Neutral Citation Number: [2022] EWHC 2300 (Fam)

Case No: FD21P00817

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/09/2022

Before:

Mr Paul Hopkins QC
(sitting as a Deputy High Court Judge)

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S

Applicant

-and-

A

Respondent

- -

Ms Roshi Amiraftabi for the **Applicant**
Mr Amar Alyas for the **Respondent**

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Hearing dates:

18-20; July 2022; 29 July 2022;
15 August 2022;
2 September 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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INTRODUCTION

1. These proceedings concern one child, namely S (a girl), born on 31 January 2018, who is therefore aged 4 ½ years old. I shall refer to G as "the child" in this judgment.

2. G is the child's father and the applicant in these proceedings. A is the child's mother and the respondent. I shall refer to them as "the father" and "the mother" respectively, or collectively as "the parents", in the course of this judgment.

3. The father seeks by his application dated 21 October 2021 the child S's summary return to Pakistan pursuant to the Court's Inherent Jurisdiction. There is also a potential ancillary issue as to direct contact between the child and father in the event that the father's application fails.

4. This has been a fully remote final hearing. The father has joined the hearing via 'Teams' link from his home in Pakistan. The mother has joined the hearing from her solicitor's offices.

5. The main part of the final hearing took place between 18 and 20 July 2022. Unfortunately, there were various technical problems during that hearing, including the father's repeated loss of connection to the hearing or with his interpreter. There were also a number of power cuts in Pakistan, which again led to the father losing connection with the hearing. I emphasise that these problems were not the fault of either party. However, the net effect was that considerable court time was lost. It became necessary for the court to find further time to conclude the case. Whilst a proposed follow up remote hearing was arranged for 29 July 2022, due to a failure on the court's part to arrange interpreters for the parents, that hearing was abandoned. A further follow up remote hearing did take on 15 August 2022.

6. The court took remote oral evidence from the following witnesses during the hearing between 18 and 20 July2022 : (a) Mr A. K, Senior Partner at K & Co, Barristers-at-Law, Sindh, Pakistan (i.e. the court appointed joint expert in Pakistani child law); (b) Mrs O (the High Court Cafcass Officer); (c) father (via an interpreter) and (d) mother (via an interpreter). At the further hearing on 15 August 2022, due to late reference to further documentary evidence at the

hearing on 20 July 2022, I acceded to an application for both parents to give further short oral evidence at that later hearing.

7. The oral evidence from the parents was intended to be limited to the following areas: (a) The circumstances underpinning the child's arrival in England in September 2020 and (b) The proposed practical arrangements for the child in the event that she is returned to Pakistan. In the event, the breadth of the parties' evidence did at times exceed these tight parameters.

THE PARTIES' POSITIONS

Father

8. The father's case, in outline, is that the child, who had been living with him and the mother in Pakistan, was removed from Italy to England in September 2020 without his knowledge and agreement. It is his case that the removal to England amounted to an abduction. If this had been a Hague Convention case, it would have been his submission that the removal to England was wrongful and that the child's habitual residence had not changed from Pakistan at the time of his subsequent application. He seeks the child's summary return to Pakistan. In the event that his primary application fails, he would continue to seek an order for the child's return to Pakistan following a full welfare evaluation in this jurisdiction. As part of that contingent case, he seeks an order for interim direct contact with the child in the hope that he can obtain a visa to travel to the UK.

Mother

9. The mother's case in response, in outline, is that the father agreed to the child's move to England from Italy. Once again, if this had been a Hague Convention case, it would have been her submission that the removal to England was not wrongful. Furthermore, it would also have been her submission that the child's habitual residence had changed from Italy to England at the time of the father's application. She disputes that the child has ever been habitually resident in Pakistan. She opposes the child's summary return to Pakistan. In the event that her primary case fails, she has confirmed that she would return to Pakistan with the child. By contrast, if her primary case succeeds, she agrees, in principle, that there should be an order for interim direct contact between the father and the child in this jurisdiction if father is able to travel here. Further to that aspect of her case, she also asserts that she would assist the father in any application he may make for a visa to come to the UK.

RELEVANT LAW

10. In terms of first principles, any party who makes an allegation bears the burden of proving that allegation. The standard of proof in these proceedings is the civil standard.

11. It is agreed by the parties that the court has jurisdiction to make an order for the summary return of child to Pakistan pursuant to the inherent jurisdiction in accordance with paragraph 1.2(e) PD 12D FPR 2010. The availability of an alternative appropriate order pursuant to section 8 of the Children Act 1989 ("CA89") does not preclude the court opting to use the inherent jurisdiction if

it is appropriate to do so, see **Re NY (A Child) [2019] UKSC 49.** I digress to note that, there having been no contra argument, I am satisfied that it is appropriate to use the court's inherent jurisdiction in this case.

12. **In Re NY** Lord Wilson identified between paragraphs 56 and 63 of the judgment eight matters that the court should address at the outset when considering an application for a summary return: (a) Whether the evidence in the case is sufficiently up to date and addresses issues of welfare (paragraph 56); (b) Are the court's findings sufficient to make an order for summary return. Further, in the light of the policy in favour of the making of substantive welfare determinations by the courts of habitual residence, is there need for inquiry into the child's habitual residence at the relevant date (paragraph 57). I return to this aspect of the judgment later in my judgment; (c) In order to sufficiently identify the child's welfare in such an application, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) CA89 and a determination as to how extensive that inquiry should be (paragraph 58); (d) If allegations of domestic abuse are raised, engaging PD 12J, does there need to be an enquiry into these allegations, and, if so, how extensive should that enquiry be (paragraph 59); (e) What are the details of the proposed arrangements for the return of the child (paragraph 60); (f) Is oral evidence from any of the parties required and, if so, on what aspects of the case (paragraph 61); (g) Whether a Cafcass Officer should report (paragraph 62) and (h) Consideration of the nature of the powers in the court in the country to which it is proposed the child should be returned, with particular review as to whether that court has **the power to order the child's return to this jurisdiction (parag**raph 63).

13. The earlier leading authority on the return of children to non-Convention countries is the House of Lords decision in **Re J (A Child) (Return to a Foreign Jurisdiction: Convention Rights) [2005] UKHL 40.** In **Re J**, Baroness Hale set out the principles which apply to the applications for a summary return under the inherent jurisdiction: In outline, the principles may be summarised as follows: (a) Any court which is determining any question with respect to the upbringing of a child has a statutory duty to have regard to the welfare of the child as its paramount consideration. In non-convention cases the court must act in accordance with the welfare needs of the particular child (paragraph 18); (b) There is no basis for the principles of the Hague Convention to be extended to countries which are not parties to that convention (paragraph 22); (c) A power did remain in accordance with the welfare principle to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits (paragraph 26); (d) A trial judge had to make a choice, having regard to the welfare principle, between a summary return or a more detailed consideration of the merits of the parties' dispute in this jurisdiction (paragraph 26-28); (e) In making the above choice, the focus must be on the individual child and the particular circumstances of the case (paragraph 29); (f) It is wrong to say that there should be a 'strong presumption' that it is 'highly likely' to be in the best interests of a child subject to an unauthorised removal or retention to be returned to his country of habitual residence so that any issues which remain can be decided there. The most that can be said is that the judge may find it convenient to start from the proposition

that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. However, the weight to be given to that proposition will vary enormously from case to case. What may be best for the child in the long-term may be different from what will be best for that child the short-term. It should not be assumed that in allowing a child to remain in this jurisdiction while the future is decided inevitably means he or she will remain here forever (paragraph 32); (g) A number of variable factors are relevant, amongst all the circumstances of the case, in deciding whether to order a summary return or not (paragraph 33 to 40). I deal with these variable factors separately in more detail below and (h) Any decision about whether to order a summary return or not should be taken swiftly even if this is to a country that is very different (paragraph 41). I shall also return to this factor later in more detail in the judgment.

14. In returning in more detail to the potential variable factors referred to in **Re J** that will be relevant to the court's determination of any application for the child's summary return, the following is a summary: (a) The degree of connection of the child with each country must be considered. This is <u>not</u> to apply the concept of habitual residence, but for the court to ask in a common sense way with which country the child has the closer connection, namely what is his or her 'home country'. Factors such as the child's nationality, where he has lived for most of his life, his first language, his race, his ethnicity, his religion and culture, and his education may be relevant; (b) The length of time spent in each country is important. Although removing a child from one country clandestinely may well not be in his interests, if he or she is already familiar with this country and has been here for some time without objection, it may be less disruptive for the child to remain a little longer while his or her medium and long-term future are decided than it would be to return summarily; (c) The different approach of the foreign legal system may be relevant. The extent to which this may be relevant depends on the particular facts. It would be wrong to say that the future of every child within the jurisdiction must be decided according to the domestic concept of welfare. Nevertheless, differences between legal systems are relevant and may be decisive e.g. whether genuine welfare issues between the parties are capable of being tried in the courts of the country to which a return is sought. If not, the court must ask itself whether it is in the child's interests to enable that dispute to be heard in this jurisdiction. The absence of a relocation jurisdiction must do more than give the judge pause for thought, it may be a decisive factor. On the other hand, if it appears that the mother would not be able to make a good case for relocation, that factor might not be decisive. This is fact specific and there may be circumstances in which the absence of relevant jurisdiction will not be decisive and (d) The effect of the decision on the primary carer is relevant, but is not decisive.

15. I therefore return to my observation in relation to paragraph 57 of Lord Wilson's judgment in **Re NY**. I invited further submissions from the parties' counsel as to whether there should be a determination of the child's habitual residence notwithstanding the House of Lord's decision in **Re J**. It was submitted on behalf of the father that Lord Wilson in paragraph 57 of the judgment was identifying a number of enquiries which a trial judge might consider relevant to

undertake in the course of his or her decision-making process and that this was not setting a precedent that the issue of habitual residence must be determined in each case nor that the 'policy' of primary jurisdiction should be followed in each case. I accept this submission.

16. My attention was also drawn to the judgment by MacDonald J in **H v N (Inherent Jurisdiction: Summary Return to Pakistan) [2021] 1 FLR 1355, [2020] EWHC 1863** which addresses the issue I identified. At paragraph 48 of the judgment, the learned judge addressed the question by reference to Lord Wilson's reasoning as to availability of both the Children Act 1989 and the inherent jurisdiction for a summary return application, see also section under discussion between paragraph 49 and 54. At paragraph 55 his lordship concludes as follows:

> *"Whilst, pursuant to the principles articulated in Re J (Child Returned Abroad: Convention Rights) that I have set out above, I bear in mind that habitual residence is not apt as a concept in non-Convention summary return cases per se, the foregoing conclusions with respect to the position regarding habitual residence at the time the children left Pakistan and at the time welfare proceedings, and the proceedings subsequently issued by the father, were commenced in this jurisdiction nonetheless lends weight in this case to the starting proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there and that a case against his doing so has to be made. However, as also made clear in Re J (Child Returned Abroad: Convention Rights), the weight to be given to that proposition will vary enormously from case to case, the proposition is not determinative and the proposition falls to be weighed against other matters. In this case, weighing the competing factors, I am satisfied that a welfare case against the summary return of the children to Pakistan is made out".*

17. Counsel for the father submits that the determination on habitual residence would not, in any event, be decisive to the application. I once again endorse this submission.

18. My attention was also drawn to the Supreme Court decision in **KL (A Child) [2013] UKSC 75** in which the Court heard an appeal arising from the refusal of an application for the summary return of a child under the 1980 Hague Convention and, in the alternative, under the inherent jurisdiction. The Supreme Court upheld the refusal of the application pursuant to the 1980 Hague Convention on the grounds that the child was no longer habitually resident in the requesting state at the time of the retention. However, the appeal against the refusal of a summary order under the inherent jurisdiction was allowed.

19. The court addressed the question of jurisdiction at paragraph 28 of the judgment. After agreeing that the question asked by the trial judge in determining the issue of summary return under the inherent jurisdiction was incorrect, they set out the correct question at paragraph 32:

"That being the case, it is open to this court to ask itself the correct question: Is it in K's best interests to remain in this country so that the dispute between his parents is decided here or to return to Texas so that the dispute can be decided there?

20. After reviewing the factors in favour of the child remaining in this jurisdiction and those in favour of his return the court found at paragraph 36 as follows:

"The crucial factor in my view, is this is a Texan child who is currently being denied a proper opportunity to develop a relationship with his father and with his country of birth. For as long as the Texan order remains in force this mother is unlikely to allow, let alone encourage, him to send vacations in America with his father. Whilst conflicting orders remain in force, he is effectively denied access to his country of origin. Nor has his mother been enthusiastic about his contact here. The best chance that K has of developing a proper relationship with both parents, and with the country whose nationality he holds, is for the Texas court to consider where his best interests lie in the long term. It is necessary to restore the synthesis between the two jurisdictions, which the mother's actions have distorted'.

21. In the circumstances, I was also assisted with submissions as to the meaning of habitual residence.

22. I was firstly taken to **Re B (A Minor: Habitual Residence) [2016] EWHC 2174** Hayden J summarised at paragraph 17 the fundamental principles as follows:

"i) The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (A V A, adopting the European test).

ii) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual enquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (A v A, Re KL).

iii) In common with the other rules of jurisdiction in Brussels IIR its meaning is 'shaped in the light of the best interests of the child, in particular on the criterion of proximity'. Proximity in this context means 'the practical connection between the child and the country concerned': A v A (para 80(ii)); Re B (para 42) applying Mercredi v Chaffe at para 46).

iv) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (Re R).

v) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (Re LC). The

younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration.

vi) *Parental intention is relevant to the assessment, but not determinative (Re KL, Re R and Re B).*

vii) *It will be highly unusual for a child to have no habitual residence. Usually a child will lose a pre-existing habitual residence at the same time as gaining a new one (Re B).*

viii) *In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must weigh up the degree of connection which the child had with the state in which he resided before the move (*Re B – see in particular the guidance at para 46*);*

ix) *It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (Re R and earlier in Re KL and Mercredi.*

x) *The relevant question is whether a child has achieved some degree of integration in social and family environment; it is not necessary for a child to be fully integrated before becoming habitually resident (Re R) (emphasis added).*

xi) *The requisite degree of integration can, in certain circumstances, develop quite quickly (Art 9 of BIIR envisages within 3 months). It is possible to acquire a new habitual residence in a single day (A v A; Re B). In the latter case Lord Wilson referred (para 45) those 'first roots' which represent the requisite degree of integration and which a child will 'probably' put down 'quite quickly' following a move.*

xii) *Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (Re R).*

xiii) *The structure of Brussels IIa, and particularly Recital 12 to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a*

conclusion that he lacks any habitual residence, the court should adopt the former."

23. At paragraph 18 of the judgment, the learned judge emphasises the following in relation to the correct approach:

> *"If there is one clear message emerging both from the European case law and from the Supreme Court, it is that the child is at the centre of the exercise when evaluating his or her habitual residence. This will involve a real and detailed consideration of (inter alia): the child's day to day life and experiences; family environment; interests and hobbies; friends etc. and an appreciation of which adults are most important to the child. The approach must always be child driven"*

24. In **Re B (A Child) (Abduction: Habitual Residence) [2020] EWCA Civ 1187** the Court of Appeal again considered the concept of habitual residence and in particular the approach to be taken by the court to the issue when there are two countries in which it is said a child may be habitually resident. At paragraph 83 Moylan LJ reiterated the need to show that there has been '*some*' degree of integration in a social and family environment. At paragraph 84 he states:

> *"What degree of integration will be "sufficient" will obviously vary from case to case depending, for example, on the extent to which a child has connections with, say, two states and could, potentially, be habitually resident in either of them. This is why the court has to undertake a "global analysis" which, as Ms Renton submitted, is a factual, child focused assessment, as made clear by the CJEU's decision of Proceedings Brought by HR (With the Participation of KO and Another) [2018] Fam 385 ... This will involve the court assessing the factors which connect the child with the state or states in which he or she is alleged to be habitually resident.'*

25. Moylan LJ quoted again at length at paragraph 85 from **HR v KO in Re G-E (Children) (Hague Convention 1980: Repudiatory Retention and Habitual Residence)[2019] 2 FLR 17.** The judgment continues to emphasise the importance of '*proximity*' meaning '*the practical connection between the child and the country concerned*' is clear. The question of habitual residence is ultimately a purely factual one and is to be determined by reference to all the circumstances of the child's life. There is no rule as to the duration of the residence. It is possible to acquire habitual residence in a single day. However, the deeper the child's integration in the old state, probably the slower his or her integration in the new state. The greater the adult pre-planning of the move to include arrangements for the child's day-to-day life, probably the faster the child's integration. Similarly, where all the central members of the child's family have moved, probably the faster the integration takes place. Where some central members of the child's family remain in the old state, representing a continuing link with the old state, the slower the rate of integration

26. I return at this point to the reference to a swift determination of an application for a summary return in paragraph 41 of Baroness Hale's speech in **Re J**. Whilst there are no specific time limitations, it may intuitively be considered that an application for the return of a child who had been present in this jurisdiction for in excess of, say 12 months, would be inherently inconsistent with the *summary* nature of the process. Indeed, in a number of the authorities concerning summary return drawn to my attention, including **H v N,** the court made a determination of the application for a summary return within a few short months of the relevant child's arrival in England and Wales. However, whilst reminding myself that every case is fact specific, the Supreme Court ordered the return to the United States of America of a child much older than the child in this case over 2 years after the child's arrival in England.

27. For completeness, I also record that my attention was also drawn to the relatively recently case of **J v J (Return to Non-Hague Convention Country) [2021] EWHC 2412** in relation to an application for summary return**.** Cobb J ordered the summary return of the parties' 5 year old son to India. The court's attention was drawn to the summary of the law at paragraphs 34 to 38 of that judgment

28. I have also heard oral evidence from the parties. In the circumstances, it is therefore appropriate that I remind myself of the principles that apply to the assessment of witnesses.

29. In **Re M (Children) [2013] EWCA Civ 1147** Macur LJ at paragraph 11 stated: that:

> *"Any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so".*

30. In **Re P (Sexual Abuse - Finding of Fact Hearing) [2019] EWFC 27** MacDonald J stated at paragraph 254 of his judgment that:

> *"…the court's impression of a parent, and its assessment of the credibility and reliability of that parent, should coalesce around matters such as the internal consistency of their evidence, its logicality and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts. The credibility and reliability of that parent should not be assessed simply by reference to, as it was termed historically, 'the cut of their jib'.*
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> .

31. I also bear in mind the principles summarised by Leggatt J in **Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor [2013] EWHC 3560 (Comm)** at paragraphs 15 to 21 of his judgment.

32. When in the Court of Appeal, the same judge developed his analysis at paragraph 41 to consider reliability of witness testimony based on demeanour in **R (on the application of SS) (Sri Lanka) v The Secretary of State for the Home Department [2018] EWCA Civ 1391** as follows:

> *"No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts."*

33. In **Re A (A Child) [2020] EWCA Civ 1230** King LJ considered the import of Leggatt J's statements and referred to the Court of Appeal's decision in **Kogan v Martin and Others [2019] EWCA Civ 1645** in which it was stated that.

> *"Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed . . . But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence".*

34. King LJ concluded at paragraph 41 of the judgment that:

> *" The court must . . . be mindful of the fallibility of memory and the pressures of giving evidence. The relative significance of oral and contemporaneous evidence will vary from case to case. What is important, as was highlighted in Kogan, is that the court assesses all the evidence in a manner suited to the case before it and does not inappropriately elevate one kind of evidence over another".*

NATIONALITY

35. The father was born in Pakistan and is a Pakistani citizen, who currently lives in the Punjab region of Pakistan.

36. The mother was also born in Pakistan and is a Pakistani citizen. She now lives in the Greater Manchester area of England. She has also previously lived for a number of periods in Italy from the age of 16 years onwards as her parents have a long-standing connection with that country (her father is described as an *"Italian national*") and has acquired what is described in her evidence as an "*Italian visa permit*". On 25 November 2020 the mother was granted pre-settled status, with limited leave to remain in the UK under the post-Brexit EU Settlement Scheme. She will be able to apply for settled status after 5 years.

37. The child was born in N [city] in Italy. She is a Pakistani citizen who holds a Pakistani passport. In terms of her status in the UK, she is the daughter of a mother with EU pre-settled status.

BACKGROUND

38. The parties' marriage, which was arranged by their families, took place in Pakistan in April 2016 in S [city], Pakistan. The following year, in around April 2017, the mother became pregnant with the child. Shortly after becoming pregnant, the mother travelled to Italy to stay with her parents. It is the father's case that the mother told him she wanted to be close to her own mother during her pregnancy. On this basis, he says that he agreed. The child was born in N [city], in Italy, in early 2018. The father's case is that he was unable to travel to Italy to be there for the birth as he did not have a visa. It is part of the mother's case, which is denied, that the father was violent to her from an early stage in the marriage.

39. It is also part of the father's case that he was desperate to meet the child and, as a result, the paternal grandfather, who lived in Italy at the time, suggested that he pay to him a 'consultancy' fee and expenses so that an application could be made to the Italian Immigration Service for a visa. The father contends that he gave his father in law several payments, but he never received a visa.

40. It is part of mother's present case in response, which is denied, that father's primary aim in marrying her, and then having a child, was to obtain a visa to leave Pakistan and to live in Italy.

41. In any event, the mother returned to Pakistan with the child in around May 2018 when the child was about 4 months old. The father contends that he quickly formed a bond with the child and that she became attached to him. The mother contends in response that the father was not really interested in the child. She alleges further violence by the father, which is again denied. The mother and child remained with the father in Pakistan until around August 2018, a period of about 3 months. The father also alleges, which is equally denied, that the

mother was physically abusive towards the child by hitting her in the face during this period.

42. In around August 2018 the mother again said she wanted to return to Italy for a holiday to stay with her parents. Whilst the father asserts that he was unhappy to be separated from the child again so soon, he agreed to "*keep the mother happy"* and to "*keep his marriage*". The mother duly left with the child for Italy.

43. On this occasion, the mother remained in Italy with the child for a relatively long period. She did not return to Pakistan until around the middle of 2019. The mother refers to her return to Pakistan in May 2019. The father says that the return was in July 2019. It follows that the child would have been resident in Italy for about 9 to 11 months during this period. The father contends that he made regular requests to the mother to return home to Pakistan in that time.

44. When the mother and child returned from Italy to Pakistan in 2019, all three of them remained living at the family home for a prolonged period of time. They remained together as a family until the end of August 2020. This was a period of approximately 13 to 15 months. It is father's case that he spent a great deal of time with the child during this period, who he says was happy and settled. The mother repeats the same general response, namely the father exhibited ongoing lack of meaningful interest and involvement with the child at this time. During this period, it would appear that the mother completed a beautician course and obtained employment as a teacher.

45. In May 2020 there was an incident involving the parents. The mother alleges that the father was violent towards her, which is denied. The mother has produced medical evidence to corroborate the allegation. The father asserts that the documentary evidence in support has been fabricated and relies, in part, upon the fact that no complaint was made by her to the police in support of his assertion. The outcome of this incident was that the mother left the family home, moving to live in the extended maternal family home some distance away where her sister was living at the time.

46. Mother alleges that there was a further violent incident in July 2020, which is again denied. She again produces medical evidence purportedly to corroborate this allegation. Once again, the father asserts that this documentary evidence in support has also been fabricated.

47. It is clear that the relationship was at a low point at this time. The father accepts that he sent wholly unacceptable and abusive messages to the mother [131/344] along with threats to kill her [135/344] and to use other lesser forms of violence against her [136-137/344]. However, there then appears to have been a reconciliation later in July 2020.

48. It is the father's case that in August 2020 the mother asked if she could go to Italy with the child once again for a "*holiday*" with her parents. She told the

father that she would organise a visa there so that he could follow her to Italy for a family holiday. The father says that he agreed to the trip on this basis. She left with the child on 31 August 2020. However, no visa was forthcoming. He says that he told the mother that, if a visa was not granted, she would have to return with the child to Pakistan. He contends that later, in October 2020, the mother telephoned to inform him that she was in England with the child and that they would not be returning to Pakistan. The father asserts that he was "*blindsided*" by this information. The father would therefore have asserted, had this been a Hague Convention case, that whilst the visit to Italy was consensual, taking the child from Italy to England would have amounted to a wrongful removal.

49. By contrast, the mother contends in response that the father was aware that she and the child were travelling to England from the time before she left Pakistan in August 2020. She asserts that her father had decided to migrate to live in the UK and to take them all with him. She asserts that the father was, once again, anxious as part of the plan for her to obtain a permit for him to leave Pakistan. On her case in any Hague Convention case, these consensual arrangements would not have amounted to a wrongful removal of the child from Italy to England. However, I pause to note at this stage that, on the mothers case, the father's agreement to the child travelling to England was conditional upon a visa being obtained for him to travel to the UK in due course.

50. Following the child's arrival in England, the father asserts that the mother refused to tell him where they were living or why they were in the country. He says that he repeatedly asked her to return to Pakistan, but she refused to comply. The mother responds by asserting that the father did know where she was living. She alleges that he was abusive towards her again in messages, which is corroborated by some of the messages sent later in 2020 [147/344].

51. Notwithstanding other issues joined by the parties relating to this period, it is agreed that the father was able to speak with the child regularly via video platform following her arrival in England. There was also contact between the parties. It is also clear that in December 2020 an application was submitted for a visa for the father to travel to the UK. The application was submitted by the mother's brother. The father had to attend Karachi in January 2021 with his passport as part of progressing the visa application.

52. The father says that the video contact arrangement continued until 21 April 2021. Then on that date all contact was abruptly terminated by the mother. He says that he repeatedly messaged and called the mother, but she blocked his telephone number. He also contends that he tried to seek assistance from the mother's adult brother and her mother. However, according to the father, they threatened him and said they would take steps to stop him and that it would "*not be good for his family".*

53. In response, the mother asserts that the father started to become abusive in their communication in February 2021. She says that she blocked the father in March 2021. She has produced some evidence in support of this contention [150/344]. The father has equally produced messages indicating that the mother was abusive towards him [198-199/344] at this time as well. The mother denies that any threats were made to the father or his family by any member of her family.

54. I digress to note that there were also seemingly very pleasant exchanges between the parents in the Spring 2021 [205-237/334] which suggests that there was a changeable dynamic in their relationship at this time.

55. The application for a UK visa for the father was rejected in April 2021. The mother asserts that the father challenged her about this, indicating that he would use any means to obtain a visa. She believes that he was (and is) *"using"* the child to achieve this goal. The father denies any such motivation.

56. The father says that he contacted solicitors in England for the first time in around May 2021, some 8 or so months after the child had first arrived. I digress to note that it is asserted on his behalf that there were significant delays in obtaining Legal Aid for him, which was only forthcoming in October 2021.

57. During the period from October 2020 to April 2021, the father says that he repeatedly asked the mother to return the child to Pakistan. However, as indicated above, he did not seek any legal advice, or take any legal action, during this period. He seeks to explain his apparent inaction over this period by asserting that he was hoping to persuade the mother to return home with the child. He also contends that he still had aspirations at that time to save his marriage.

58. The father continued to try to make contact with the mother from May / June 2021 onwards. I digress to note a Whatsapp message [82/344] sent on 14 June 2021 wherein he says *"…please i want to see my daughter… I can't live without her."* and on 2 August 2021 [86/344] *"I want to talk to her. I want to see her. Please".* Similar entreaties by father continued into the Autumn of 2021.

59. The messages in response by mother on 1 September 2021 [253/344] were very troubling wherein she said: *"Forget your daughter; She will never meet you; in life; Bye bye".*

LITIGATION HISTORY BETWEEN THE PARTIES

60. I deal firstly with this litigation. The father's application dated 21 October 2021 pursuant to the court's inherent jurisdiction seeking a summary return of the child to Pakistan was, in fact, issued on 2 November 2021. This would have been approximately 13 months after the child's arrival in England. I have no reason to doubt that part of the delay, approximately 4 to 5 months, was attributable to problems in obtaining Legal Aid for the father and not his fault.

61. The first without notice hearing took place before HHJ Harris-Jenkins, sitting as a s9 Judge, on 2 November 2021. The learned judge made location and port alert orders, along with other directions to progress the application. The mother was duly served with the application and the order on 16 November 2021.

62. The next hearing took place before Roberts J on 19 November 2021. The mother had been served just before the hearing and required further time to respond to the application. The learned judge adjourned the application to 7 December 2021 with further directions. The port alert order was continued.

63. On 7 December 2021 the case was listed before Recorder Trowell QC sitting as a s9 Judge. By that hearing, the mother had filed allegations of domestic abuse and coercive control against the father. She opposed at that time any form of contact between the child and him. The father offered undertakings around indirect contact, which were accepted by the court. The court ordered twice weekly video contact between them. Further directions were also made to progress the application, including provision for a report by Cafcass. The port alert remained in place.

64. The next hearing took place before Judd J on 2 February 2022. In relation to indirect contact, the mother was encouraged by the judge, as recorded in the preamble to that order, to allow another member of her family rather than herself to be present during father's video contact with the child. The court made further directions to progress the case, including a direction for schedules of the cross allegations to be filed, a jointly instructed expert to report on relevant child law in Pakistan and for an addendum Cafcass report to be filed. The court declined to join the child as a party to the application. The father's application was listed for final hearing on 24 April 2022.

65. The proposed final hearing was listed before Mr A. Verdun QC sitting as a s9 Judge. Unfortunately, that hearing could not proceed as the Cafcass Officer was unexpectedly away after sustaining serious injuries in an accident. Therefore, the case was adjourned, with further directions, to a hearing listed to commence on 18 July 2022.

66. I also note, merely for completeness of the procedural history, that I directed a hearing on 14 July 2022 (as the case had by then been allocated to my list for the relevant week) following the issue of a C2 application by the mother's solicitors. This hearing served as a de facto pre-trial review before the hearing commencing on 18 July 2022. I cannot leave this aspect of the review without recording that the earlier adjournment of the final hearing, which was not in any way the parties' fault, was another highly unfortunate source of further delay.

67. I now turn to review what is known about ongoing litigation between the parties in Pakistan.

68. It would appear that both parties commenced proceedings in Pakistan in 2021. The father issued an application for 'custody' of the child pursuant to section 25 of the Guardians and Wards Act 1890 on 28 May 2021.

69. The mother later issued divorce proceedings, which were duly consolidated with father's application in relation to the child. The mother was granted a divorce on 22 November 2021. However, the father was seemingly required to reissue his application for custody. These consolidated proceedings are seemingly ongoing. A further hearing took place in those proceedings on 13 July 2022. The outcome of that hearing is unknown. It is understood that the mother is participating in those proceedings via a lawyer.

70. In addition, in the course of the hearing between 18 and 20 July 2022, it was brought to the court's attention that a further hearing had taken place shortly before involving the mother's dowry. It seems that she is seeking the return of the same following the breakdown of the marriage. The court was informed that the mother's sister was dealing with this application on her behalf pursuant to a power of attorney, with lawyers instructed to represent the mother. It is not presently clear whether these proceedings relating to the dowry are directly ancillary to pre-existing divorce proceedings or entirely separate.

INTERIM CONTACT

71. As indicated earlier, at the hearing on 7 December 2021, the court directed that the child should have video contact with the father twice per week on Sunday and Wednesday at 6pm, commencing on Wednesday on 8 December 2021. Although this contact has mainly taken place, the father asserts that calls only last for very short periods. He also contends that there are occasions when the calls are terminated almost immediately. He says that for most of the time the child is also out of video shot. He also complains that the mother often mutes her microphone so that he is unable to hear the child and that she often appears distracted by someone or something in the background. However, he also says that on some occasions he has been able to meaningfully interact with the child, who has appeared happy to see him.

72. The father has recorded a number of the contact sessions. He has exhibited to one of his statements a sample of a good contact session, together with two samples of video calls in which there is no interaction.

73. It is the mother's case in response that she has done everything possible to encourage the indirect contact between the child and father. She maintains that the child is challenging to engage in contact with him as she herself has negative memories of him from her own direct experience, rather than any form of malign and negative influencing. The mother has also submitted some videos of contact to the court reflecting, on her case, her positive conduct around contact.

74. The arrangements for interim contact were further considered at the hearing on 2 February 2022. As again indicated earlier, the court recorded its encouragement to mother to allow another member of her family to be present during contact. However, I digress to note that, unfortunately, this has not happened.

75. The issue of interim contact has been a source of concern to Ms O, the Cafcass Officer. In summary, she is extremely concerned that the mother has taken no steps to encourage the child's relationship with her father. I return to this aspect in more detail when reviewing later the Cafcass evidence.

ALLEGATIONS OF DOMESTIC ABUSE

76. I digress at this stage to note, once again, that allegations of domestic abuse and coercive control have been raised by the mother against the father. The father has also alleged that the mother has been physically abusive towards the child. As indicated earlier, on 2 February 2022 the court directed that schedules of cross allegations should be filed, which has taken place [21-31/344].

77. In terms of the management of the case, PD12J applies. However, no special / participation measures were sought as the final hearing was conducted on a wholly remote basis, with the mother joining the hearing from her solicitor's offices.

78. At the outset of the final hearing, I determined that there would not be any evidence by the parties in relation to their respective allegations of domestic abuse and coercive control / violence towards the child. I limited parental oral evidence to matters relating to the circumstances surrounding the child's arrival in England and the proposed arrangements for the mother and child in the event of a return. It follows that there will be no findings as to alleged domestic abuse / violence within this judgment.

79. In relation to this aspect of the case, Ms O, the Cafcass Officer, opines that the truth, or otherwise, relating to these allegations is an important part of the fundamental context to contact. I return to this aspect later when reviewing her professional evidence. If the mother's allegations are true, then it may explain what appears to be a negative surrounding attitude on her part to such contact, rather than gratuitous alienating behaviour. I direct myself that I must bear in mind that this important aspect of the background is not determined as part of this hearing and I should guard against any action that may unintentionally work unfairness in relation to the mother as the allegations may indeed be wholly or substantially true.

80. That said, I cannot leave this part of my judgment without observing, further to observations expressed in the hearing, that the mother's allegations, taken at their highest, are unlikely to impede the development of contact and the relationship between the father and the child. Indeed, it is part of the mother's

own case that she does not, in principle, oppose direct contact taking place between them. She merely contends that any initial contact should take place in a contact centre.

81. Returning again to the interim contact, it follows that, whatever the precise cause, at the moment the father's contact with the child is not, as a matter of fact, proving to be a beneficial experience for the child. There are serious professional concerns about the future prospects for this contact and the development of the child's relationship with her father and her paternal family. Such concerns become even greater if, as may well be the case, the father is not permitted to come to the UK to have contact (and to continue to seek an order for the child to return to Pakistan following a full welfare assessment) if his application for summary return fails.

SUMMARY OF EVIDENCE / ASSESSMENT OF WITNESSES

Overview

82. I confirm that I have read the contents of the main bundle, the supplementary bundle, other specific miscellaneous documents, together with the extremely helpful opening and closing skeleton arguments filed by counsel. I have also read the composite document setting out the parties' draft undertakings in the event that the child is returned to Pakistan.

83. I have also heard, as indicated earlier, remote oral evidence from the following witnesses: (a) Mr A. K; (b) Ms O; (c) The father and (d) The mother.

Summary of the report / evidence by Mr K

84. Mr K sets out his professional qualifications and credentials at paragraph 4 of his main report dated 17 February 2022 [311/344].

85. I do not intend to rehearse the content of Mr K's main report in full. The following is a short summary. He notes that gender based violence in Pakistan is widespread. He refers to the setting up by the Chief Justice of numerous new courts in parts of Pakistan to address this endemic problem. He also refers to the enactment of a number of local Acts in the relevant Sindh region of Pakistan to address domestic violence and improve protection for women in a civil law context. There is also protection against domestic violence in terms of relevant criminal law. However, he equally notes that prevailing social attitudes are reportedly slow in catching up with recent legislative changes.

86. In relation to how courts in Pakistan decide what is in the best interests of a child, the relevant statutory provision is to be found in section 17 of the Guardians and Wards Act 1890, which was enacted during British rule in India, and is reproduced in the report. Specific reference is made in the report to the decision in **Re S (Minors) (Abduction) [1994] 1 FLR 297**, in which the Court of Appeal concluded that the courts in Pakistan would try to give effect to the children's welfare from the Muslim point of view and that the differences

between English and Pakistani law were not such as to render the Pakistani court an inappropriate forum. Section 17 of the Guardians and Wards Act 1890 contains the equivalent of the English 'Welfare Checklist'. He also cites a number of Pakistani authorities which confirm preference to the child's welfare over the parents' interests, if necessary, justifying where necessary a departure from rules of personal Muslim law.

87. Mr K then refers to section 26 of the Guardians and Wards Act 1890 and indicates that parents are able to apply for permission to remove a child from Pakistan, albeit subject to furnishing a recognisance bond.

88. In relation to the potential recognition and enforceability of orders made by a foreign court, Mr K refers in the report to Pakistan having signed the Hague Convention on the Civil Aspects of Child Abduction (but with accession not yet accepted by the UK government) and implemented the same via legislation to bring international child abduction cases within the jurisdiction of the relevant local Family Courts. He also refers to some Pakistani case-law where foreign orders in favour of custodial parents have effectively been respected and upheld in response to conduct by abducting parents.

89. Mr K deals specifically with the status of foreign undertakings in Pakistan. Whilst undertakings given by a parent to a court in England and Wales can be recognised and enforced in courts in Pakistan, there is no automatic procedure for a 'mirror order' to be made. The aggrieved parent has to institute proceedings in the relevant Pakistani court. In relation to undertakings given to a court in England and Wales, in order to make them binding in Pakistan, the relevant parent would need to make the undertakings again in a Pakistani court.

90. Mr K also confirms that the Pakistani Family Court system aims to deal with cases within 6 months of issue. However, the equivalent of Legal Aid is not routinely available in Pakistan for such family cases.

91. Mr K later answered a written question put to him in relation to whether the father would be able to give his undertakings offered to this court in Pakistan by way of an addendum report dated 14 July 2022. He explains in that further report that any undertakings provided by the father would have to be submitted to the court in Pakistan in an affidavit. The father could potentially be ordered to attend court for cross examination. Mr K further indicates that the violation of undertakings accepting by a court in Pakistan involves penal consequences, namely a fine and / or 6 months imprisonment.

92. By way of summary, Mr K's oral evidence in response to questions put on behalf of the father was as follows. He explained about the hierarchy of the court system in Pakistan (which does not require to be set out). He confirmed that one of the local Acts, namely the Punjab Protection of Women Against Violence Act 2016 had been extended to all provinces in the Punjab, save for Islamabad. The court, pursuant to this local Act, can make protective orders for the benefit of women. The applications can be made by the litigants themselves, lawyers acting on their behalf or by officers of the 'Women's Force'. Protective orders can, in addition to personal injunctive type orders, prohibit attendance by the

other party at a home or place of employment. Breach of such orders can lead to a fine and / imprisonment for up to 2 years.

93. Mr K also dealt with the social reality in Pakistan in his evidence. Honour based violence remains a very worrying and prevalent concern. Part of the reason why the Punjab Protection of Women Against Violence Act 2016, and its related services for women, do not always work effectively arises out social factors. He emphasised "*Pakistan is not the UK*". There is widespread socio-economic poverty, illiteracy and ignorance of the law that is available to protect women, together with reluctance on the part of some to access the same due to cultural pressure.

94. In terms of likely costs, Mr K told the court that issue fees in relation to applications are very modest. In his experience, some women do pursue applications themselves without lawyers acting on their behalf, due to lack of funds. Alternatively, he said that there are usually numerous lawyers available at court, who will often tailor their professional fees to meet the limited financial circumstances of some litigants.

95. In relation to undertakings, Mr K told the court that the only potential impediment to the court accepting undertakings given to a court in England and Wales would be if any part of the same was in some way '*un-Islamic'*. However, he went on to express the view that there is nothing "*repugnant*" to Islam in the father's proposed undertakings. He confirmed that any breach of undertakings accepted by a court in Pakistan would be contempt. The court could either take action of its own motion or further to the equivalent of a committal application.

96. In response to questions put on behalf of the mother, Mr K told the court the following. In order to bring a criminal case, a complaint has to be made at a local police station. He agreed that Pakistan is a conservative country and that pressure can be brought to bear on women not to make complaints. In relation to police refusal to investigate complaints, he informed the court that, while that may be so with some lesser offences, the police have no option but to investigate more serious alleged offences (i.e. offences attracting 3 or more years custody). He disagreed that police practices varied widely between provinces. He agreed that, whilst there was some corruption in the police service, he also referred to a notable case involving a complaint by the wife of a very senior police that was investigated in answering the suggestion that all police were corrupt.

97. Mr K agreed that many wives do not, in fact, report abusive husbands, but that this was not particular to Pakistan. When this aspect was explored further, he referred again to the widespread socio-economic poverty in Pakistan, but went on to draw a distinction with the mother in this case who is well educated.

98. When Mr K was taken to some of the threats set out in 'Whatsapp' messages in the case, he referred the court to specific legislation in Pakistan, namely the Protection From Electronic Crime Act, which enables complainants of such messages to report such behaviour to the police online.

99. It was suggested that the mother's report of alleged threatening behaviour by the father was normal in Pakistani culture. He resisted such a suggestion, characterising the same as "*abnormal*". He confirmed that the courts would act if the father breached undertakings that had been repeated by him and accepted by the relevant Pakistani court. He confirmed that there can be adjournments and delays in the Pakistani courts, but that this is more of a problem with lower courts.

100. Mr K did not accept the suggestion advanced on behalf of the mother that judges could be inappropriately influenced. He added that *"…my experience is the opposite"*. He also disputed the suggestion that there would be little the mother could do if the father chose to remove the child from her care. In terms of personal Muslim law, he said it would be "*inconceivable*" for a very young child to be removed from a mother. In personal Muslim law, a female child should not be removed from her mother's care until she has reached puberty. I digress to note that it is 7 years of age for a male child. If the child were to be removed by the father, it would be open to the mother to apply to the court for her to be returned to her care. A bailiff would enforce a return order. The mother could also seek such an order for the child to be produced even if there was no prior order or undertakings in place.

101. I also note that Mr K followed up his oral evidence with a short e-mail on 18 July 2022, which clarified part of his evidence. In that e-mail he confirmed that an application pursuant to the Punjab Protection of Women Against Violence Act 2016 would be to a Family Court established under the Family Courts Act 1964.

102. I was impressed by Mr K as a witness. He was balanced. He was not dogmatically blind to some of the shortcomings in the justice system in Pakistan. He accepted that, very sadly, there is limited access to justice for many socio-economically impoverished women in Pakistan. However, there is protective legislation, together with a relatively effective court service in place, for those women who are, as a consequence of rather more positive personal circumstances, willing and able to take advantage of the same.

103. The father's counsel endorsed Mr K's evidence. In response, counsel for the mother, in his closing submissions, invited the court to disregard this evidence in favour of the court effectively substituting anecdotally based *judicial notice* that the Pakistani judicial system is thoroughly corrupt and that the mother would be denied access to justice there. I decline to do so. Mr K was a jointly instructed expert, who was robustly cross-examined. Whilst he accepted the imperfections in the Pakistani justice system, he disputed that overarching assertion.

104. I digress to comment that I did note with interest an endorsement on one court document in the bundle from Pakistan [264/344] with a direction to the public not to pay more than the "*ticket fee*" for a copy of a court file and to make a complaint if any further fee is sought. However, that endorsement does not come close to persuading me to endorse the overarching submission by mother's counsel in relation to the Pakistani judicial system.

Summary of the reports / evidence by Ms O

105. There are two reports by Ms O before the court. Once again, I shall confirm my review to a summary of the same.

106. In Ms O's first report, she confirms that there were no safeguarding concerns about the child in mother's care. The child had been clingy for about a month at the time of the first report, which coincided with the resumption of paternal contact. The mother also repeated her allegations of domestic abuse (i.e. "*severe beatings every 15 to 20 days"*) and coercive control against the father.

107. In discussions with the child, it became clear that she had responded positively to contact with the father. By contrast, the mother reported that the child was scared during contact and hits herself with toys around contact sessions. Unfortunately, this account was shared in the interview in the presence of the child before it was translated. Ms O then made arrangements for the child to be moved from the interview, fearing what else the mother may say in her presence that would not be helpful. When Ms O spoke to the mother about her concerns, she replied that she and her family try not to talk in front of the child about the father because when they do the child becomes worried and says "*why do you force me to talk to him and things like that*". In short, Ms O was concerned about alienating behaviour on the part of mother at this early stage of her investigation.

108. Later the mother told Ms O that she did not think that the child should have a relationship with the father at all because he has been physically abusive to her as well. She reported that he would lash out if the child cried and recalled when she was 1 ½ years old the father slapped her on her back, saying that he would get angry if she did not go to sleep on time. The mother pointed out that, although the child is young, she remembers what happened to her. I digress to comment that this allegation has not been repeated by the mother in either her sworn evidence or in her schedule of allegations. Ms O then reflects on the likely impact on mother if her allegations are true.

109. In applying the Cafcass 'Risk and Vulnerability' assessment tool, Ms O opines that the child is not resilient in the light of the adversities she has experienced.

110. Ms O identified in the first report that a legal opinion on child law in Pakistan would be welcome. Other evidence was also outstanding, which had hampered her assessment. She also queried whether the child should be separately represented in the proceedings.

111. I also digress to note that the mother told Ms O about her move to England. According to Ms O, there appeared to be some discrepancy between what mother said to her and what she said in her sworn evidence. She told Ms O that she was currently on a 5-year visa, but if she gets a job she will be able to extend the visa for another 5 years. She said that her father and two brothers moved to the UK from Italy in 2018, followed by her mother in 2019. She and the child then joined them on 24 September 2020. However, Ms O noted that mother in her chronology said that the father had allowed her to leave Pakistan to go to

Italy in August 2020 as her father was planning to move to the UK. She also reported an ongoing police investigation against father in Pakistan.

112. I therefore turn to summarise Ms O's addendum report. In that second report she described the child as bright and alert, listening carefully to what was said to her, with seemingly an improved grasp of English by this time. She was positive in her references to the father. Mother reported that she confusingly refers to her maternal uncle as "*daddy*" as she hears his children call him that term.

113. Ms O expressed the view that the child was, inevitably, wholly dependent on the mother to meet all her diverse needs. She repeated her concerns that the mother was not seeking to promote the child's relationship with her father. Mother reported that the child refuses to speak to the father. Mother blames the father for this. Ms O also worryingly recorded that the mother said that she did not think the father should have any contact with the child, even if he was able to come to England. There was also reference to a very negative conversation between mother and teachers regarding the father, to which the child had been exposed. She had real concerns as to what other conversations take place at home between maternal family members about the father to which the child is exposed.

114. Ms O's professional view was that the child "*yearns*" for a relationship with her father, but knows that her mother, her primary carer, is against this. This is compounded, in her assessment, by the geographic distance between the child and the father. Ms O shares the father's concern that he will never see the child and have a proper relationship with her if she remains in England, with all the adverse long-term implications, including in relation to the development of her self-identity. Mother reported no plans to return to Pakistan, even for a holiday, which Ms O felt would be a huge loss for the child.

115. Mother also reported that she had been awarded "*custody*" of the child in Pakistan. Ms O was concerned that this did not accord with her understanding of Pakistani court documentation. I digress to confirm that there is no evidence that the mother has been granted "custody" of the child in Pakistan.

116. Ms O felt disadvantaged at not being able to see the father and child together. She felts that a proper assessment of their relationship could only take place if the child is returned to Pakistan, with a full assessment conducted there. Ms O also drew reassurance from her reading of Mr K's report as to the options available to the mother in the Family Court system in Pakistan.

117. In her recommendation in support of the father's application for summary return, Ms O opines as follows:

> *"On the basis of my interview with the mother, I do not see how* [the child] *will ever be able to have a relationship with her father and paternal family members if she remains here."*

118. In the course of her oral evidence, Ms O told the court in answer to questions put on behalf of the father about her concerns having seen the video clips of his contact with the child, including why mother chose to remain in the room. She agreed that the father had tried his best. She agreed that there was no overt encouragement of contact by mother, but in a measured way, also accepted that she did not know what may have been said before or after the contact. She identified the "*crux*" of this aspect of the case is why the child responds to father in the way indicated.

119. I digress at this point to set out my views of the clips I have seen. I agree that the father does appear to try his best in challenging circumstances. Whilst there are some modestly positive points, on the whole, the repeated experience reflected over a number of clips was plainly not a beneficial experience for the child and an extremely poor substitute for assessing 'in person' the relationship between a child and his / her parent.

120. Ms O emphasised in her oral evidence her concern about the mother's lack of meaningful insight in relation to what should and should not be said in front of the child and the importance of encouraging the development of the child's relationship with the father. She had hoped that the mother would have moved in terms of her stance on the child having a relationship with the father during the course of her investigation, but there had been no progress. She said the mother's stance, even with her wide experience, was "… *shocking to me*". She was concerned that if the child remains in England there is "*no chance*" that she will be allowed to know her father.

121. Ms O felt that any fact finding determination of the cross allegations should take place in Pakistan, together with the response to such facts as may be found, along with the assessment of the reaction to father.

122. Ms O accepted that the mother would be distressed if she was told that she had to return to Pakistan. She agreed that she has become "*very invested*" in staying in England. I digress to note that mother started a college course in B [town] in February 2022. However, in her view, that should not be at the cost of properly assessing the child's needs in the linguistically and culturally best place to do so, namely Pakistan. She also agreed that Pakistan was in no way "*alien"* to the mother, who has members of her own family still living there. It is likely that she would have support if she is required to return. She also accepted the proposition that father's undertakings would mitigate the impact of a forced return.

123. In answer to questions put on behalf of the mother, Ms O confirmed that the child has, more recently, made progress with her attainment in English. She was asked to reflect on the child's progress in nursery in England and that this should not be put in jeopardy by a return to Pakistan. She said in response that she could not agree as prioritising this would involve sacrificing the prospects of a relationship with the father. She said that she has engaged in a balancing exercise, which has come down in favour of supporting the father's application in light of her assessment of the child's welfare needs.

124. In relation to the child's reaction to a forced return to Pakistan, she was reassured that the mother has confirmed that she would return with her. The child will be able to adapt. She would be able to make new friendships, including with her aunt's children. On her understanding of the legal opinion, it would be open to the mother, in any event, to apply to return with the child to England.

125. Ms O did not see the merit in the point advanced that the child had spent most of her life in Europe, either in Italy or England. Her lived experience was within an extended Urdu speaking Pakistani family throughout this period.

126. In response to the suggestion that the mother was proposing to the court that father should have contact with the child if he is able to secure a visa, she said that this was "*too little too late*" and was "*lip service*" in the light of the strength of the mother's earlier negative views about contact. She was concerned that the mother had "*demonised*" father in the child's perception. She feared that if the father could travel to England, there would be issues about times, venues, frequency relating to any such proposed contact. In short, she was of the view if the application failed, there would be "*no contact*" between the child and father.

127. I was impressed by Ms O. She has been a High Court Cafcass Officer (or its precursor) for just over 20 years. Whilst she was robust in response to some cross examination points advanced on behalf of the mother, this arose out of the difference in what mother had reported directly to her (which was not factually challenged) and her pleaded case to the court about being supportive of contact with the father For the avoidance of any doubt, I accept her professional evaluation, which informs, in part, the court's overall determination.

The father

128. I remind myself at the outset of the significant technical difficulties associated with each session of the father's evidence, which were not his fault. I also bear in mind the inevitable challenges which arise when taking evidence via an interpreter in terms of capturing all the fine detail. Nevertheless, the father appeared bright and relatively focussed in his evidence.

129. There were some concerning features to father's overall evidence. It appeared on his behalf in the course of cross examination of the mother that he did not know about 'putting her name down' for a nursery / school. It was later accepted that he completed the contents of a school application form in October 2020, which was the precursor to the child attending a nursery. In his sworn evidence, he clearly asserts that he did not know where the mother and child were when they came to England. However, it became clear that he inserted the references to B [Town] in the school application form in October 2020.

130. However, in the course of answering questions he was direct during most of his evidence. He was somewhat hesitant when I asked him who had entered the word "*permanent*" in the school application form, a point to which I return later.

The mother

131. The technical arrangements for each of the mother's sessions of oral evidence worked far more smoothly. I remind myself again of the unavoidable challenges associated with assessing her as a witness via the medium of interpretation. Nevertheless, the mother also appeared bright in the course of her evidence.

132. However, by comparison with the father, I have to record that there are far more issues arising in terms of internal and external inconsistencies in important parts of the mother's evidence.

133. Firstly, the mother makes very serious allegations against the father. Whilst I am not going to determine the allegations of domestic violence as part of this judgment, I do comment on what appear to be several inconsistencies and other concerns in relation to this aspect of her case. The mother in her schedule, makes allegations of violence on specific limited occasions. In her first statement she asserts that throughout the marriage the father would be "*very violent*" and "*physically abusive*" towards her when there were issues with obtaining a visa for him. She later alleges that he was "*physically violent*" in 2018 when she returned from Italy. She later alleges the father "*physically assaulted me*" in May 2020 and that she was "*assaulted again*" in July 2020. In her account to Ms O she refers to being "*beaten*" every 15 to 20 days. In addition to some material differences across these diverse accounts, I note the absence of any particularity whatsoever in any of these allegations.

134. Secondly, in her sworn evidence and schedule of allegations, the mother makes no allegation against the father in terms of alleged physical abuse against the child. Yet, she reported to Ms O that he would "*lash out*" and "*slap*" the child. These are serious allegations that the court have ordinarily expected the mother to have set out at an early stage in her sworn evidence.

135. The mother has also made the further serious allegation to Ms O that the father is effectively a criminal who "*defrauds*" people and is subject to an ongoing police investigation in Pakistan. This is not borne out in the Pakistani police antecedent information [266/344] before the court

136. The mother asserted to Ms O that a 'custody' order had been made in her favour in Pakistan, which is not borne out in the documentation from the Pakistani Family Court. There are also significant differences, which I will set out later in more detail at the relevant part of the judgment, in the evolution of her account as to the plan to travel to England when she left Pakistan in August 2020.

Conclusion

137. In short, in my assessment of the two lay parties, I concluded that the father was, to a large extent, the more reliable of them in relation to important events concerning the child and, in particular, in relation to the period after the mother left Pakistan in August 2020.

FINDINGS OF FACT

138. As indicated earlier, the oral evidence by the parties exceeded somewhat the tight parameters set at the outset. I permitted some latitude as the evidence was relevant and helpful in informing, in part, the court's determination. This evidence gave rise to a number of issues that merit specific findings as part of this judgment.

Father's fundamental agenda in relation to the child

139. The mother contends that the father's primary motivation in relation to the child was to effectively *'use'* her in order to attain a visa to leave Pakistan and get to Italy, or later, to the UK. This issue is inextricably linked with the circumstances surrounding the child's arrival in England in 2020.

140. This is a serious allegation by one parent against the other. The mother bears the burden of proof in this respect.

141. As part of her case as to father's fundamental agenda, the mother asserts that she, or her family, applied for a visa for the father to travel to Italy on 3 separate occasions, such was the father's enthusiasm to do so. The father responds by contending that there was only one such effective application. This was with the intention of him visiting the child in 2018 when mother had been away for a number of months and he had not met the child. There was reference by father to a possible second visa application in 2018, which was to be made by the mother's brother. However, the father asserts that he is unaware whether any second application was actually submitted on his behalf.

142. I am not satisfied that the father has had the malign intention of '*using*' his daughter to his own ends. I am satisfied that he had genuine feelings of love, affection and commitments towards her. I have reached this conclusion for a number of reasons.

143. Firstly, whilst one Italian visa application is accepted by the father, there is no documentary evidence of any further application for a visa for the father to travel to Italy, which is supportive of his account, rather than the mother's case.

144. Secondly, the parties have, inevitably in this day and age, filed relatively voluminous evidence as to the exchange of electronic communication (i.e. texts/ Whatsapp messages) between them in the past. However, there are no messages reflecting exhortations by father to progress visa application/s or recriminations about failed application/s.

145. Furthermore, the visa application for the father to travel to the UK (in relation to which I will return in greater detail later) failed. The father rejects the mother's current proposal to assist him in a further application for a visa to travel to the UK, citing his family and business commitments in Pakistan. Whilst this may be a sophisticated stance, based on the knowledge that his previous visa application failed, I am more inclined to accept that his reasoning is genuine, which is directly at odds with the mother's overarching contention that he has always *'used'* her and the child to try to get a visa to travel to Europe.

146. Finally, the professional evidence by Ms O clearly confirms that the father's motives towards the child are genuine. Despite the failed UK visa application, and the challenges that he has faced in terms of pursuing indirect contact with the child, he has remained consistent and commendably committed in his conduct towards her. Furthermore, in my judgment, some of the contemporaneous contents of the father's messages sent to the mother about the daughter in 2021 referred to earlier also direct support this finding.

Earlier habitual residence

147. On reflection, in my judgment, it is appropriate that I should review the child's habitual residence as part of my determination and apply my conclusion in the limited way indicated by relevant case law as part of my overall determination.

148. In the circumstances, I am satisfied that I can commence my review of the child's earlier habitual residence by dealing relatively briefly with my conclusions relating to the period she was living in Pakistan between May/July 2019 and August 2020. The father asserts that the child was habitually resident in Pakistan during this period (and furthermore that this habitual residence did not change). The father bears the burden of proof in this respect.

149. Whilst the child had experienced significant international movement during her first year or so of life between Pakistan and Italy, I am persuaded that during this 2019/20 period, the child was habitually resident in Pakistan. In reaching that conclusion, I take into account the following: (a) The child was at all times a Pakistani national as were/are her parents. In short, she was living in the country of her national identity, with no conceivable issue as to her right of abode there; (b) The parties and the child lived together in their family home in Pakistan for most of this period; (c) Whilst duration is not determinative, this was a significant period of 13 to 15 months in the context of this child's life; (d) Members of the child's extended family on both sides were residing in Pakistan during this period, with whom the child had contact; (e) As the child's primary carer, the mother undertook courses and was herself employed in Pakistan at different times during this period. For completeness, the father was also involved in running his family's business in Pakistan throughout this period; (f) The child, as an Urdu speaking Muslim child, would have been exposed to her birth culture and language throughout this period; (g) The child attended a pre-school nursery in Pakistan for part of this period.

150. In short, whilst the child still had connections with Italy, and in particular with extended maternal family members living in Italy at this time, I am satisfied that she was integrated, as a rising two year old, in her life in Pakistan at this time.

The visit to Italy in August 2020 / later arrival in England in September 2020

151. The mother contends in her first statement [92/344], which was confirmed in her oral evidence, that the plan from the outset in July 2020 was for her and child to travel firstly to Italy and then on to England and for a visa application to be made on behalf of the father for him to join them later in England. The mother contends that the completion of the application form for the child to

attend a nursery is part of the picture reflecting their consensual plan for the child to remain in England. The father asserts in response that he was only aware of, and agreed to, a visit to Italy in August 2020. He says that he did complete the school application form with information provided by the mother to enable the child to attend a nursery as he felt he had no alternative and that this was only for a short period until she returned to Pakistan.

152. I accept, and I find, that the father was only aware of a proposed visit to Italy in 2020. I have reached this conclusion for a number of reasons.

153. The father has been fundamentally consistent in his overarching assertion. By contrast, there have been a number of issues in relation to the mother's consistency in this respect. I have already referred to the inconsistency picked up by Ms O around this aspect of the mother's case. I also note how the mother pleads this part of her case in her schedule of allegations, by contrast to her sworn evidence, wherein she alleges [20/344] as follows: "*When I <u>came back to Italy</u>, my father asked him for his permission to take myself and* [the child] *to the UK.* [The child's father] *said, you can take them but you must get my visa from the UK".* In mother's most recent statement [2/20] she says "*…since my arrival in the UK I told my Ex husband* [the child's father] *about our emigration and with his consent we moved to the UK".* Whilst this extract of her statement may itself be internally inconsistent, it also detracts from the overall cogency of her case in respect of this issue.

154. In addition, there is also no supporting contemporaneous evidence in any electronic messages between the parties at the relevant time referencing a planned move to England in any way. There is no suggestion in the evidence that the mother and the child left Pakistan with all their possessions for a planned and very major permanent move. Whilst a visa application was later made for the father to travel to the UK, that application was not made until December 2020. The mother needed [202/344] a copy of the father's ID document for her brother to submit the application. I am satisfied that if this had been a settled long-term plan from the outset, the mother would have left Pakistan in August 2020 with everything that would be needed in due course to make a visa application at the earliest opportunity. On mother's case, the father would have made sure that she had everything that would be needed.

155. In relation to the 'In year admission to Primary school' application form, I firstly note that the wrong form for the child's situation was used at the time. The form was intended for use in relation to a situation whereby parent/s intend to apply for a child to change schools during an academic year. The child was only aged c20 months old at the time and plainly was not of school age or enrolled in any school. The use of this particular form is likely to have been the result of the parents' unfamiliarity with the process. It was also agreed by mother in cross examination that, in Pakistan, nurseries or playgroups are attached to schools and that any application for places has to be made to the relevant school.

156. I have taken into account the reference to '*permanent*' on the form in relation to the child's address. In view of the evidence that the father provided the information on the form as he had access to a laptop, it is likely that he filled in

that part of the form. However, that answer on the form is clearly incorrect. The child had only been in the country for a few weeks at the time of the application. I also remind myself that the father's first language in not English. Having myself drawn attention to this part of the form during further oral evidence, I am not satisfied that any specific inference can safely be drawn from the word '*permanent*'. I also admitted evidence purportedly sent by the mother, which she denies, to the father 2 days before the form was compiled. However, for completeness, I merely record that the contents of the messages are insufficiently precise to have any bearing on the determination of this aspect of the case.

157. For the avoidance of any doubt, I am satisfied, and I find, that the motivation behind compiling this application form was to seek a nursery placement for the child, rather than an application to enrol the child in a school some 2 years or more in advance when, on any view, that was going to occur, which had been suggested in cross examination of the father. I also accept that the father felt he had no choice but to cooperate with mother at this time.

158. However, even in the event that I am wrong about the parties' intentions at the time the mother and child travelled to England, and shortly thereafter, I remind myself that parental intentions are not determinative in any event in either determining habitual residence or, for that matter, when considering an application for a summary return.

Subsequent habitual residence / at the time of father's application

159. I therefore turn to consider the child's habitual residence at the time of the father's application for a summary return in early November 2021. Father asserts that this was still Pakistan. He still bears the burden in this respect.

160. Whilst acknowledging that a period in excess of 13 months in England by that time is a significant period, my attention was drawn to the child's enduring links to Pakistan and Pakistani culture at that time. The child's father and her extended paternal family were still present in Pakistan, as were members of her extended maternal family. Her nationality had not changed. She retained the right of abode there. She was being brought up in an Urdu speaking Muslim home. It was also submitted that the child's presence in England remained relatively tenuous over this period. In terms of intentions, the father's case, as I have found, is that he never agreed for the child to come to England.

161. By contrast, the mother contends that the child's habitual residence had never been Pakistan. It is her case that the child's habitual residence had changed from Italy to England by the relevant date. However, I have already rejected these submissions. Significant reliance was inevitably placed on the period of time that the child had been resident in England and that she was settled then and is even more settled now. My attention was also drawn to the presence of other members of the child's maternal family in England during this time i.e. maternal grandparents and uncles. It was also submitted that the child had integrated by starting to learn English and had started at a nursery in February 2021.

162. I digress to deal with the purported earlier nursery attendance from February 2021. That assertion emerged for the first time in oral evidence on 15 August 2022 by the mother in answer to questions from me seeking clarification. There is no documentary evidence before the court about this nursery. The inquiries by Ms O indicate reference to the child starting nursery in November 2021. In short, there is no reference in any statement or elsewhere about the child starting at any nursery before November 2021. On careful reflection, I am not satisfied that the child did attend a nursery before November 2021.

163. I confess that I found the determination in relation to the child's habitual residence at the relevant time of the father's application finely balanced and challenging. Whilst not determinative, she had been living in England for a significant period, in excess of 12 months, at that time. She was settled and living with her mother and members of her extended family. She was clearly exposed to the English language at that time. I specifically remind myself that part of the test involves only some integration.

164. Nevertheless, I have ultimately concluded on the evidence before the court that the child's habitual residence had not changed from Pakistan at the relevant time. Whilst she had been in England for in excess of 12 months, she had not, in my judgment, sufficiently integrated. I have found as follows: (a) Her period in England has to be seen in the context of a number of earlier international moves and her periods living in Pakistan; (b) In view of her past integration in Pakistan, the slower will be the attainment of sufficient social integration in England; (c) She was not enrolled in any nursery over this period; (d) She was living at home with her Urdu speaking mother and members of her Urdu speaking maternal family; (e) Some of the members of the maternal family had been away for periods of time up to November 2021. It was said that the visa application was not made until December because the paternal uncle, who had to make the application, was not in the country. The maternal grandmother was also back in Pakistan during part of this period; (f) I am satisfied that all of the members of the maternal family present at times with the child in England had much closer connection with Pakistan than England. Their respective connections were, if anything, stronger with Italy than with England; (g) Her grasp of the English language was probably very limited over the relevant period, allowing for her age and stage of development, in the light of the language spoken at home. I note Ms O's evidence as to the child's improved grasp of English by the time of her face to face meeting in March 2022. On any view, the child had been in nursery by this time; (h) There was a degree of uncertainty as to the child's long term presence in the UK over this period; (i) There were very significant ongoing ties for the child with Pakistan at this time; (j) There was no change to child's nationality / right of abode in Pakistan; (k) I have found that there was no consensual plan involving both parents for the child to travel to England and (l) There had been limited and hasty planning by the mother in relation to the move to England.

165. In the event that I am wrong in terms of this specific finding, I bear in mind that this aspect is not in any way determinative of the application. If I had reached the conclusion that the child's habitual residence had changed to England by the

time of the father's application, this would not, as part of considering all the relevant circumstances, have changed my final determination.

The proposed arrangements on return

166. Firstly, in the course of oral evidence, there was a degree of refinement to the father's proposed undertakings. I incorporate the final version of his proposals at this point in my judgment, which he has confirmed he will give to the relevant court in Pakistan:

(i) To pay for the cost of return flights for the mother and the child, and any Covid tests they may need to re-enter Pakistan;
(ii) Not to initiate criminal proceedings against the mother regarding the abduction of the child to England;
(iii) Not to use or threaten violence against the mother, nor to instruct or encourage another person to do so;
(iv) Not to attend at or approach the property at which the child and the mother are residing;
(v) Not to attend at the airport when the mother and the child return to Pakistan;
(vi) Unless the mother decides to live in the maternal family home, to fund and provide the child and the mother with appropriate accommodation, and fund their utility bills, pending the first inter partes hearing in Pakistan seised with the welfare of the child;
(vii) Not to remove the child from the care of the mother, save for such periods of contact as may be agreed in writing between the parties, pending the first inter partes hearing in Pakistan seised with the welfare of the child;
(viii) To take steps to lodge or otherwise make enforceable the undertakings given to this court, in the family court with competent jurisdiction in Pakistan seised of welfare proceedings in respect of the child.

167. There was evidence in the course of the hearing in relation to aspects of these undertakings. The mother contended, for the first time, that she could not return to the family home in Pakistan as her sister, who is living there, is about to leave to get married. I do not accept that new assertion. I am satisfied that this property would be available to the mother if I order a return. That property is situated in a town approximately 20-25 miles from the father's home. It was also suggested in evidence that the maternal grandparents would not be able to support the mother as they are now dependent on state pension. I bear in mind the international lifestyle of this extended family, and the past financial support provided to the mother by both her parents and her brothers. I strongly suspect that the maternal grandmother, who has been back in Pakistan relatively recently, would join the mother there if mother felt she needed her added support.

168. The mother also asserted that she would not feel comfortable living in her family home in any event in the light of the father's past behaviour towards her. However, I remind myself that she lived back at this property for a period in the summer of 2020 before she later reconciled with the father. I am also satisfied

that the court in Pakistan would accept the father's undertaking not to attend at that property to further reassure the mother.

169. In the alternative, I accept that the father would pay a sufficient allowance for the mother to rehouse herself elsewhere pending the first court hearing in Pakistan. In the course of some of the cross examination, it was suggested to the father that he should be expected to cover expenses that were not incurred when they lived together as a family. In terms of health cover, the Pakistan government effectively provides citizens with basic health insurance, which can be supplemented by private health provision. I accept the father's evidence that they did not as a family have the benefit of private health cover up to 2020 and that he should not be expected to fund the same now as part of his proposals. I also note that the mother told the court her brother was currently assisting her to finance the court proceedings in Pakistan in relation to her dowry and that they would, if necessary, support her financially.

170. I have also already set out my acceptance of Mr K's evidence as to the enforceability of these undertakings as long as they are repeated and accepted by the Pakistani court

DISCUSSION / DETERMINATION

171. I remind myself, once again, that this is an application for summary return. There has not been a full welfare evaluation in relation to the child. I must determine where the child should be located whilst that fuller welfare assessment and final long-term determination of her future should take place, albeit with the child's welfare needs informing my approach. The child must be the focus in my assessment.

172. There are a number of significant points advanced on behalf of the mother. I accept that the child is settled in her care. There are no concerns, in the light of the findings I have made, about her as a parent, save for her apparent attitude to the child's contact with the father. The child has members of her maternal family around her. She was living in England for in excess of 12 months at the time of the father's application. She has been living in England now for nearly 2 years, albeit significant portions of that period have arisen for reasons beyond the control of the parties. The child is settled in a nursery and is progressing well in terms of her attainment in the English language. There is every reason to suppose that her mother will be permitted to remain in the UK long-term.

173. There are also some legitimate concerns if the child is made to return to Pakistan. Such a move would amount to a significant change to the child's life, who is now rising 5 years old and is far more aware of events occurring around her. I accept that her mother will be distressed at having to return to Pakistan. There is a risk that this change could lead to an adverse impact on the child's social and emotional development.

174. However, in my judgment, there are compelling, and ultimately determinative, reasons in favour of ordering the child's return to Pakistan for the further

assessment of issues informing the decision about her future. I deal at the outset with some important practical considerations.

175. There are issues about the parents' past relationship, in terms of their cross allegations, that may have a bearing on the evaluation of the mother's approach to paternal contact and the precise arrangements for that contact. There are significant challenges to the forensic evaluation of the mother's allegations in this jurisdiction. The mother seeks to rely upon medical evidence in support. The father asserts that the evidence has been fabricated. I am satisfied that the most convenient forum for the determination of such issues is the relevant Pakistani court.

176. It is also necessary for there to be fuller evaluation of the father's contact with the child and her attachment to him as part of a full welfare assessment. I accept the professional evidence before me that it is very difficult for this to be conducted when their contact is indirect via video and assessed remotely. In view of the father's past failed application for a UK visa, it presently seems unlikely that he will be able to come to the UK for such direct contact to be set up and assessed. By contrast, if the child is returned to Pakistan, direct contact between them can be set up and assessed in a far more meaningful manner.

177. I also digress to note that if the child is returned to Pakistan, with direct contact set up, that may have the consequential advantage of encouraging the development of the relationship between her and father, which in turn could prove to be beneficial if, ultimately, the relevant Pakistan court determines that the child should be permitted to return to England with the mother in due course.

178. I am also satisfied that an order returning the child to Pakistan is in accordance with her welfare needs.

179. Whilst the child is too young to explicitly express her wishes and feelings, I accept Ms O's professional evidence that the child "*yearns*" to have a relationship with the father.

180. In addition to requiring her immediate usual basic needs to be met, the child's longer term emotional and developmental needs, in terms of acquiring a rounded development of her self-identity, must also be borne in mind. All things being equal, this ordinarily involves a secure relationship with both parents (as reflected within section 2A CA89) and, if possible, both sides of the extended family.

181. The child's educational needs are presently met. There is no evidence before me to suggest that this would be placed in jeopardy if she were to be enrolled in a pre/school placement in Pakistan. Both parents clearly benefited from their early education in the Pakistani school system.

182. The effect of change is a very important consideration in this case. As I have identified, a return to Pakistan would amount to a significant change from the child's perspective. However, I am satisfied that the mother, as primary carer, will return to Pakistan with the child, thereby ensuring continuity of direct care.

Whilst I accept that the mother will be distressed with a return, I accept Ms O's evidence that Pakistan is not an "*alien*" country to her. She will have family to support her. I am satisfied that she will adjust. I am equally satisfied that this arrangement will significantly mitigate any uncertainly arising for the child in a return to Pakistan.

183. The child is a rising 5 year old Pakistani female child who has been brought up in the Muslim faith. Whilst she has lived in Italy, Pakistan and England in her short life to date, she has always lived, wherever she has been, in a 'Pakistani' home.

184. In relation to past harm, as indicated, I have not evaluated the cross allegations, which include alleged exposure of the child to indirect and direct abuse and have made no findings in that regard. However, I am satisfied that there has been some emotional harm and impairment of the child's development to date arising out of the interruption in the development of her relationship with her father. I am also satisfied that there is currently a serious long-term risk of further such harm in the future.

185. Each of the parents is capable. As indicated already, apart from promoting contact with the father, there are no issues with mother as a parent in the light of the findings that the court has been able to make. The same point applies to the father. No issue has been raised about members of either side of the child's extended family as part of her family support network. I digress to note that the father suggests that the maternal grandparents may have exerted a malign influence in terms of bringing about the mother's removal with the child to England. However, there is insufficient evidence to make any finding in that regard.

186. I must also ensure that I apply all the relevant principles that are relevant to the determination of this application from established case law. In addition to my earlier conclusions, I also confirm the following: (a) I am satisfied that there are sufficient findings within my judgment to make an order for return; (b) I have, in fact, made a determination as to the child's habitual residence and concluded that it had not changed from Pakistan at the date of the father's application; (c) However, even if that determination is wrong, I am satisfied that the child lived in Pakistan for significant earlier periods in her life and has always lived in a de facto 'Pakistani' home wherever geographically she has been resident; (d) I am further satisfied that the child is most closely connected with Pakistan, in terms of its culture, language and religion; (e) I specifically remind myself that the most that can be said in relation to this aspect in any event is that it may be convenient to start from the proposition that it is likely to be better for a child to return to the 'home country'; (f) The case against a return in this case has, in my judgment, limited merits; (g) I am satisfied that there has been sufficient evaluation of the child's welfare needs to determine this application; (h) I am satisfied that the proposed practical arrangements on return will provide a sufficiently 'soft landing' for the mother and the child in Pakistan; (i) I have allowed oral evidence by the parties which, in my judgment, helped to inform the court's determination; (j) The court's determination has also been informed, in part, by the evidence by Ms O, both in terms of her reports and her oral

evidence; (k) I am satisfied that there will be an appropriate assessment of the child's welfare needs in Pakistan, which will be applied and prioritised in informing the Pakistani court's decision about her future; (l) I am specifically satisfied that the mother will be able to apply in the relevant Pakistani court for permission to return with the child to England and (m) I also specifically remind myself that the mother is a bright, well-educated and articulate young woman, who is already engaging, with the benefit of legal representation, in other family / civil proceedings involving the father in Pakistan. I am satisfied that she, sadly unlike some other women there, will have effective access to justice in Pakistan.

187. Accordingly, I have reached the conclusion that I should make a summary order for the child's return to Pakistan and will invite submissions from counsel in due course as to precise terms of the final order to give effect to this determination.

CONCLUDING REMARKS

188. I finally record in closing my gratitude for the parties' unfailing courtesy to the court during the hearing and the invaluable assistance provided to the court by their counsel.

End of judgment

Paul Hopkins QC

2 September 2022