surprising that, having made the allegations against the mother, Child T feels uncomfortable about spending time with his mother. There are glimpses of happier times, including when he went ice skating with his mother recently, on 8 March 2023. I am confident that with time and professional support, Child T's relationship with his mother will repair. It needs to for Child T's benefit both now and into adulthood. It cannot stay as it is. It is fractured, based on false allegations which were led by the father. The mother is clearly able to meet the children's needs.

140. The father is able to meet the children's physical and educational needs. I do not consider that he is able to fully meet their emotional and psychological needs.

He has told Child T terrible untruthful things about the mother. He has harmed these shy children used to modesty by subjecting them to repeated questioning, examinations by professionals and photographing in their underwear. He went from expert to expert until he got the result he wanted to hear. He did not act in the best interests of the children. In his oral evidence, the father accepted that it was definitely not in the children's interests to undergo multiple examinations but said that he acted on advice, which he now says may not have been the best advice. The father has been dismissive of experts and professionals that he does not agree with. It is concerning that he continues to believe that the mother has hit, beaten, jumped on, kicked and bitten the children regularly as Child T eventually alleged. The father's negative views of the mother affected his ability to respond responsibly and proportionately when he first saw the bruises on the children. He blames the mother for everything. He is ready to accuse the mother of causing bruises when he sees them but does not question that belief when he knows that the children suffered bruises whilst they were in his care. His ability to meet his children's emotional and psychological needs is likely to remain compromised whilst he continues to believe that the mother is a mad, unsafe and abusive mother. The father needs to take a step back, see the damage he has done, take responsibility for it and do things differently in the future. He needs to change the narrative. The mother did not cause the bruises to the children. She has not abused the children. She is not a risk to the children.

141. Both parents clearly love the children. However, the father's ability to act in the best interests of the children is affected by his own negative views about the mother. If the father continues to denigrate the mother and tell people, including the children, that the mother is sick and unsafe to be around, he will cause the children lasting emotional and psychological harm.

142. The mother has a proven track record of promoting the father's contact with the children both in England and in America. She did so even after a period when the father did not take up contact following his move to America. She has done so even though the father continued to say that she was mentally unwell and had BPD. Even after the current allegations have been made against the mother, she says that the father's contact with the children should not be supervised or supported. She wants it to be natural. She has made it clear that even though she would find it very difficult to have contact in the religious community in America, particularly as a divorced woman without the care of her children and who has been accused of physically abusing them, she will do all that she can to make it work.

143. The father's ability to promote the mother's contact in America is untested and, in my judgment, is likely to be poor. In these proceedings, the father has been

unable or unwilling to get Child T to see his mother, other than on a few occasions, in England. That is unlikely to improve if Child T moves to the USA. Child T's relationship with his mother needs to repair. The father's actions and decisions have had a significant impact on Child T's relationship with his mother. The father continues to believe, wrongly, that the mother is mentally unwell and has a BPD. He continues to believe that the mother physically abused the children. His family supports him in all that he says, believes and does. There is no evidence that the father is able or willing to change his belief or his narrative. That is a concern.

144. Whilst the mother told the Court that she would do everything she could to make contact in America work if the children moved there (and I believe that she would), the father's position about contact in England if the children remained here was less helpful. He said that contact in England would not work because of the harassment he has suffered in the religious community in England. In his evidence, he was not open to contact in other areas of England where there is a strong religious community, including of where there is strict adherence to the religious rules. In final submissions, it was accepted on the father's behalf that contact could take place in other areas where the father could still buy food and could still eat in restaurants which satisfy the requirements of the family's faith, could still live amongst members who strictly adhere to the same religious practices, and could still attend a religiously affiliated place of religious worship (as he has done whilst living in England). Contact in England may not be ideal for the father, but it is possible and it could be managed if it meant that he could spend time with the children in England. The father was more reluctant to find a way of making contact work in England than the mother was of finding a way of making contact work in the USA. The father understandably wants any contact to be in America where he lives. He was less flexible than the mother in considering less than ideal contact arrangements in the event that his application was unsuccessful and contact was to take place in the other parent's country. The father's contact in England does not have to take place in the children's local community or in the religious community. There are other communities in England in which there is strict adherence to the religious rules where the father can spend time with the children.

145. The unsuccessful parent is likely to be extremely disappointed, even devastated. However, it is the welfare of the children that is the Court's paramount consideration.

146. I have already addressed some of the advantages and disadvantages of the two options available for the children, namely living with their father and family in America or living with their mother in England. I repeat what I have said above. As I

have previously said, this judgment must be read as a whole. I summarise the main advantages and disadvantages of each of the options below.

147. The advantages in the children moving to live with their father in America are:

- (1) They will continue to live with their father whom they love and their half-siblings whom they adore, their step-mother and their step-siblings. Their family is large and happy;
- (2) They will have the opportunity to get to know their American family better;
- (3) They will live in the American religious community, in their father's home and attend schools that they are familiar with;
- (4) They are young and adaptable;
- (5) Child T is desperate to live with his father in America;
- (6) Their physical, religious, cultural and educational needs will be met by living with the father and his family in the same religious community in America;
- (7) Their father, his wife and their wider family love them and want to keep them safe. The children are physically safe in the father's care;
- (8) They will be able to see their mother once a month according to the father's plan. The mother will do whatever is necessary to make contact in America work if that is the Court's decision;
- (9) The father has cared for the children well in difficult circumstances in England.

148. The disadvantages in the children moving to live with their father in America are:

- (1) They will be far away from their mother. She will not be involved in their day to day care. They will not be able to spend time with her as they have done over the last year or so, albeit in unnatural supervised and supported settings;
- (2) They have never lived away from their mother on a permanent basis;
- (3) They will grow up in a household and environment where their mother is perceived to be mad, unsafe and mentally unstable;
- (4) They are unlikely to have a balanced view of their mother whilst living with their father and his family who continue to believe that the mother is mentally unwell and has physically abused the children on a regular basis;
- (5) Child T's relationship with his mother will not be able to repair given the distances involved. Child T is likely to continue to see his mother as an abusive and unsafe parent who does not care for him and is deceitful;
- (6) The idea that the mother is a risk to the children will be reinforced by the fact that they are not living with her;
- (7) The father's ability to promote the mother's time with the children is untested. My assessment is that the father is unlikely to promote the mother's time with the children, particularly as he continues to believe that the mother is mentally unwell and that the mother has physically abused the children. That is despite knowing the difficulties in the way in which the father's evidence was gathered;

- (8) The father and his wife are unlikely to consult the mother about appointments for the children. They may not refer to the mother about important decisions that the mother should be part of as the children's mother with parental responsibility,
- (9) The children will not grow up with their mother, despite the previous agreement that that was what should happen;
- (10) The children will move far away from the life they have always known in England, amongst their family and friends, including their maternal grandparents. They are likely to miss their friends and family in England;
- (11) Child E in particular is likely to be "*psychologically crushed*" by a permanent move away from her mother to America. Her relationship and her brothers' relationship with their mother will never be the same;
- (12) The father and his second wife underestimate how difficult a permanent move to America may be, particularly for Child E. They lacked emotional insight and were dismissive of any suggestion that the children may have picked up on the tensions over the last year. Their insight was at times superficial;
- (13) The father lacks insight into the children's emotional and psychological needs. His actions and decisions following sight of the bruises were not child focused. His focus was on blaming the mother rather than standing back and considering where the truth was likely to lie. His questioning and handling of the situation has led to false allegations of regular physical abuse by the mother being made, maintained and forming the basis of an interim change in living arrangements as well as the mother's contact being supervised, supported and unnatural;
- (14) The mother and her family are likely to be devastated by the decision;
- (15) The ISW does not support the children moving to live with the father in America. It is against the recommendation of the Court appointed single joint expert in this case.

149. The advantages in the children returning to live with their mother in England are:

- (1) They will return to live with the mother in England where they have safely lived for all of their lives until the flight to America with their father in April 2022;
- (2) The mother loves them and is able to safely care for them. She is able to meet their physical, emotional, psychological, educational, religious and cultural needs;
- (3) The children's relationship with their mother can be repaired, restored and normalised;
- (4) The mother has insight. She recognises that the children's move back to her is likely to be difficult for Child T in particular. She has already looked into therapy

to support any such move. She is emotionally attuned and resilient. She does not underestimate how difficult it may be;

- (5) The mother has insight into the children's needs. She has made child focused decisions and has a child focused outlook;
- (6) The mother has a proven track record of promoting the father's time with the children, even when she knew that the father continued to view her as mentally unwell and having a BPD;
- (7) The mother recognises the importance of the children having a good relationship with their father, their half-siblings and father's family. She is likely to continue to promote their time together;
- (8) The children's cultural, religious and educational needs will be met by living in the same religious community in England;
- (9) The children will be able to see their father and his family in England. There are other communities in this jurisdiction which observe strict adherence to the religious rules that the father and his family can stay in. Contact does not have to be in the religious community. The father can travel alone if his second wife and children do not want to return to England. In time, the children can travel abroad to spend time with the father and his family providing the risk of non-return has reduced and/or is addressed by additional measures:
 - (10) The children are young and adaptable;
 - (11) Child H and Child E want to return to live with their mother;
 - (12) It would follow the recommendation of the expert ISW instructed in this case;
 - (13) If concerns are raised in the future, they can be adequately managed in this jurisdiction. The schools are a protective factor. Child E's headteacher and the boys' safeguarding liaison officer are both proactive and aware of the Court's involvement in this family;
 - (14) The children will probably be able to return to the local place for religious worship where they used to pray with their school friends.

150. The disadvantages in the children returning to live with their mother in England are:

- (1) Child T does not want to live with his mother in England. He wants to live with his father in America. He is the oldest of the three children and will feel that his wishes and feelings have not been taken into account and/or that he has not been listened to or heard;
- (2) Child T may feel silenced and discredited. It will be necessary to explain to Child T that he has done nothing wrong and that he is accepted back as part of a loving family without any suggestion of blame. He may struggle with his feelings and beliefs around the abuse allegations. He may struggle to move past everything that the father said to him about his mother, which has remained uncorrected over the last year (a long time in the life of a nine year old);

- (3) Child T's move back to live with his mother is likely to be difficult. He will need support, probably therapeutic support. He will benefit from his father giving him permission to return and supporting his return to his mother. His father may not be willing or able to given that permission and/or support;
- (4) Child T in particular will miss his father and feel his loss once again. All of the children will miss their father and his family including their half-siblings;
- (5) The children will not be able to live with the father and his family including their half-siblings. Their relationship with them will return to a long-distance relationship necessitating trans-Atlantic flights. The children will not be able to get to know their American family as well as if they were living in America;
- (6) The father and his family are likely to be devastated by the decision;
- (7) The children will have to get used to another change in living arrangements;
- (8) The father may continue to worry about his children's safety if he is unable to change his views about the allegations and the mother;
- (9) Realistically, the father cannot spend time with the children in the local community in England. He is likely to experience further harassment if he remains or returns to the local community;
- (10) If there are concerns about the children's safety in the mother's care in the future, they may not be reported to the police or social services. The father's brother's evidence was that he raised his own concerns about harassment within the community with community leaders but that nothing was done. Concerns may not be taken outside the community;
- (11) Despite what the mother said in evidence, there is the possibility that she may not promote the father's relationship with the children or their time together. I consider that unlikely;
- (12) The children may grow up aware of their community's negative view of the father. They may be unable to involve their father in their community based friendships and activities including religious and educational activities.

Conclusion

151. Having considered all matters, I find that it is in the best interests of the children that they return to live with their mother in England. The mother has not physically abused the children. She did not cause the bruises seen on the children on their arrival in America. The children's need for their relationship with their mother to be restored, repaired, normalised and based on a foundation of truth carries significant weight. It overrides the anguish and disappointment that either parent will feel in not succeeding in their application. The children's relationship with their mother takes priority over their relationship with their half-siblings. The children should return to the agreed living arrangements before the children were wrongfully retained by the father in America.

152. I have considered Child T's wishes and feelings but they are not determinative. They are at best heavily influenced, and at worst poisoned, by the father's actions and words. The need for the children's relationship with their mother, and Child T's in particular, to be repaired, restored and normalised is clear and obvious. That cannot happen in the way that is needed if the children move to live with their father in the USA. The opportunity to repair the damage caused by the false allegations drawn out by the father will be lost and it will be to the detriment of the children's welfare both now and in the future. They will see their mother as unsafe and the negative and harmful views of the father, his wife and brother will be reinforced. Child T has no understanding of the wider impact of a move to the USA at this time. He cannot be expected to understand that. He is too young. Having considered all the evidence and submissions, when considering the welfare of the children the balance falls in favour of the children returning to live with their mother in England.

153. The father needs to do all that he can to make the children's move back to the mother's care as smooth as it can be. He must put his children's interests above his own. He and his family must take care in the language they use about the mother. I hope their narrative changes. It clearly should. Whether it does or not is up to them. I hope that the children are able to grow up knowing and seeing that their parents are able to respect and promote each other's important role in their children's lives and that the parents put their children's best interests at the heart of every decision they make. The mother and the father each make up one half of each of their children. The father and his family need to stop portraying the children's mother as mentally unwell, abusive, unsafe and deceitful. If they continue in those views, they run the risk of causing the children emotional and psychological harm.

Future Contact arrangements

154. The parties are going to discuss and, I hope, agree contact arrangements once they know my decision. I consider that there is currently a significant risk that if contact takes place abroad now, Child T in particular may not want to return to England. The parties should consider where contact could take place in England and what period should pass before contact takes place abroad. The ISW considered that contact should not be in the USA for three to six months. He said that there should be a period of time for things to settle down and to see how it goes. It would be disastrous if Child T went to see the father in the USA, refused to return and was then the subject of a further Hague Convention application. There is a clear need for matters to settle down and for contact to be in England for a period of time until the children are once again settled in the mother's care. It may not be ideal for the father but it is in the best interests of the children.

155. I will hear submissions on the need (if any) for any Prohibited Steps Orders, mirror orders and appropriate recitals to the final order reflecting the findings I have made. Consideration should be given to any bond that the father may be required to provide and to whether this judgment should be provided to the Local Authority. It should be provided to the ISW as the expert instructed in this case.

156. Of course, I wish the mother, father and their respective families well. I hope that the relationships are able to repair and improve. I hope that trust can be built/rebuilt. I wish the children the very best. They are clearly delightful, loving and loved children. The photographs of them playing and spending time with their family have been a highlight of this case.

157. That is my judgment.

158. A draft of this judgment was circulated to the trial advocates on 19 April 2023 for factual corrections/typographical errors/requests for clarification/nil returns. I accepted, and have incorporated, all the corrections identified by the advocates in their joint document emailed to me on 24 April 2023. This judgment can now (24 April 2023) be sent to the parties in advance of the handing down hearing on 28 April 2023.

HHJ McKinnell
28 April 2023