



Neutral Citation Number: [2020] EWHC 1863 (Fam)

Case No: FD20P000118

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 16/07/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between :

H
- and -
N

Applicant

Respondent

Ms Anita Guha (instructed by **Dawson Cornwell**) for the **Applicant**
Ms Rebecca Davies (instructed by **Moss Beachley Mullem and Coleman**) for the **Respondent**

Hearing dates: 22 and 23 June 2020

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. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 16 July 2020.

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THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter, I am concerned with the welfare of four children, namely W, aged 14, X, aged 13, Y, aged 9 and Z aged 1.
2. The applicant, H, is the father of the children, represented by Ms Anita Guha of counsel. The father applies under the inherent jurisdiction of the High Court for an order for the summary return of the children to the jurisdiction of Pakistan. I found the father to be at times an arrogant witness, prone to emphasising his own perceived virtues, in particular stating on repeated occasions that he was far better educated than the mother and, thus, apt to be the far better parent. He was particularly pre-occupied with the impact of this case on his own reputation. I am also satisfied that the father has at times been dishonest in his evidence. In so far as it is necessary to do so, I will deal with specific aspects of the father's reliability below.
3. The respondent, N, is the mother of the children, represented by Ms Rebecca Davies of Counsel. The mother opposes the application for an order for summary return under the inherent jurisdiction. The mother was presented as a somewhat more credible witness than the father but on occasions was also apt to dissemble when pressed on matters of relevance to the court's determination. Further, as will become apparent, I am satisfied that the mother was, at best, economical with the truth before the West London Family Court on 3 December 2019. Again, in so far as it is necessary to do so, I will deal with specific aspects of the mother's reliability below.
4. In determining the question of whether it is each of the children's best interests for a summary return order to be made under the inherent jurisdiction, I have had the benefit of hearing evidence from the mother, the father and the Cafcass Family Court Adviser (hereafter FCA). I have also been assisted by the written and oral submissions of counsel. This matter was heard remotely. By reason of her lack of access to the necessary computer equipment and her need for the services of an interpreter, the mother attended the Royal Courts of Justice and participated in the remote hearing from that location with the services of her interpreter, who was also located, socially distanced, in the courtroom at the RCJ. The father participated by video link from Pakistan.

BACKGROUND

5. The parents were married in October 1998 by way of an arranged marriage. The parents and all the of children are Pakistani nationals. W, X and Z were born in Pakistan and Y was born in England. The three elder children have United Kingdom passports. Z has a Pakistani passport. As the mother conceded in cross-examination, the children have a large extended family in Pakistan, with some forty-seven first cousins residing in that country. The children have no extended family members in this jurisdiction. The mother contends that the older three children do not miss Pakistan and have limited positive memories of it, those memories concerning the houses of the maternal grandmother and aunt and festivals such as Eid.
6. Within this context, there is a dispute between the parties as to whether their marriage was characterised by domestic abuse. The mother alleges the father was regularly

domestically abusive to her, with many of these incidents stemming from the parental grandmother's desire for the father to divorce the mother. The mother alleges that the domestic abuse continued when the family was in England at points between 2010 and 2017 and when the family returned to Pakistan in 2017. The father denies the allegations of domestic abuse and contends that they have been fabricated in order to advance an agenda of the mother and her brother (who the father also alleges has pursued a vendetta against him in Pakistan borne out of jealousy) to marry the children to their maternal cousins and thereby gain immigration clearance into the United Kingdom for those maternal cousins.

7. The allegations of domestic abuse made against the Father are unparticularised save for one specific allegation, namely that she was hit with a shoe by the father in January 2019, which resulted in her leaving the family home with the children to live with the maternal grandmother. In the circumstances, there is no schedule of findings sought by the mother against the father before the court. The mother's case, however, is that the domestic violence was so prevalent during the marriage that it is difficult to recall specific incidences. The mother accepts that she did not report the alleged domestic abuse to authorities in Pakistan but contends that this was as a result of cultural norms in Pakistan regarding the reporting by women of domestic abuse, familial pressure not to approach the police and promises that the situation would improve. The mother likewise accepts that she did not report the alleged domestic abuse to the Police in this jurisdiction when it occurred in England.
8. With respect to evidence supporting the credibility of the allegations of domestic abuse, the court has before it the following relevant evidence:
 - i) The mother's account contained in her statements of evidence. As I have noted the mother does not particularise her allegations of domestic violence, save for the incident with the shoe. In her evidence, the mother contended that she gave an account of the domestic abuse to the British High Commission in Pakistan, stating that she went to the High Commission and told an official that she was the victim of domestic abuse and that the father had threatened to get her and the children's nationality cancelled. In her evidence the mother further stated that the father would be rude to her and the children to the extent that the children would be afraid of the father. She stated the father had beaten her before she left the family home in January 2019 and when she had thereafter returned before leaving again in May 2019.
 - ii) The mother's account to social services given in October 2019. During the Child and Family Assessment the mother informed social workers that she had left the father in Pakistan due to prolonged domestic violence perpetrated by the father.
 - iii) The mother's account to Cafcass. The Cafcass safeguarding letter dated 26 February 2020 records the following account given by the mother

“The relationship between the parties ended in 2019; there was domestic violence from [the father]; [the father] used to beat her a lot so she left him. The worst incident was when [the father] bit her and he took the children from her and then he hit and kicked her and used a shoe to hurt her. [The father] was mentally abuse (*sic*) as he would

“torture” her mentally; she “lived feeling always afraid and in the corner.”

- iv) The statements made by the children regarding domestic abuse. The mother’s allegations are corroborated in general terms by the children. In October 2019 W told social workers that there had been many fights and it was not safe for them to remain with their father. He stated to social workers in October 2019 that he was aware that his father had been hitting his mother and that had been evicted from family home on at least six separate occasions but the senior relatives and their extended family would encourage them to return. The social work assessment of September 2019 records all of the elder three children reporting domestic abuse by their father towards their mother. They were adamant that they did not want to speak to their father because of the way he had treated their mother. In April 2020 W told the FCA that he had always seen his parents fighting at home. He described a situation at home in Pakistan in which the father was swearing and shouting at the children, hitting the mother and always angry. During incidents of domestic violence W described the children as scared, screaming and trying to stop the father and that fights occurred perhaps every week. He described being scared of his father by reason of his father having hit his mother. When speaking to the FCA X stated that the father hit the mother with shoes and slapped her, got angry very quickly, resulting in the children being scared and no one speaking afterwards. She described this as always happening. X was scared that if they returned to Pakistan the fights would start again. Y recalled her father hitting her mother many times and shouting at the children.
- v) The tenor of some of the text messages sent by the father to the mother in October 2019, which the mother submits became intimidating when the father’s initial emollient approach did not work, the father sending texts including:
- “Well done cheater and disloyal woman”
- “Nothing will be in your hands like home, property, kids”
- “There is another world which don’t need evidence and witness. Also grave (Qabar) is very dark”
- “I think you don’t have a brain”.
- During cross examination the Father denied these texts amounted to emotional abuse by him of the mother.
- vi) Police records from 18 October 2019 during the father’s visit to England. The mother contends that the father attempted to snatch her passport and bank card and hit her, at which point she called the police, which claim the father denies. The police records do however, detail the mother alleging that domestic violence had taken place in the past in Pakistan, that the father used to assault her and that that domestic abuse was constant. The officers notebook appears to indicate that the mother declined to give her consent to her details being referred to a domestic violence support agency.

- vii) Mother's medical records (which were secured by the father from the mother's doctor in Pakistan without consultation with the mother or her consent) include an entry dated 21 March 2018 where the presenting complaint is recorded as "trauma to chin". This entry was not however, relied on by the mother in evidence as probative of domestic abuse.
9. Against this evidence, the father denies perpetrating domestic abuse against the mother. In particular, the father points to the absence of reports of domestic violence to the police in Pakistan or the police in England prior to 2017, the absence of any particularised incidents save one and what he contends is the motivation for the mother's allegations of domestic abuse, repeating his assertion that domestic abuse has been fabricated in order to advance an agenda of the mother and her brother to marry the children to their maternal cousins and thereby gain immigration clearance into the United Kingdom for those maternal cousins. The father also relies on cards that he contends show that the children had good relationship with the father and an entry from X's diary showing that, as at 9 February 2017, "Everyone is happy about Dad coming". Whilst important, this of course is a snapshot and, within that context, I note that Y is recorded as stating as follows to the FCA:

"She would not want to see her father if he came to see her here and she opposed indirect arrangements, explaining 'I won't talk to him because I don't miss him and I don't like him anymore'. Upon being asked how he had been when she used to like him, she replied 'when I was little he was not that kind, he still used to be shouting and hitting at us, but sometimes he be kind but only to me'. She then stressed he was only kind 'a little bit, then he gets angry on me'.

10. The father further points to the mother's statement to the social worker in October 2019 that she did not wish to move accommodation to address a risk of domestic abuse. However, it is important that the full passage in the Children and Family Assessment is considered, namely:

"However [the mother] and the children were very much against the idea of having to move to another accommodation. Mother reported that her solicitor had advised that he would apply for a restraining order to prevent father from approaching her and the children. [The mother] said for this reason she was willing to remain at the current [home] which was within a close walking distance from the children's school."

11. Likewise, whilst the father relies on the assessment of the social worker recording that the mother "is confident that the father does not pose a risk", it is again important to consider that statement in its full context, the passage reading in full as follows:

"Father was able to locate the residential address of the mother and the child but mother is confident that the father does not pose a risk that that she will apply for an injunction against him if father was to return to the UK and posed any risks."

In cross examination, the mother stated that she had told the social workers that she was confident the father did not pose a risk because she knew she could obtain an injunction

and that, as a lawyer, the father would respect that order and that she knew the father was leaving the United Kingdom in two days' time to return to Pakistan.

12. The mother stated in evidence that the father did not physically harm the children. This is different to the account given by Y to the FCA, in which X stated that the father had hit her and that she had gone to her mother for comfort. Indeed, as set out in the passage above, on Y's account the father had shouted at and hit all of the children. Again, none of the other children make this allegation.
13. In 2009 the father was granted a 3 year highly skilled migrant visa and arrived the United Kingdom in May 2009. The Mother obtained a spousal visa and came to England in 2010. There is a factual dispute between the parties as to how long the mother and children have spent living in the United Kingdom and how long they spent living in Pakistan between 2010 and 2014. The father contends that the mother did not like living in England and that both parents travelled back and forth to Pakistan frequently. Between 2010 and 2014 the mother contends that she travelled to and from Pakistan only in order to provide care to the applicant's ailing father.
14. On the issue of the amount of time spent in England by the mother and W, X and Y between 2010 and 2014 there is independent evidence in two formats. First, a letter from the Home Office indicating that when the mother applied for UK citizenship in at the end of 2015 her application was rejected because she had not been in England long enough during the qualifying period. The letter details that between 2010 and 2015 the mother had been absent from the United Kingdom for 1105 days (a period of a little over three years in total) and for 115 days in the last twelve months of that qualifying period. This evidence tends to be borne out by the second piece of independent evidence, that provided by the dates on the children's Pakistani school reports that are now before the court. The reports in respect of W cover the period from 2012 to 2014. A report for W dated 9 November 2013 indicates an attendance of 71 days out of a maximum of 78, a report dated 18 January 2014 shows W attendance at 64 days out of a maximum of 68 days. The reports for X cover the period between 2013 and 2014. The report dated 9 November 2013 indicates an attendance of 70 days out of a maximum of 78 days, the report dated 18 January 2014 indicates an attendance of 64 days out of a maximum of 68 days and the report dated 26 February 2014 indicates an attendance of 50 days out of a maximum of 52 days. Finally, a Pakistani school report for Z dated 26 February 2014 shows an attendance of 50 days out of a maximum of 59 days. A letter from SN, exhibited to the father's first statement, states that W and X also received tutoring in Pakistan in 2013 and 2014. The foregoing information is consistent with the statement that the father attempted to lodge in the proceedings under the Children Act 1989 at the West London Family Court that I will come to.
15. In 2014 the father, the mother and the three eldest children relocated to England. In 2017 the family returned to Pakistan. Again, there is a dispute as to the circumstances of this return. The mother contends that she and the children were forced by the father to return to Pakistan. However, in providing an account to the social worker in October 2019 the mother described the father as encouraging them to go back. In her first statement, the mother states that the children in particular did not want to return to Pakistan and gives as a reason the fact that "all their education was in this country" and "all their friends were in this country". The mother contends in her first statement that it was never the intention of the parties in 2017 to return permanently to Pakistan. W

has likewise stated that he and his siblings did not want to go and live in Pakistan, but their father took them to Pakistan against their wishes.

16. The father contends that he and the mother agreed in 2017 that living in England was not suitable for the family and that they wanted the children to grow up learning about their Pakistani culture and heritage. In his application in Pakistan the father puts his case slightly differently, making out it was the mother who pressed for a return to Pakistan. The father further relies on an extract he has taken from X's diary indicating she was excited to return to Pakistan. Whilst the mother says that the relevant passage relates to X's excitement about air travel rather than a return to Pakistan, when read in context the diary entry does tend to suggest that her excitement is about going to Pakistan rather than simply air travel, not least because X makes clear her extreme displeasure that the PIA plane on which they were travelling did not have functioning television screens.
17. As with much else in this case, there is a dispute between the parents as to the level of care given to the children by each of them. The mother contends that, beyond the provision of food, the father was not heavily involved in the care of the children and that she performed all of the basic care tasks with respect to the children. The father contends that the parents were equally involved in the care of the children. In providing their account to the FCA, the children indicated that their father was always in a bad mood and angry. W told the FCA that the father did not give the children time, did not listen to them and was always busy with work. X stated that the father cared about property and money more than the children and never gave much time to the children. During their time in Pakistan between 2017 and 2019 the documentary evidence before the court indicates that the elder three children were enrolled in school and were attending these schools. Between October 2017 and July 2018 W, X and Y received tuition from SN and MR between 1 August 2018 and 30 June 2019 and Quranic tutoring from 5 October 2017 to 30 July 2019. The family lived in a four bedroom family home owned by the Father and the parents established an immigration consultancy business.
18. There is a further dispute between the parents as to the amount of contact the children had during this period with the maternal extended family. The mother contends that the children's contact with her parents and extended family was extremely limited, extending to only one or two visits during this period. By contrast, the father contends that the children had regular contact with their maternal family and produces a series of photographs to evidence this. Those photographs depict *one* occasion when W was in the company of the maternal grandmother. Once again, the children provided relevant information to the FCA with respect to this issue. W gave an account of not being allowed to visit maternal relatives by reason of his father disliking them as the result of a disagreement eleven years ago between the father and the mother's elder brother. W described meetings his maternal cousins for the first time after his father had "kicked them [the children and the mother] out of the house". In evidence the father conceded that he has had a longstanding disagreement with one of the mother's brothers, whom he accuses of having him wrongfully arrested in Pakistan. X stated that when the father came to England in October 2019 she had witnessed him denigrating the mother's wider family. Y told the FCA that the father rarely let the children visit the maternal grandmother even though she lived close by.
19. The parents separated in May 2019. The mother contends that she was evicted from the family home with the children on 2 May 2019, this being the sixth time such an

eviction had occurred. This is reflected in the children's accounts and in their belief, expressed to the FCA, that they were not 'kidnapped' by their mother but rather 'kicked out' by their father. By contrast, the father asserts that "everything was fine" in their marriage and the mother "never complained that she was unhappy with me or our family life" and that "out of the blue" the mother simply disappeared with the children. The father again asserts that this took place following a dispute arising that the father alleges arose from a desire of one of the maternal uncles to marry the children to their maternal cousins in order to make a claim on the father's property, the mother reacting to the father's refusal to this course by threatening suicide of herself with the children. The father exhibits to his first statement an affidavit from MH, who deposes to the fact he saw the mother leaving the family home with two bags and two children and that the father was not at home when the mother left. This corresponds with notice issued by father on 31 May 2019 giving the mother notice that if she did not "restart your matrimonial life" he would take legal action. On 18 May 2019 the father sent a text to the mother also speaking of her having left the family home in his absence. His text message of 26 October 2019 in which it is clear that the father is asserting that the mother "ran from the house in husband absence".

20. Following their departure from the family home, the mother contends that the father did not visit the children between May and September 2019, seeing them only once at school and taking the children home from school on one occasion. With respect to this latter incidence of contact, the mother describes the children as having to "escape" from their father's property whilst the father was not at home. That account is disputed by the father and does not accord with the account given by W to the FCA who recorded that W had stated that the children had been kept by the father for three days before W and X told the father they did not want to stay with him and decided to leave and return to their mother. In her oral evidence the FCA stated that, in giving this account, W was clear that the children had simply voted with their feet, and that he did not add anything in terms of having to escape or attach to his account any emotions or worries.
21. It is not disputed that upon leaving the family home the mother and the children went to stay with the maternal grandmother. The mother asserts that on 29 July 2019 she visited the British High Commission. In her first statement she states as follows:

"[13] The Applicant threatened to take the children from me and to cancel their and my British passports. I went to British Embassy in Islamabad for help they advised me that the best solution for me and for the children is to move back to UK. Then I decided that it would be best for the children to return to the UK."

There is no evidence before the court to corroborate this account as set out in the mother's statement.

22. The children were removed by the Mother to this jurisdiction from Pakistan on 11 September 2019. Within the foregoing context, it is the father's case that as at that date the children were habitually resident in Pakistan. The mother accepted in cross-examination that she removed the children from the jurisdiction of Pakistan without the consent of the father. Again, the father contends that this was part of a plan to move the children to England and thereafter to marry them to maternal cousins in order to secure the entry of those cousins into the United Kingdom. The mother denies this, stating that the children were too young to be talking about marriage and she was simply

seeking to escape a domestically abusive relationship. The father alleges that during his subsequent attempts to locate the whereabouts of the children the maternal family actively obstructed him by pretending that the children remained in Pakistan and would be returning.

23. On 27 September 2019 the father issued custody proceedings in the Session Court in Pakistan under the s 25 of the Guardian and Ward Act 1980. The father does not appear to have alerted the Pakistani court that the mother had left the jurisdiction and was in England. Whilst, as I have noted, the father claims the maternal family sought to convince him the mother remained in Pakistan, it is apparent from the statement of the father that he was aware *prior* to the children's departure that the mother was seeking a UK visa for Z, but the father still asserted in cross-examination that "there was no reason to tell the Pakistani courts that she was in the UK".
24. The father has further asserted to this court that on 23 October 2019 the Pakistani court made a custody order in the father's favour in respect of all of the children. The father contends that the mother has applied to discharge the custody order. The local authority Child and Family Assessment further records the father as claiming to have an "Abduction Order" in his favour and to have used a secret agency to track down the mother and the children. The father has not however, produced an order showing that custody was granted to him by the court in Pakistan in October or otherwise. Rather, it would appear from the papers that are before this court from the proceedings in Pakistan under the Guardian and Ward Act 1980 that the only issue that has thus far been determined is that the proceedings shall proceed *ex-parte* in circumstances where the mother had not attended despite substituted service by way of publication of the proceedings in the local newspaper, which order to proceed *ex parte* was made on 23 October 2019 together with a direction that the matter would be listed for the father's evidence. The application by the mother referred to by the father is an application to set aside the order that the proceedings be dealt with *ex parte*. Having regard to the information before the court, I am satisfied that, contrary to the father's clear assertion, there is no evidence of a substantive custody order having yet being made with respect to the children in the proceedings in Pakistan in favour of the father.
25. Following her arrival in the United Kingdom the mother presented herself to social services on 16 September 2019 as homeless and the local authority undertook its Child and Family assessment. As I have noted 16 October 2019 the father travelled to the United Kingdom as part of his continuing effort to locate the whereabouts of the children. The father made enquires of the Police, social services and the Pakistani High Commission. He managed to locate the mother and the children. There is again dispute concerning the father's conduct when he confronted the mother in England. In the Case Summary prepared on behalf of the father it is said that the mother ran away before the father could "respond". The mother contends that the father attempted to snatch her passport and bank card and hit her, which claim the father denies, at which point she called the police. The mother states that the father accused her of kidnapping the children. The father returned to Pakistan on 29 October 2019 but contends that he was prevented by the mother from having any contact with the children whilst in this jurisdiction.
26. The Mother issued private law proceedings in the West London Family Court on 3 December 2019 on a without notice basis. On 3 December 2019 HHJ Corbett made an *ex parte* child arrangements order and an order preventing the father from removing the

children from the mother's care or from the jurisdiction of England and Wales. A penal notice was attached to the order. There does not appear at the hearing on 3 December 2019 to have been any specific consideration of the question of jurisdiction despite the children having only been in England and Wales since September 2019 and having, prior to that, been in Pakistan since 2017. However, in this context I note that the order of 3 December 2019 records that the mother had informed HHJ Corbett that the mother had lived in the United Kingdom between 2010 and 2017 and since 11 September 2019. On the basis of the information set out above from the Home Office and the children's Pakistani schools, this account by the mother to HHJ Corbett was, at the very least, disingenuous.

27. On 7 January 2020 HHJ Willans continued the orders made by HHJ Corbett until further order and made an order prohibiting the father from removing the children from England and Wales. The father contacted the court and sent documents for consideration at the hearing. HHJ Willans however, appears not to have considered the documents sent by the father on the basis they had not been filed digitally and directed that the documents be returned to the father. With respect to jurisdiction, HHJ Willans acknowledged that the father raised jurisdictional issues in his communication with the court by making clear he contested the mother's assertion that she and the children had lived in England between 2010 and 2017. However, HHJ Willan's order records that:

“There is no evidence of any application being made pursuant to the principles of International Child Abduction. Pending any such application the Family Court remains seized of the proceedings”.

The import of this recording is unclear. Any application “made pursuant to the principles of International Child Abduction” (whatever that phrase may mean) would not automatically be determinative of the question of jurisdiction with respect to the proceedings under the Children Act 1989. However, the question of jurisdiction appears not to have been addressed and determined and the order of 3 October 2019, including the penal notice, was continued until further order of the court.

28. In the foregoing circumstances, the question of whether the court had jurisdiction to make orders under the Children Act 1989 in circumstances where the children had only been in England and Wales since September 2019 at the date the proceedings under the Children Act 1989 were commenced was not considered within the context of the private law proceedings before orders endorsing position of the children with their mother and placing the father at risk of penal sanction. Within the foregoing context, I pause to repeat again the observations I made in *R v R* [2016] EWHC 1339 (Fam) at [60]. The proceedings under the Children Act 1989 have now been stayed.
29. On 15 January 2020 the father issued a further application in Pakistan for the restitution of conjugal rights. That application had been preceded by the notice issued by the father, to which I have already referred, earlier in 2019 demanding the mother return to the family home. The father contends that he has now withdrawn that application. However, it is not clear from the papers before the court whether the application has in fact now been withdrawn or whether simply the withdrawal process has been initiated. The father's oral evidence suggested the latter.
30. In addition, the father denied in his second statement that he was and is pursuing this application for a second marriage, stating that “It is not true that I applied to have a

second marriage when we moved back to Pakistan” and later that “I have not applied to the court for permission for a second marriage”. However, the father has also provided translated copies the administrative refusal of an application for permission for a second marriage and it is clear from papers provided by the mother that the father is currently actively appealing that decision, the notice of the hearing of the appeal being dated 20 April 2020. In the circumstances, I am satisfied that the father has not told the truth about this application.

31. Within the context of the foregoing history the father contends that the children continued to be habitually resident in Pakistan as at the date the mother instituted proceedings in this jurisdiction under the Children Act 1989 on 3 December 2019 and as at the date the father issued proceedings in this jurisdiction under the inherent jurisdiction of the High Court on 27 February 2020 for the summary return of the children to Pakistan.
32. Finally by way of background, as I have noted above, the children spoke to the Cafcass FCA, who has provided a report dated 9 April 2020. The FCA, Ms Baker, undertook the interviews with the children remotely. The FCA acknowledges this in her report and did so in oral evidence, further acknowledging that it had affected the ease of the process of obtaining the children’s views but that she considered the children had been able to convey to her what each had wished to. Z is, of course, too young to express a view. In addition to the aspects of the children’s account I have already set out, the children’s views can be summarised as follows.
33. W is fifteen years old. As I have noted, he provided a detailed account to the FCA of a life in Pakistan that included estrangement from extended maternal family, domestic abuse from his father to his mother, being repeatedly “kicked out” of the family home and being shouted at by his father. W was unable to identify any positives with respect to life in Pakistan much beyond extra-curricular activities at school and his maternal cousins, whom he commenced contact with after the parents separated in May 2019. W said to Ms Baker that “Things that happened in Pakistan are not things to be remembered.” Within this context, W indicated to the FCA that he did not want to return to Pakistan and wanted to remain in England. W was also clear he did not want any contact with his father by reason of the way W asserts the father treated the mother, save perhaps through the medium of text messages. Regarding the prospect of a return to Pakistan W told Ms Baker, “The thing is I don’t want to go back and if I had to go back I wouldn’t feel happy” and “The main thing is I would get upset and I won’t be as happy as I don’t want that to happen. I want to live here.”
34. X is 13 years old. She gives a very similar account of life in Pakistan to that provided by W, also recalling, as I have noted, fights and her father hitting her mother and getting angry quickly, feeling scared in these situations, being prevented from seeing maternal family members and of being “kicked out” of the house by the father on repeated occasions. Were an order to be made returning the children to Pakistan X told the FCA that “I would be really upset because I don’t want to there.” X further stated: “I know that if we go there the fights are going to start again, the fights would never end”. When asked about what could happen if the parents were separated, X, like W, deprecated her education in Pakistan, remarking that “but then the education is really bad, the education is much better. I like the education here.” With respect to contact, X told Ms Baker that she did not want to see her father again “because of the way he behaved.”

35. Y is 9 years old. As with W and X, Y also identified issues with her education in Pakistan, fighting in the family home and her father shouting and hitting her mother. When asked how she would feel if an order was made for her return, she told Ms Baker that “Of course I will be upset because I didn’t want go back. Because I was born here and I like this country and I will be sad and not happy if I go there.” Y wished a message to be conveyed to me, namely that “I don’t want to go back to Pakistan. I just want to live here. If I even miss Pakistan, I only miss my grandma, not anybody else, but I don’t want to go there, I just want to live here.” With respect to the question of context, Y told Ms Baker “When I was little he was not that kind, he still used to be shouting and hitting at us, but sometimes he be kind only to me”. She then stressed he was only kind “a little bit, then he gets angry on me” and stated that “I won’t talk to [her father] because I don’t miss him and I don’t like him anymore.”
36. The Family Court Adviser who prepared the initial safeguarding letter in private law proceedings before the West London County court raised the question of whether, in addition to have been influenced by their father’s negative behaviour, the children’s views could result from an alliance formed with their mother and the influence on the children of her views. Within this context, the FCA was pressed by both counsel on the genesis of the children’s views as summarised above. In summary, the following salient points emerged in evidence.
- i) The children are acutely aware of their mother’s views, including her dislike of Pakistan. The children’s views are closely aligned to those of their mother in this respect and their concerns mirror those of the mother. Ms Baker cautioned however, that it is to be anticipated that the older children would talk about matters of mutual concern with their mother, particularly in circumstances where the mother and the children represent a closed family unit with no extended family here in the UK.
 - ii) The children are clearly of the view that their mother has not ‘kidnapped’ them and that they left Pakistan as the result of being “kicked out” of the family home, in particular W and X clearly expressed a sense of not being wanted in the family home when speaking of being evicted by the father. Ms Baker was clear that if the children feel that, in this context, their father is bringing an unjustified case for their return and is not telling the truth about the circumstances of their departure, this will negatively influence the children against him.
 - iii) The children’s respective accounts of Pakistan were each markedly and notably negative. Ms Baker considered that the strong overall inability on the part of the children to say anything at all positive about Pakistan stood out. Ms Baker told the court that she gained a strong impression that the children wanted their narrative to support, to justify them remaining in the UK. Within this context, Ms Baker considered that there was a lack of balance in children’s account and identified what she termed an absence of critical thinking in the children, by which she meant that they presented their lives in Pakistan as nothing but largely negative despite Ms Baker’s questioning around various contexts and everything to do with the UK as wholly positive. Against this, the FCA acknowledged that the children feel they have a deep connection here, that this is home and that this is where they feel comfortable. As such, Ms Baker conceded that the children’s motivation to stay here is very strong and this could explain their strong views without recourse to maternal influence.

- iv) The overall account given by the children of their father, his conduct and their lives in Pakistan were very similar as between the three elder children. Ms Baker considered that this factor could reflect maternal influence or it could reflect a shared lived experience on the part of each of the children.
 - v) In this context, with respect to domestic abuse the generalised description of domestic abuse given by each of the children, with few specific details save for one specific incident in January 2019 may not automatically militate against the children's account reflecting their shared lived experience as opposed to being the result of maternal influence. Ms Baker stated that whilst the recollection of particular incidents can be a pointer to genuine lived experience, if the domestic violence was as frequent as each of the children claimed with the same sort of behaviours happening regularly, then a summary account may be expected.
 - vi) Ms Baker considered that there are aspects of the children's account that do require caution. Y was clear she had gone to her mother after allegedly being hit by her father, but her mother states the father never hit the children. As I have noted, Y further intimated that all the children had been hit but this was not the account of W or X. Further, whilst X's overall message was that the children did not want to return to Pakistan in 2017, her diary entry would appear to contradict this. Finally, the cards sent by the children to their father as set out in the bundle were considered by Ms Baker to be positive, humorous and lovely gestures from children to their father yet when speaking to W their importance of them is now limited or minimised. Ms Baker was also sceptical of the claim that the cards were sent in an effort to get the father to change, Ms Baker observing that "I thought it was odd that it was about a child getting a parent to change rather than what they are normally about, namely an expression of a child's affection."
 - vii) Within the foregoing context, Ms Baker considered that it was important, when evaluating and weighing the three elder children's views, to ask the question of whether the children have been influenced, whether directly or indirectly, by their mother.
37. Within this context, Ms Baker told the court that she had concluded that the mother has to a degree influenced the views of the children, either directly or indirectly. The FCA was clear that the overarching message from the mother was that her life and the lives of the children were here, they all wanted to be here and their experience in Pakistan had not been positive and that the children reflect this view. Within this context, Ms Baker stated that both the possibility that the children had been provided with a script and the possibility that the children were simply reflected the shared lived experience of themselves and their mother would need to be considered by the court.

THE LAW

Summary Return

38. In *Re NY (A Child)* [2019] UKSC 49 the Supreme Court made clear that it remains open for an applicant to apply for a summary return order under the inherent jurisdiction notwithstanding that the same outcome may be capable of being achieved by way of a specific issue order under the Children Act 1989:

“[44] The instruction in para 1.1 of Practice Direction 12D goes too far. There is no law which precludes the commencement of an application under the inherent jurisdiction unless the issue "cannot" be resolved under the 1989 Act. Some applications, such as for a summary order for the return of a child to a foreign state, can be commenced in the High Court as an application for the exercise of the inherent jurisdiction. But then, if the issue could have been determined under the 1989 Act as, for example, an application for a specific issue order, the policy reasons to which I have referred will need to be addressed. At the first hearing for directions the judge will need to be persuaded that, exceptionally, it was reasonable for the applicant to attempt to invoke the inherent jurisdiction. It may be that, for example, for reasons of urgency, of complexity or of the need for particular judicial expertise in the determination of a cross-border issue, the judge may be persuaded that the attempted invocation of the inherent jurisdiction was reasonable and that the application should proceed. Sometimes, however, she or he will decline to hear the application on the basis that the issue could satisfactorily be determined under the 1989 Act.”

39. In this case, the matter first comes before me at final hearing and the matter has to date has proceeded on the basis that the invocation of the inherent jurisdiction as the vehicle by which the father seeks a summary return order is reasonable. Where the application is made under the inherent jurisdiction, the question of summary return turns on welfare. The child’s best interests are the court’s paramount concern when considering an application for return in the exercise of the inherent jurisdiction. In *Re J (Child Returned Abroad: Convention Rights)* [2006] 1 AC 80 the House of Lords made clear that:

“[22] There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it. Section 1(1) of the 1989 Act, like section 1 of the Guardianship of Infants Act before it, is of general application. This is so even in a case where a friendly foreign state has made orders about the child’s future.”

And in this context:

“[30] Nevertheless, it was urged upon us by Mr Setright QC, for the father, that there should be ‘a strong presumption’ that it is ‘highly likely’ to be in the best interests of a child subject to unauthorised removal or retention to be returned to his country of habitual residence so that any issues which remain can be decided in the courts there. He argued that this would not mean the application of the Hague Convention principles by analogy, but the results in most cases would be the same.

[31] That approach is open to a number of objections. It would come so close to applying the Hague Convention principles by analogy that it would be indistinguishable from it in practice. It relies upon the Hague Convention concepts of ‘habitual residence’, ‘unauthorised removal’, and ‘retention’; it then gives no indication of the sort of circumstances in which this ‘strong presumption’ might be rebutted; but at times Mr Setright appeared to be arguing for the same sort of serious risk to the child which might qualify as a defence under article 13(b) of the Convention. All of these concepts have

their difficulties, even in Convention cases...There is no warrant for introducing similar technicalities into the 'swift, realistic and unsentimental assessment of the best interests of the child' in non-Convention cases. Nor is such a presumption capable of taking into account the huge variety of circumstances in which these cases can arise, many of them very far removed from the public perception of kidnapping or abduction.

[32] The most one can say, in my view, 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. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever."

40. In *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 Baroness Hale observed that:

"It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child."

41. In *Re NY (A Child)* Lord Wilson made considered that when evaluating the question of welfare in an application under the inherent jurisdiction the court is likely to find it appropriate to consider the first six items in the section 1(3) Children Act 'welfare checklist':

"[47] Where an application for the same order can be made in two different proceedings and falls to be determined by reference to the same overarching principle of the child's welfare, it would be wrong for the substantive inquiry to be conducted in a significantly different way in each of the proceedings.

[48] Of course, when in each of the proceedings it is considering whether to make a summary order, the court will initially examine whether the child's welfare requires it to conduct the extensive inquiry into certain matters which it would ordinarily conduct. Again, however, it would be wrong for that initial decision to be reached in a significantly different way in each of them.

[49] The mother refers to the list of seven specific aspects of a child's welfare, known as the welfare check-list, to which a court is required by section 1(3) of the 1989 Act to have particular regard. She points out, however, that, by subsections (3) and (4), the check-list expressly applies only to the making of certain orders under the 1989 Act, including a specific issue order, as is confirmed by the seventh specific aspect, namely the range of powers under that Act. The first six specified aspects of a child's welfare are therefore not expressly applicable to the making of an order under the inherent jurisdiction. But their utility in any analysis of a child's welfare has been recognised for nearly 30 years. In its determination of an application under the inherent

jurisdiction governed by consideration of a child's welfare, the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3) (see *In re S (A Child) (Abduction: Hearing the Child)* [2014] EWCA Civ 1557, [2015] Fam 263, at para 22(iv), Ryder LJ); and, if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should conduct an inquiry into any or all of those aspects and, if so, how extensive that inquiry should be.”

42. Finally, this case involves allegations of domestic abuse. Within the context of this application being brought under the inherent jurisdiction for a summary return order, I note the following observations of Lord Wilson in *Re NY (A Child)* at [50] regarding the manner in which allegations of domestic violence fall to be dealt with in that context:

“The mother also refers to Practice Direction 12J, which supplements Part 12 of the 2010 Rules and which is entitled “Child Arrangements and Contact Orders: Domestic Abuse and Harm”. By para 4, the Practice Direction explains that harm is suffered not only by children who are the direct victims of domestic abuse but also by children who live in a home in which it is perpetrated. When disputed allegations of domestic abuse are made, the Practice Direction makes detailed requirements of the court, in particular to consider whether to conduct a fact-finding hearing in relation to them (para 16), whether to direct the preparation of a report by a CAFCASS officer (para 21) and whether to order a child to be made a party and be separately represented (para 24). The mother points out, however, that, by para 1, the Practice Direction applies only to proceedings under the relevant parts of the 1989 Act (which would include an application for a specific issue order) or of the Adoption and Children Act 2002. Therefore it does not expressly apply to the determination of any application under the inherent jurisdiction, including of an application governed by consideration of a child’s welfare in which disputed allegations of domestic abuse are made. Nevertheless, as in relation to the welfare check-list, a court which determines such an application is likely to find it helpful to consider the requirements of the Practice Direction; and if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child’s welfare requires, it should, in the light of the Practice Direction, conduct an inquiry into the allegations and, if so, how extensive that inquiry should be.”

Habitual Residence

43. Where the question of jurisdiction issue arises as between a Member State to which BIIA applies and a non-member third party State, that issue remains to be determined by reference to the terms of the Regulation. In *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)* [2013] UKSC 60, [2014] AC 1, *sub nom Re A (Jurisdiction: Return of Child)* [2014] 1 FLR 111 the Supreme Court made clear that BIIA applies when determining the question of jurisdiction regardless of whether there is an alternative jurisdiction in a non-Member State. The Court of Justice of the European Union (the CJEU) has confirmed in *UD v XB* (Case C-393/18 PPU) EU:C:2018:835 [2019] 1 WLR 3083 that

Art 8(1) of BIIA is not limited to disputes involving relations between the courts of Member States.

44. Art 8(1) of BIIA provides that the courts of a Member State, which at present includes the UK under the transitional arrangements governing the departure of the UK from the EU, shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.
45. For habitual residence to be established the residence of the child must reflect some degree of integration in a social and family environment (*Re A (Area of Freedom, Security and Justice)* (Case C-523/07) EU:C:2009:225 (2009) ECR I-2805, [2010] Fam 42, [2009] 2 FLR 1 and *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening)*). Whether there is some degree of integration by the child in a social and family environment is a question of fact to be determined by the national court. Habitual residence must be established on the basis of all the circumstances specific to the individual case (*Re A (Area of Freedom, Security and Justice)*). With respect to those circumstances, in *Re A (Area of Freedom, Security and Justice)* and *Mercredi v Chaffe* [2011] EWCA Civ 272, [2011] 2 FLR 515, the CJEU identified the following, non-exhaustive, list of circumstances that might be relevant in a given case:
 - i) Duration, regularity and conditions for the stay in the country in question.
 - ii) Reasons for the parents move to and the stay in the jurisdiction in question.
 - iii) The child's nationality.
 - iv) The place and conditions of attendance at school.
 - v) The child's linguistic knowledge.
 - vi) The family and social relationships the child has.
 - vii) Whether possessions were brought, whether there is a right of abode and whether there are durable ties with the country of residence or intended residence.
46. In a series of decisions, namely *Re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre Intervening)* [2013] UKSC 75, [2014] AC 1017, sub nom *Re KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2014] 1 FLR 772, *Re LC (Children) (Reunite International Child Abduction Centre Intervening)* [2014] UKSC 1, [2014] AC 1038, [2014] 1 FLR 1486, *Re R (Children) (Reunite International Child Abduction Centre and Others Intervening)* [2015] UKSC 35, [2016] AC 76, sub nom *AR v RN (Habitual Residence)* [2015] 2 FLR 503 and *Re B (A Child) (Reunite International Child Abduction Centre and Others Intervening)* [2016] UKSC 4, [2016] AC 606, sub nom *Re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] 1 FLR 561 the Supreme Court has articulated the following principles of general application with respect to the question of habitual residence:

- i) It is the child's habitual residence which is in question and hence the child's level of integration in a social and family environment which is under consideration by the court determining the question of habitual residence.
- ii) In common with the other rules of jurisdiction, the meaning of habitual residence 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.
- iii) In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must also weigh up the degree of connection which the child had with the state in which he resided before the move.
- iv) 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.
- v) 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.
- vi) In circumstances where the social and family environment of an infant or young child is shared with those on whom she is dependent, it is necessary to assess the integration of that person or persons (usually the parent or parents) in the social and family environment of the country concerned.
- vii) In respect of a pre-school child, the circumstances to be considered will include the geographic and family origins of the parents who effected the move.
- viii) The requisite degree of integration can, in certain circumstances, develop quite quickly. It is possible to acquire a new habitual residence in a single day. There is no requirement that the child should have been resident in the country in question for a particular period of time. The deeper the child's integration in the old state, probably the less fast his or her achievement of the requisite degree of integration in the new state. Likewise, the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his or her achievement of that requisite degree. In circumstances where all of the central members of the child's life in the old state have moved with him or her, probably the faster his or her achievement of habitual residence. Conversely, where any of the central family members have remained behind and thus represent for the child a continuing link with the old state, probably the less fast his or her achievement of habitual residence.
- ix) A child will usually, but not necessarily, have the same habitual residence as the parent(s) who care for her. The younger the child the more likely that proposition but this is not to eclipse the fact that the investigation is child focused.

- x) Parental intention is relevant to the assessment, but not determinative. There is no requirement that there be an intention on the part of one or both parents to reside in the country in question permanently or indefinitely. Parental intent is only one factor, along with all other relevant factors, that must be taken into account when determining the issue of habitual residence.
47. In considering the question of habitual residence, it is not necessary for the court to make a searching and microscopic inquiry (*Re B (Minors) (Abduction) (No 1)* [1993] 1 FLR 988). In *Re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2015] EWCA Civ 886, [2016] AC 606, [2016] 2 WLR 487 Lord Wilson noted, at para [45]:

“... The concept operates in the expectation that, when a child gains a new habitual residence, he loses his old one. Simple analogies are best: consider a see-saw. As, probably quite quickly, he puts down those first roots which represent the requisite degree of integration in the environment of the new state, up will probably come the child’s roots in that of the old state to the point at which he achieves the requisite de-integration (or, better, disengagement) from it.”

48. Having regard to the foregoing principles, Ms Guha submits that the children were habitually resident in Pakistan both as at the date of the commencement of the proceedings under the Children Act 1989 and when the father issued his application for an order for summary return under the inherent jurisdiction of the High Court. However, with respect to the latter application, on behalf of the mother, Ms Davies submits that the question of whether the children were or are habitually resident in Pakistan is not germane where the application before this court is the father’s application for summary return under the inherent jurisdiction. Within this context, in addition to the observations of the House of Lords in *In re J (A Child) (Custody Rights: Jurisdiction)* set out above, I note that with respect to the question of the significance of habitual residence in a case where an order for summary return is sought under the inherent jurisdiction of the High Court, Lord Wilson observed as follows in *Re NY (A Child)* at [24]:

“In principle the inherent jurisdiction was as fully available in relation to this child as was the jurisdiction to make a specific issue order. For, had she remained habitually resident in Israel on 18 June 2019, a summary order for the child's return there under the inherent jurisdiction, not being an order which "gives care of a child to any person", would have fallen neither within section 1(1)(d) of the 1986 Act nor otherwise within Part 1 of it; and the result would have been the application of the bases of jurisdiction under common law, including that of the child's presence in England. If, alternatively, she had become habitually resident in England by that date, article 8(1) of Regulation B2R would, as in the case of a specific issue order, have endowed the court with jurisdiction to deploy the inherent jurisdiction in relation to her.”

DISCUSSION

49. Having regard to the evidence before the court and having listened considered carefully the submissions of counsel, I am satisfied that it is not in any of the children’s best

interests to be summarily returned to the jurisdiction of Pakistan pursuant to the inherent jurisdiction of the High Court. My reasons for so deciding are as follows.

50. In *Re J (Child Returned Abroad: Convention Rights)* the House of Lords made clear that there is no warrant, either in statute or authority, for the principles of the 1980 Hague Convention to be extended to countries which are not parties to it and that, accordingly, the 1980 Hague Convention concepts of ‘habitual residence’, ‘unauthorised removal’, and ‘retention’ have no place in the ‘swift, realistic and unsentimental assessment of the best interests of the child’ in non-Convention cases. As recognised in *Re NY (A Child)*, the court has jurisdiction to make an order for summary return under the inherent jurisdiction whether the children are habitually resident in the jurisdiction of Pakistan or habitually resident in the jurisdiction of England and Wales. Both parties submit and I accept that, as required by *Re NY (A Child)*, the court has sufficient evidence to make the best interests decision on whether children should be returned summarily to the jurisdiction of Pakistan.
51. In *Re J (Child Returned Abroad: Convention Rights)* the House of Lords observed that the judge may find it convenient in an application for an order for summary return under the inherent jurisdiction 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 and that a case against his doing so has to be made and I take this as my starting point.
52. Within this context, having weighed the evidence before the court, I am satisfied that as at point the children were removed from Pakistan on 11 September 2019 they were, as contended for by the father, habitually resident in that jurisdiction. In reaching this conclusion I bear in mind that (a) whilst the children did spend time in England between 2010 and 2014, I am satisfied that the children also spent extended periods in Pakistan for their schooling during that period, (b) as the children’s primary carer, between 2010 and 2014 I am satisfied that the mother spent significant periods, indeed the majority of her time, in Pakistan (as demonstrated by the Home Office figures), (c) in these circumstances, the mother’s assertion to the West London Family Court that she and the children lived in England from 2010 to 2017 was misleading, (d) between 2017 and 2019 the children spent all their time in Pakistan, which included spending time in school and being tutored, (e) between 2017 and 2019 the children lived with both their parents in Pakistan, during which time their parents began a business in Pakistan, (f) the children are Pakistani nationals, the three elder children speak Urdu and between 2017 and 2019 their lifestyle and cultural roots are firmly embedded in Pakistan and (g) whilst I am satisfied that prior to May 2019 the children had limited contact with their large extended maternal family, between May 2019 and September 2019 the children had extensive contact with the maternal side of their family. In these circumstances, I am satisfied that as at 11 September 2019 each of the children had some degree of integration in a family and social environment in Pakistan sufficient to ground their habitual residence in that jurisdiction.
53. Likewise, as at commencement of welfare proceedings before the West London Family Court on 3 December 2019, I am satisfied that the children had not become habitually resident in England and remained habitually resident in Pakistan as at that date. In reaching that conclusion, I bear in mind (a) the evidence demonstrates a very limited amount of planning by the mother prior to her arrival in this jurisdiction, as evidenced by her and the children’s homeless status on arrival, lack of income and absence of arranged school placements, (b) the children had moved from a high level of integration

in a family and social environment in Pakistan to a jurisdiction in which they had no extended family and only limited established friendships, (c) upon arrival, the children initially had no settled home and were not in education, (d) the father and the children's extended family remained in Pakistan, (e) the elder three children had not been in the United Kingdom since 2017 and Z had never been in the United Kingdom. Within this context, and whilst I accept that the children were brought to this jurisdiction with the intention of them remaining here, that they are present in this jurisdiction, that the three eldest children had had previous experience of life in England, that the children speak English and that Z is dependent on her mother who is in this jurisdiction, I am not satisfied that as at 3 December 2019, less than two months after the children's arrival, the children's circumstances were such as to have loosened their degree of integration in a family and social environment in Pakistan and secured a degree of integration in a family and social environment in England such that they had become habitually resident in this jurisdiction.

54. Upon this judgment being circulated in draft form, Ms Guha invited the court also to reach a conclusion on the question of whether the children were habitually resident in England and Wales at the date the father issued his application for a summary return order under the inherent jurisdiction. For the reasons set out in paragraph 48 above, the question of habitual residence is not central to an application for summary return under the inherent jurisdiction, the court having the power to make such an order under its inherent jurisdiction whether the child or children in question are habitually resident here or in a foreign jurisdiction for the reasons explained in *Re NY (A Child)* at [24]. However, on the question of whether the children had become habitually resident in England and Wales as at 27 February 2020, whilst it is plain that the children will have become more settled in the two and a half months or so that had elapsed since 3 December 2020, having regard to each child's situation during that period, I am, on a fine balance, satisfied that the children had still not at that point lost their habitual residence in Pakistan and gained habitual residence in England and Wales.
55. 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.
56. The wishes and feelings of a mature child do not carry any presumption of precedence over any of the other factors in the welfare checklist (see *Re P-J* [2014] 2 FLR 27). The weight to be attached to the child's wishes and feelings will depend on the particular circumstances of each case. In particular, having regard to the words of section 1(3)(a), it is important in every case that the question of the weight to be given

to the child's wishes and feelings is evaluated by reference to the child's 'age and understanding' and in respect of each individual child. Within this context, W is almost sixteen years old and has expressed clearly and repeatedly that he does not wish to be returned to Pakistan and has articulated a clear rationale for this position. X is 13 years old and has also articulated very clear opposition to being returned to Pakistan, stating that this would cause her real upset and articulating her fears about a resurgence and continuation of parental acrimony. Y is 9 years old and has stated clearly that she does want to go back to Pakistan and wishes to live in England, going as far as ensuring that the FCA had a specific message to deliver to the court making clear that she does not wish to return to Pakistan.

57. In considering the wishes and feelings of each of the three older children I have been given pause by the injunction of the CAFCASS FCA, Ms Baker, to consider the extent to which the children's wishes and feelings have been influenced by their mother. In considering each of children's 'understanding' it is important to consider the extent to which each child's understanding of their situation has been the subject of parental or other influence. I bear in mind that it is clear that the children are acutely aware of their mother's views, including her dislike of Pakistan and that their own views are closely aligned to views of their mother in this context. I also bear in mind that the children's wishes are markedly negative, with very few positives balancing these notwithstanding evidence that suggests some positive aspects to their relationships with their father in the past (in particular the cards sent to him, X's diary and Y's statements to the FCA).
58. Against this, the account provided by each of the elder children as to their wishes and feelings, and the rationale for the same, has remained notably consistent as between their account to the social worker when they arrived in England and the account provided some months later to the FCA. Further, I am satisfied that the confluence of the views of the mother and the children arise out of matters of mutual concern that are grounded in a shared lived experience in Pakistan. As I will come to, I am satisfied on the evidence before the court that the children will have witnessed a degree of domestic abuse within the family home in Pakistan and that the children tended to be isolated from their extended maternal family. As I again will come to, I am likewise satisfied that the father was not intimately involved in the children's primary care in Pakistan, being primarily concerned with work and providing for the family financially. During her oral evidence the FCA acknowledged that the evidence before the court reflected both the possibility that the children had been provided with a script and the possibility that the children were simply reflected the shared lived experience of themselves and their mother. Whilst satisfied that the children have been acutely aware of their mother's views, on balance I am satisfied that the wish of each of the three elder children not to return to Pakistan and their reluctance currently to have contact with their father is grounded in shared and negative lived experience in Pakistan.
59. Within this context, in my judgment, the expressed wishes of W, aged 16, Y, aged 13, and X, aged 9, each of the three elder children not to be returned to Pakistan must carry significant weight in the court's welfare evaluation in this case. The FCA was clear that in these circumstances the children would struggle emotionally because of their strong expressed wish to stay in England and their belief that this would be where they would be living. In particular, I am satisfied that to force W into a situation which is very clearly against his wishes would not be in his best interests and that the impact of

forcing X to return to a country when she has so strongly expressed her views as above would likewise not be in her best interests.

60. With respect to the children's physical, emotional and educational needs, I have borne carefully in mind that a decision not to return the children to the jurisdiction of Pakistan will inevitably interfere with them re-building and developing a relationship with their father. Ms Baker was clear that the current gap in contact is significant, particularly for the younger two children. Whilst for the older two children this absence of contact is in line with their wishes, the FCA considered that W and X lack the maturity to see the longer term implications of not repairing the relationship with their father. Ms Baker was concerned that if the children grow up with no relationship and negative picture then significant emotional harm to the children is a potential prospect, especially if they then learn or come across information that shows either parent was wrong about why they do not have a relationship with either parent.
61. However, as the FCA also made clear in her evidence, the fact of returning the children against their wishes, which would, on the face of it, increase the opportunities for contact between the children and their father, would in fact do further damage to the already damaged relationship between the children and their father in circumstances where they would blame him for the ensuing disruption to their lives, they would feel he had not listened to them and they would feel destabilised. In particular, I bear in mind the evidence of the FCA that should the three elder children be forced to return to Pakistan against their wishes they would be upset with their father, they would blame him for the ensuing disruption to their lives, they would feel he had not listened to them and they would feel destabilised. Within this context, I am satisfied that given the strength of the feelings expressed by the children the consequences for the children's relationship with their father of being forced to return against those wishes would be adverse to their best interests.
62. Having regard to the foregoing matters, I am satisfied that in the short to medium term the children's relationship would be better promoted by weight being accorded to their wishes and feelings and for contact to be re-established and promoted in that context. I do not accept that the prospects of this occurring are 'remote' as submitted by Ms Guha. Indeed, for the reasons articulated by the FCA and as I have stated, I consider that there is a greater chance of a good relationship between the father and the elder children being established if their wishes and feelings are listened to than if not. Whilst I also accept that remaining in this jurisdiction will make it more difficult for the children to establish a relationship with their extended family, having regard to the difficulties that I am satisfied exist in the relationship between the father and the maternal family, which in some instances amounts on the father's own evidence to an ongoing feud, I am again satisfied that the children may well find it easier to develop and maintain, albeit initially on a remote basis, their relationship with their wider maternal family.
63. With respect to the children's educational needs, each of the elder children expressed a preference for education in this jurisdiction. Due to a change in accommodation the children moved schools in January of this year, but are now settled in education and have past experience of being educated in this jurisdiction. Within this context, I am satisfied that remaining in this jurisdiction would not prejudice the children's educational welfare.

64. I am also satisfied that a further change of circumstances would have a significant adverse impact on the children, in particular W, X and Y. Notwithstanding the position with respect to habitual residence at the point the children were removed from Pakistan and at the point the mother commenced private law proceedings in this jurisdiction that I have articulated above, the position on the ground is that the children have now been in this jurisdiction for a period of some 10 months, having spent a considerable amount of time in this country in the past. Whilst their initial period in this jurisdiction was unsettled, they are now in stable housing and in stable education. More importantly, the FCA was clear in evidence that the children are firmly of the view that their position in England, living here, being cared for by their mother here and being educated here would be, and should be the final position for them. Each of the elder children has a UK passport. As I have noted, the elder children have each indicated a very strong wish to remain living in England and, currently, trenchant views regarding contact with their father.
65. Within this context, I am satisfied that the change of circumstances that would be constituted by a summary return to the jurisdiction of Pakistan would be significantly de-stabilising for the children and would further undermine the already damaged relationship between the three elder children and their father for the reasons I have given. The evidence of the FCA was clear that such a move would result in significant disruption, particularly for W having regard to the stage he has reached with respect to his GCSE education (subject to the depredations of COVID-19). As I have noted, the FCA further considered that the children would blame their father for the disruption caused by this change of circumstances, creating further difficulties in repairing and developing that relationship as I have set out.
66. I have borne carefully in mind the age, sex, background and other characteristics of each of the children, and in particular their nationality, culture and family background. In particular, I have taken account of the fact that if a return order is not made the children will not return to a country that constitutes a significant part of their identity and their religious and cultural heritage. Against this, in light of the history I have articulated above, the children have a degree of connection to both Pakistan and to England. The three elder children have dual nationality. W, X and Y have spent significant periods of time in the United Kingdom, know it well and consider that their lives are centred here. The children speak both English and Urdu. The United Kingdom is a multicultural society with a large Pakistani diaspora. I am satisfied that whilst living with their mother and siblings, each child will be in a position to explore their heritage and religion. Whilst the mother entertains strong negative views about a return to Pakistan, there is no evidence to suggest she is not capable of promoting the children's culture and heritage. Indeed, the social work assessment records that the children have a good understanding of their age, gender, race and religion and that the mother provides them with a sense of being valued and to have a positive sense of their own cultural and ethnic identity. Whilst I have had regard to the individual characteristics of each of the children, it is also important in the foregoing context to note that the children form a very close sibling group. Again, the social work assessment records that the children have safe, stable and affectionate relationship amongst themselves as well as with their mother.
67. With respect to any harm suffered by the children, whilst the court does not have before it a schedule of specific findings of domestic abuse, on the evidence before the court I

am satisfied that it is more likely than not that the father has been domestically violent towards the mother on occasions and that the children have witnessed a degree of domestic abuse within the family home in Pakistan and have witnessed verbal aggression by the father. In reaching this conclusion I have had regard to the fact that the mother has been consistent in her allegation that the father was domestically abusive in her account to account to social services in October 2019, to the police on 18 October 2019 during the father's visit to England mother's, to Cafcass in February 2020, as set out in the Cafcass safeguarding letter dated 26 February 2020, and to this court.

68. Further, I bear in mind that each of the elder children corroborated the mother's assertion that the father has been domestically abusive. As I have noted, in October 2019 W told social workers that there had been many fights and it was not safe for them to remain with their father. He stated to social workers in October 2019 that he was aware that his father had been hitting his mother. In April 2020 W told the FCA that he had always seen his parents fighting at home. The earlier social work assessment from September 2019 records all of the elder three children reporting domestic abuse by their father towards their mother. As I have noted, X stated that the father hit the mother with shoes and slapped her, got angry very quickly and Y recalled her father hitting her mother many times. W described a phenomenon often seen with children caught up in domestic abuse, namely that the children had been scared, screaming and trying to stop the father. As regards the credibility of children's statements with respect to domestic abuse, for the reasons I have set out above, whilst satisfied that the children have been acutely aware of their mother's views, on balance I am satisfied that the statements of the children are grounded in shared and negative lived experience in Pakistan.
69. I have borne carefully in mind the points prayed in aid by the father in support of his firm denial, both in his statement and during cross-examination when the allegation was put to him, that he has perpetrated domestic abuse against the mother. However, I am not satisfied that I can attach great weight to the absence of the mother having reported the abuse to the police in circumstances where the court is aware that domestic violence often goes unreported to the authorities. Likewise, I do not consider that the cards sent by the children to their father detract from their statements regarding the domestic abuse they state they witnessed in the home. Again, the court is well aware that a child who witnesses domestic abuse may nonetheless love the abusive parent. Finally, I am not satisfied that the mother's statements to the social worker regarding the father not posing a threat detract from the conclusions I draw regarding domestic abuse. As I have set out above, when read in context it is clear that these statements reflected the fact that the father was leaving for Pakistan and that the mother had been advised as to the availability of non-molestation injunctions.
70. Within the foregoing context, I note that the elder children remain acutely concerned that if they are returned to Pakistan they will once again see a resumption of domestic abuse. In this regard, I also bear in mind that the father has only just moved to withdraw his proceedings in Pakistan for the restitution of conjugal rights. I am further satisfied that the father is not telling the truth to this court when he denies that he has sought permission to marry a second wife, the documents before the court clearly demonstrating that the father has sought to mislead this court in his statement regarding that issue, with an appeal against the refusal to grant him permission to marry a second wife still pending.

71. With respect to the capability of the parents, I am satisfied that the mother has been the children's primary carer for the majority of their lives. On the evidence before the court it is clear that father has not had the primary care of the children for any substantial period of time and has concentrated on work and providing financially for the family. I am satisfied that, contrary to his assertion before this court, the father has not been granted interim custody of the children in Pakistan. Within this context, it is apparent on the evidence that this is the elder children's perception of their father and that each of the children clearly values the care given to them by their mother. W stated that his mother "always listens to me, understands my feelings, what I say and trying to solve them" but his father "didn't give us the time, never listened to us, [was] always busy doing work. X made clear that she has a good relationship with her mother and can approach her with anything. By contrast, X stated that the father cared about property and money more than the children and never gave much time to the children. As I have noted, the social work assessment carried out in September 2019 noted that the children have safe, stable and affectionate relationship with their mother. I also bear in mind what I am satisfied would be the detrimental effect on the mother's capability to care for the children were she to have to return to Pakistan within the context of the findings I have made regarding the conduct of the father in this case.

CONCLUSION

72. Having regard to the foregoing welfare analysis, on balance and considering each of the children individually, I am satisfied that it is not in any of the children's best interests for a summary return order to be made under the inherent jurisdiction of the High Court requiring the children's return to the jurisdiction of Pakistan. In the circumstances I decline to make such an order and dismiss the father's application. I will invite counsel to draw an order accordingly.
73. The proceedings under the Children Act 1989 issued by the mother are currently stayed. Whilst the children were not, in my judgment, habitually resident at the time those proceedings under the Children Act 1989 were issued for the reasons set out above, the Family Court nonetheless has jurisdiction to make orders under Part II of the 1989 Act pursuant to ss 1(1)(a), 2(1)(b)(ii) and 3(1)(b) of the Family Law Act 1986. In the circumstances, the stay with respect to those proceedings should be lifted and the matter listed before the Family Court for a further hearing to determine the proper course of those proceedings. This has the effect of reviving the prohibited steps order currently in force in respect of the children.
74. That is my judgment.