



Neutral Citation Number: [2021] EWHC 585 (Fam)

Case No: SE11P00514

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/03/2021

Before:

MS SARAH MORGAN Q.C.
SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

M	<u>Applicant</u>
- and -	
F	<u>1st Respondent</u>
- and	
P, Q and S	<u>2nd 3rd & 4th</u>
(By Their Children Guardian)	<u>Respondents</u>

Mr Mark Jarman (instructed by **Wilson Solicitors**) for the Applicant
Mr Alistair Perkins (instructed by **Freemans Solicitors**) for the Respondent
Ms Jillian Hurworth (instructed by **Cafcass Legal**)

Hearing dates: 10-14 August, 15 October 27 -29 October 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.

.....
MS SARAH MORGAN Q.C

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

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30AM on 16th March 2021.

Ms Sarah Morgan QC:

Introduction

1. These proceedings relate to three children P who is 16, Q who is 15 and S who is 12. All 3 are wards of Court having been so warded on the Mother's application by Coleridge J on 15th July 2011. That they were made wards of court on that date and the case comes before me for a fact-finding hearing in relation to jurisdiction in 2020 serves to herald some of the unusually difficult features of this case caused by the passage of time. The Applicant is the Mother of the children. Partway through the hearing, in circumstances it will be necessary for me to consider later in this judgment, the Father asserted that that the name by which she is known in these proceedings was a false name and that her identity was false. I will refer to her as the Mother. The Respondent is the father of the children. I will refer to him as the Father.

2. Following the orders made by Coleridge J, which included orders for the seizure of Father's travel documents and for return of the children, there was a very unfortunate turn of events. Permission had been given for orders to be served on the Father (then in Saudi Arabia but returning to the UK imminently) once he returned to the jurisdiction. In September 2011, he did return with one of the children but for reasons which it is not necessary to detail further, upon service, the father's travel documentation was not removed as directed and he gave false details of where he was staying. Alerted as to the existence of the proceedings, he swiftly returned with the child to Saudi Arabia. He made contact by email with the senior associate at the Royal Courts of Justice enquiring about the existence of proceedings and nature of any orders made. Since that time there have been a series of orders on an approximately annual basis made seeking to secure the attendance of the Father; for disclosure of information as to the children's whereabouts and in an effort to progress matters. I set out here only the most abbreviated description of that part of the litigation history so as to provide some context for the many years which have passed between the orders made in July 2011 and this hearing. Following a long series of directions for disclosure of information tracing the father and the children who are presently living in the Sultanate of Oman, the Father ultimately attended by telephone link from Oman at a hearing before Mr Justice Williams on 20th January 2020. From that date case management led to this hearing

3. A further complexity in relation to this fact-finding hearing is illustrated by the extent to which facts are in dispute as between the parties. As the case started, and on the basis of the trial bundle provided to me, it had appeared that there was indeed already much in dispute between the parties. By the time the evidence concluded however, such had been the way in which the parties' evidence and positions had developed, that the *only* material fact I was able to identify on which there was agreement was that the date on which the Mother, the Father and the two eldest children of the family left the United Kingdom was 31st January 2008. All else was disputed. In this judgment I have sought to determine, where the evidence so permits, those facts which require determination to enable me to reach the conclusions I have. I have not found it necessary or proportionate to seek to adjudicate (even were there the evidence) on every fact or issue which the parties do not agree.

4. On May 18th, 2020. Williams J listed the matter before me for *a hearing to determine whether the Courts of England and Wales have jurisdiction to determine welfare issued in relation to the children (the jurisdiction hearing)* commencing 10th August 2020 with a time estimate of 5 days. It was intended, so his order reflects, that the matter should be listed before him some time after the fact-finding hearing for such further consideration as might

then be appropriate as to the exercise of any jurisdiction found. Though in fact through oversight no such listing was ever confirmed. Regrettably, as will appear from this judgment partly as a consequence of the way in which the evidence developed, partly as a consequence of some issues arising from the fact that it remained necessary, by reason of continuing public health restrictions, to conduct the hearing entirely remotely but ultimately because it became necessary to adjourn part-heard for further and better evidence in relation to disputed translation of a document, the time estimate of 5 days became insufficient and the hearing resumed for a further 4 days on 15, and 27 -29th October.

Background

5. The Mother's account of the background – which had also been the father's account until October of this year, it that she is originally of Yemeni Origin. She came first to the UK in 2002 as a refugee having fled an abusive father and brother in Yemen. She arrived with no English and no familiarity with the culture and way of life in this country. Her evidence is that she met the Father when she was introduced to him and he acted at her interpreter in connection with her asylum claim. They married shortly thereafter in November of the same year.

6. I had not heard that the father disputed that account of when and how they married until his position in respect of the mother, her background and identity changed during the lifetime of the hearing before me. He now says that he and the Mother are first cousins and that they met and married in Yemen in 2000.

7. The case had been opened before me on the basis that the father is Somali in origin, and he too was an asylum seeker when he came to England 1998. He subsequently obtained (though has since lost) British citizenship and a British passport. Elsewhere in this judgment I will consider the way in which he has now departed from that previously agreed version of his background.

8. The eldest child of the parties, P, was born in 2003 in Sheffield. The Mother's first application for asylum was not successful and so in August of 2004 she and the then 11 month old P travelled to Yemen. She was at the time pregnant with Q who was, on her case, born in Yemen in December of 2004. It had at the start of the hearing been agreed by the Father that Q was born in Yemen as the Mother says but part way through the hearing, he asserted that the mother was lying about this and that Q had been born in Saudi Arabia.

9. After 12 months out of the UK the Mother returned in 2005, the father having secured for Q a British passport in the February of that year. The Mother's position is that it was always her intention to remain and settle in the UK. Her half-brother had also moved to Sheffield in 2004 along with his wife and children. Her children were enrolled at the local pre-school and registered with medical services. Q has particular health needs including those which arise from his diagnosis with a serious condition of the blood and seizures which may or may not be associated with that condition. For this he was under the care of clinicians in Sheffield. Although the Mother's case is that the Father did not permit her to leave the home alone and socialise, she did make friends with the wives of the father's friends and the family had a social life within the community.

10. The Mother's case is that when they lived in the UK she was heavily reliant on the father in her dealings with the outside world, partly because he was her husband and culturally she would expect to have a degree of what I would understand as obedience to him; because it

would be appropriate in particular for her to be accompanied by him when travelling outside the home, but also as a matter of practicality, she having no English was reliant on him to act as translator for her. Her case is however that it went beyond what was practically necessary and culturally appropriate and that she was largely controlled by the father. She moved in on marriage to the home for which he had a council tenancy at the time. All financial decisions and applications for benefit and bank accounts in her name were made by him and he controlled all the family documents. She gives as an example of the extent of his control, that on occasions the Father would not permit her to put the bin out – and thus be outside the home - without him being present. Her case is that this pattern and habit of control is relevant to how matters unfolded once the family left England in January 2008 and should I come to consider the question of acquiescence.

11. The father denies that he was controlling. His case is put, so far as matters within their marriage is concerned, that the marriage was what I call for convenience ‘traditional’ within the expectations of the culture to which they belonged. He worked outside the home, she kept the home and looked after the children. He was, he says a family man and worked hard to provide. His case is that far from being controlling and keeping her at home he offered her money which she declined, and it was her preference that he rather than she should do the family shopping. She preferred not to leave the home and mix amongst unbelievers, although she did sometimes teach at the Mosque. She was as he put it *her own master* and did as she pleased. At the beginning of the hearing, his case was that he had assisted the Mother in her asylum claim and acquiring leave to remain though partway through the hearing his position changed and he asserted that in fact he had colluded with her in deceiving the immigration authorities to do this. His case is that the picture of the Mother as submissive and unable to assert herself is false and that she was unhappy in the Sheffield because of the high proportion of what he says she called ‘unbelievers’. She was he says, perfectly able to and did stand up to and disagree with him when she held a different view. Evidence both of her ability to assert herself and that she has demonstrated that ability is to be seen, he had said in the way in which whilst still living in Yemen in 2002 she resisted the attempts of her father and brother to force her to marry, reporting to the authorities their violence to her for which they were convicted, and then arranged to travel and seek asylum in the UK. This was an aspect on which he relied and which was put to her in cross examination on his behalf. By the time he gave evidence himself however, he had changed his position asserting that it was untrue that the Mother’s father had been arrested in the way claimed to seek asylum and that he had met him many times on his visits to Yemen

The Parties Respective Cases On How They Came To Depart From The UK On 31st January 2008

12. The parties agree that they left the UK on 31 January 2008 at which time the Mother was pregnant. She had by then been given indefinite leave to remain, granted in 2007, but had not obtained British Citizenship. A condition of the Mother’s indefinite leave to remain was that she could not be outside the UK for a period exceeding 2 years. There had been a short family trip to Cairo very soon after the Mother was granted indefinite leave but the parties cases are entirely different about how the departure on 31st January came about. The Mother’s case is that it was for a holiday; to visit family and that was all; that it was proposed by the father and discussed over the course of the preceding 6 months. It was not her intention that this was a permanent move. She is explicit that having experienced giving birth to P in the UK and giving birth to Q when she was in Yemen, she was well placed to compare the 2 experiences and very strongly wished to return to the UK in time to be delivered of S.

She was linked to ante-natal services and had a midwife here. The Father, she says, knew this and assured her that they would return at the conclusion of a holiday intended to be for a few weeks.

13. The Father's case by contrast is that the trip was not a holiday but a permanent relocation of the family to Saudi Arabia travelling through Yemen and via the Mothers family. Further that the impetus for the relocation came in large part from the Mother herself. He is clear that she was unhappy living with unbelievers, did not like the secular society; did not wish the children to grow up here rather than in an Islamic country. The extent to which she felt this he illustrates by his assertion that she would refuse to take Q to his medical appointments because doing so involved contact with unbelievers. His case is that, consistent with her assertive and forceful personality, she persuaded him to relocate and was the driving force behind the departure. His case as expressed in his written and oral evidence is that he wished to remain in the UK but that the Mother persuaded him – in reality insisted – that the family should leave the country.

The Parties Respective Cases on Events Following the departure from the United Kingdom and how the Children came to be separated from Their Mother

14. The Father's case in outline is that following the intended and agreed relocation from the United Kingdom the parties travelled first to Yemen, then to Saudi Arabia. The Mother, he said in his written evidence returned from Saudi Arabia to Yemen to give birth to S, whilst he remained in Saudi Arabia in order to work, travelling to see the Mother and children in Yemen (who lived in a rented flat in Yemen) when he was able to do so. The Mother was cross examined on his behalf on that basis. Part way through the hearing, the father changed his position on this and when the hearing resumed part-heard, he asserted that S had been born in Saudi Arabia. The family had on his first account returned to Saudi Arabia following S's birth, on his second remained living there following S's birth. On each version of the Father's case he is has been consistent in asserting that the fact that they lived in Saudi Arabia was consensual on the part of the Mother and they lived happily there as a family.

15. The Mother's case is that following their arrival in Yemen after about a week the family travelled to Saudi Arabia to visit the paternal family. There, she says they stayed and the father would beat her and also the children. Treatment which she says was seen by the paternal family including being witnessed by the father's brother. Her case is that she lived in fear of him and that although she asked the father many times to arrange a return to the UK, he did not and she was compelled to do as he said. After 4 months in Saudi Arabia the family travelled to Yemen where the Paternal Grandfather had rented a property for them after only a few days however the Father went back to Saudi Arabia coming back and forth to visit, she and the boys remaining in Yemen where, on 22nd June 2008 S was born. Following S's birth, it is the Mother's case that the father became more violent, more frequently. After about 8 weeks in Yemen the Mother and the 3 children returned with the Father to Saudi Arabia where they lived, as far as she was concerned wretchedly and in fear, with the paternal family until February of the following year. Then they moved to a rented apartment. P started to attend school from about May of 2008.

16. In June of 2009, the family left Saudi Arabia for Yemen. The Mother's case is that this was to see her mother before the Family returned to the UK for good. The Father that he agreed to a holiday in Yemen over Ramadan until Eid for which he rented a property, dropped the mother and children there and himself came and went. When Eid came the father says that he returned to collect the family to go back to Saudi Arabia but the Mother refused

to return with him demanding instead that he buy her a house in Yemen. When he would not or could not afford to do so the Mother demanded a divorce from him without warning and abandoned the children to his care. It was, he says her insistence that he should take the children. He did so and returned to Saudi Arabia with the children. S, at the time (September/October 2009) was about 15 months and still breastfeeding. The Guardian noted that when she spoke to S, in the run up to this hearing, S's understanding is that she was abandoned by her mother and she knows nothing of her.

The mother by contrast asserts that having understood the trip to Yemen as a holiday before return to the UK, when she realised the Father was not making arrangements for return, she asked the father to allow her to return to the UK with the children. His response to this was that he became very angry, assaulted her, proclaimed a divorce and threw her out of the property. The father retained, on the Mother's case not only the children, with whom the following day he returned to Saudi Arabia, but also all of her travel documents including her Yemeni passport with her visa. It was, on her account, the last time she saw the children. The mother's case is that over the next few days she tried to contact the Father and/or to seek help from the paternal family in Saudi Arabia knowing that he had taken the children there. She could not, as a woman under 45 and unaccompanied by a male relative travel to Saudi Arabia herself.

17. Over the following 16 months, and with the assistance of her half-brother J (who was in England) she arranged re-entry to the UK returning on 27th February 2011. Those efforts to return included the making of an application to the British Embassy in Sana'a for entry clearance to the UK as a returning resident. She was initially refused, there having been a mistake as to the date of her January 2008 departure such that she had been determined to have exceeded 2 years absence. By reason of her resulting successful appeal to the Upper Tribunal I have had the benefit of the judgment of the tribunal dated 15th November 2010.

18. In March 2011 the father visited Britain. There are once again differing accounts of what happened during this visit. The Father's case is that he and the Mother, with the assistance of a mediator from within their community spoke and the Mother said that she would return to Saudi Arabia once she had obtained British Citizenship. The Mother's case is that the father telephoned her; threatened to kill both her and her family and said that she would never see the children again.

19. The parties have each in their written statements set out their very different versions of the background events which ultimately results in this matter coming before the court. That which is set out above is intended as an outline summary only of the events against which I have to draw such conclusions as I may as to jurisdiction. I have read and heard the detail of the written and oral evidence of the parties from which I am aware that they give versions of those events which differ, and that the Father has given markedly different accounts of his own version of those facts and events even within this hearing. In setting out the background I have not thought it helpful, necessary or even realistic to detail every last point on which the parties disagree.

The Mother's Participation At This Hearing.

20. The Mother is an adherent Muslim who ordinarily covers her face. At the start of the hearing Mr Perkins raised with me her wish not to be seen unveiled by male participants at this hearing unless I directed that it was necessary and in the event that I did regard it as so, to limit the parts of the hearing when it was necessary and to limit her visibility to a

restricted group of the participants. An unfortunate consequence of the remote platform was that the Mother had not appreciated that even as the application was being made, she was visible to all and not as she had believed, in a room with her (female) solicitor and unseen. It was a matter of regret to me that the unusual circumstances of the COVID 19 arrangements meant that it was not possible to balance as keenly as would ordinarily be the case, the sensitivities of all concerned. I was sympathetic to the submission made on Mother's behalf that whilst she appreciated that the male counsel acting would wish to see her face, it was not necessary for all other male participants to the hearing to see her. It is fair to observe that there was no real strength of opposition to that submission from any other party but it was not possible to replicate on a remote platform the arrangements to give effect to this. I made accordingly the following directions:

- (i) That the Mother would uncover her face when giving her own oral evidence
- (ii) That the Mother would uncover her face when the father was giving his oral evidence
- (iii) At all other times during the hearing she would not be required to uncover her face
- (iv) That in the event that Mr Perkins felt the matter needed to be re-visited he would raise it with me again.

I was not asked to revisit the issue but I recognise that the situation was far from ideal.

The Legal Framework - Jurisdiction

21. I have been greatly assisted by an agreed document to which all Counsel in this case contributed setting out in detail the applicable law in relation to the matters of jurisdiction to be determined. It has been particularly helpful to me to have included clearly within that document where there is disagreement between Counsel as to the applicable law. I have drawn on that document for much of what follows.

22. Consideration of the law in this case is not straightforward. First there are different considerations which apply in respect of P and Q, who left the jurisdiction of England and Wales with their parents (in whatever I may find were the circumstances) in January 2008, to those which apply to their sister S who was not yet born. Second because as between Mr Perkins and Ms Hurworth on the one hand and Mr Jarman on the other there is disagreement as to the applicability and interpretation of the law.

23. In relation to P and Q the Court's jurisdiction derives from Brussels IIR which gives a continuing jurisdiction to the state from which the child has moved to deal with matters of parental responsibility. The general rule as to jurisdiction in Brussels IIR is contained in Article 8 of the Regulation. Article 8(1) provides that "*the courts of a Member State 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.*"

24. However, the jurisdiction under Brussels IIR operates not only when a child is wrongfully removed to, or retained in, a member (i.e. European) state, but also when a child is wrongfully removed to, or retained in, a non-member state: -

- a. *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others intervening)* [2013] UKSC 60 Baroness Hale @ paragraph 30,
- b. *In re B (A Child) (Reunite International Child Abduction Centre and others intervening)* [2016] UKSC 4 Lord Wilson @ paragraphs 27, 29
- c. *In re H (Children) (Reunite International Child Abduction Centre intervening)* [2014] EWCA Civ 1101. Black LJ (as she then was) @ paragraphs 39, 40 & 50
- d. paragraph 32, 33 39 & 39-41 of Court of Justice of the European Union *UD v XB (Case C-393/18PPU)* [2019] 1 WLR 3083

32. *As regards article 8(1) of Regulation No 2201/2003 itself, that provision states that the courts of a member state are to have jurisdiction in matters of parental responsibility with reference to a child who is habitually resident in that member state at the time when the matter is brought before the court concerned. Thus, nothing in that provision indicates that the application of the general rule of jurisdiction in matters of parental responsibility, which it establishes, is conditional on there being a legal relationship involving a number of member states*

33. *As Advocate General Saugmandsgaard Øe observes in points 23 and 25 of his opinion, it follows that, unlike certain provisions of Regulation No 2201/2003 concerning jurisdiction such as articles 9, 10 and 15, the terms of which necessarily imply that their application is dependent on a potential conflict of jurisdiction between courts in a number of member states, it does not follow from the wording of article 8(1) of that Regulation that that provision is limited to disputes relating to such conflicts.*

and after

39. *Contrary to what the United Kingdom submits, in essence, such considerations do not have the consequence that the jurisdiction rule in article 8(1) of Regulation No 2201/2003 must be regarded as applying only to disputes involving relations between the courts of member states.*

40. *In particular, the uniform rules of jurisdiction contained in Regulation (No) 2201/2003 are not intended to apply only to situations in which there is a real and sufficient link with the working of the internal market, by definition involving a number of member states. In itself, the unification of the rules of jurisdiction introduced by that Regulation certainly has the objective of eliminating obstacles to the functioning of the internal market which may derive from disparities between national legislations on the subject: see, by analogy, in relation to the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L299, p 32), as amended by successive Conventions on the accession of new member states to that Convention, *Owusu v Jackson (Case C-281/02)* [2005] QB 801; [2005] ECR I-1383, para 34.*

41. *In the light of the foregoing, it must be stated that the general jurisdiction rule provided for in article 8(1) of Regulation No 2201/2003 may apply to disputes*

involving relations between the courts of a single member state and those of a third country, and not only relations between courts of a number of member states.

25. I have been specifically referred also by the parties to paragraph 4.21 International Movement of Children 2nd Edition Lowe, Everall & Nicholls.

26. Mr Jarman does not agree that the Court's jurisdiction in relation to P and Q derives from Brussels II R as a consequence of a combination of s 1 (1) (a), 1 (1) (d) (i) , 2 (1) & 3 (1) (a) of the Family Law Act 1986 and disagrees that there is a continuing jurisdiction.

27. Article 10 of Brussels IIR governs the position where a child has been the subject of a wrongful removal or retention. The court of the Member State in which the child was habitually resident *before* the wrongful removal or retention will continue to have jurisdiction over the child until such time as the conditions specified in Article 10 are satisfied - Re AJ (Brussels II Revised) [2011] EWHC 3450 (Fam), [2012] 2 FLR 689. In the circumstances of this case Mr Perkins and Ms Hurworth each submit that:

- (i) Article 10 of Brussels II is engaged
- (ii) The Court of Appeal's decision in relation to article 10 in re H is binding.
- (iii) If which is not admitted UD v XB (above) is authority for distinguishing article 10 so as to limit its application between member states only, it is *obiter* given the decision related to article 8 only.

In contrast, Mr Jarman does not agree that Article 10 is engaged; does not agree that the Court of Appeal decision in Re H as regards Article 10 is binding and as I understand his position submits that UD v XB is authority for distinguishing Article 10 such that its application is limited to that between Member states.

28. Article 10's application falls to be considered if I find that, in this case there has been in this a wrongful removal or retention. To that end I have been invited to consider whether any of the following took place:

- (i) A wrongful removal from England on 31 January 2008.
- (ii) A subsequent wrongful retention
- (iii) Whether there is any point at which the mother acquiesced in the retention.

And further go on to consider whether, in the light of paragraph 33 of UD v XB Article 10 applies. In the alternative, if as Mr Jarman submits, Article 10 is not engaged, then the date at which the habitual residence of P and Q falls to be determined is as of 14th July 2011.

29. Article 2(11) Brussels IIR defines "*wrongful removal or retention*". The Mother at all material times had parental responsibility for P & Q. If I find that the removal of P & Q from England as of 31st January 2008 or their subsequent retention from England was without the Mother's agreement or permission it would be wrongful within the meaning of Article 10. Conversely if the removal or retention was with her agreement or permission or she then later acquiesced then Article 10 is not engaged. In Re H (Abduction: Jurisdiction) Re H (Children) (Reunite International Child Abduction Centre Intervening) [2014] EWCA Civ 1101, [2015] 1 WLR 863, [2014] 3 FCR 405, [2015] 1 FLR 1132 it was held that jurisdiction

- “is retained in the courts of England and Wales by virtue of Art 10 and has not been lost, because the children have not yet acquired a habitual residence in another Member State” [§53]

30. Accordingly, Mr Perkins and Ms Hurworth invite me to conclude that where a child is wrongfully removed or retained to a non-Member State, the effect of the Article is that the courts of the Member State where the child was habitually resident prior to the removal or retention will retain jurisdiction indefinitely. Mr Jarman on behalf of the Father does not accept, that Article 10 has this effect in the event that a child is wrongfully removed or retained, or for that matter that the Article is engaged at all.

31. None of the states with which feature in this case namely; Yemen, Saudi Arabia, or to the extent that they are relevant to my consideration at this hearing Turkey (where the Father and children moved to from Saudi Arabia for a short time) and Oman (where the Father and children are now living) are Member States. If, so it is submitted on behalf of the Mother and on behalf of the Children, I find that that P and Q were wrongfully removed to or retained in, any of those countries, their habitual residence remains England and Wales. Mr Jarman for the Father submits that it does not.

Acquiescence

32. In contrast to the position with wrongful removal or retention, Brussels IIR does not contain any definition in relation to “acquiescence”. The parties have helpfully directed my attention to the authorities arising from article 13(A) of the 1980 Hague Convention in relation to “acquiescence”. From those Authorities the following principles may be distilled:

- (i) Acquiescence is a subjective state of mind of the wronged parent normally viewed objectively. (See Lord Browne-Wilkinson at page 87 in *Re H (Minors) (Abduction: Acquiescence)* [1998] AC 72).
- (ii) ‘Consent’ is a question of fact to be inferred from the subjective intentions and from the outward and visible acts of the left behind parent. (See *Re H* above).
- (iii) “*The trial judge, in reaching his decision on that question of fact, will no doubt be inclined to attach more weight to the contemporaneous words and actions of the wronged parent than to his bare assertions in evidence of his intention. But that is a question of the weight to be attached to evidence and is not a question of law.*” (See *Re H* above).
- (iv) The question of whether the wronged parent has ‘acquiesced’ in the removal or retention of the child depends upon his actual state of mind, save that, “*There is only one exception. Where the words or actions of the wronged parent clearly and unequivocally show and have led the other parent to believe that the wronged parent is not asserting or going to assert his right to the summary return of the child and are inconsistent with such return, justice requires that the wronged parent be held to have acquiesced.*” (See *Re H* above).
- (v) The burden of proving that the wronged parent had acquiesced was on the abducting parent (see *Re H* above).

Habitual Residence

33. Habitual residence falls to be considered in relation to the following so far as:-

- (i) P & Q's habitual residence immediately before any wrongful removal on 31.1.08 or retention thereafter to date; and/or
- (ii) P & Q's habitual residence at the point the court was seised of these proceedings on 14 July 2011.

Mr Jarman on behalf of the Father accepts only that the date at which this court was seised of these proceedings i.e., 14th July 2011 is relevant for consideration of habitual residence and no earlier date. In relation to S her complete absence from England and Wales precludes me concluding that at any of the material times she was habitually resident in this jurisdiction, for the purposes of Brussels IIR or *The Family Law Act 1986* (see ECJ judgment paragraph 52 & 53 of UD v XB (above)).

34. I have had regard to and been assisted by the analysis by Hayden J of the jurisprudence in Re B (A Child) (Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam) [2016] 4 paragraphs 16-19, (subsequently approved by McFarlane LJ (as he then was) in In the Matter of L (Children) [2017] EWCA Civ 441, and by Baroness Hale and Lord Hughes in Re C and another (Children) (International Centre for Family Law, Policy and Practice Intervening) [2018] UKSC 8.) Mr Jarman, whose submission, inviting me to find that Article 10 is not engaged, is that the relevant date is July 2011 referred me to the very recent judgment of the Court of Appeal Re M (Children) (Return Order: Habitual Residence) [2020] EWCA Civ 1105 where reference was made[§63] to Re B cautioning in the following terms over-reliance on parts of the analysis:

2. *“In many cases, as in the present case, the parties and the court have used the summary of the law set in by Hayden J in Re B, at [17]. I agree that this is a helpful summary save that, for the same reasons given above, what is set out in sub-paragraph (viii) (which I quote below) might distract the court from the essential task of analysing “the situation of the child” at the date relevant for the purposes of establishing jurisdiction or, as in the present case, whether a retention was wrongful. Accordingly, in future I would suggest that, if Hayden J's summary is being considered, this sub-paragraph should be omitted so that the court is not diverted from applying a keen focus on the child's situation at the relevant date:*
3. *“(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 (In re B - see in particular the guidance at para 46).”*

35. Holding in my mind those authorities as I consider the factual situation of these children in this case the following propositions are relevant:-

It Is A Straightforward Test:

36. The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses; my focus must be centred throughout on the circumstances of the child's life that is most likely to illuminate their habitual residence - A v A (above) and Re L (above). It is not

necessary for me to make a searching and microscopic enquiry (*Re B (Minors) (Abduction) (No 1)* [1993] 1 FLR 988). Although of course I have had to bear in mind that the factual circumstances of this case are such that the simple face of the time frame over which have to consider the events in dispute adds to the breadth of the enquiry.

It is a child-focused exercise:

37. The child is at the centre of the exercise I carry out when I am evaluating his or her habitual residence. This involves a real and detailed consideration of amongst other things 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 *Re B*, above, *per* Hayden J. @paragraph 17.

The approach must always be what is to be characterised as child-driven - *Re B*, above, *per* Hayden J. @ paragraph 17.

The Child's Presence Should Not Be In Any Way Temporary Or Intermittent:

38. In addition to the physical presence of the child, I must look to other factors identified that are capable of showing that the child's presence is not in any way temporary or intermittent. The court must in particular take into consideration:

- i. duration of residence;
 - ii. regularity of residence;
 - iii. conditions of residence;
 - iv. reasons for the stay;
 - v. the child's nationality;
 - vi. the place and conditions of attendance at school;
 - vii. linguistic knowledge of the child; and
 - viii. the family and social relationships of the child in the state in question.
- *Proceedings brought by A* [2010] Fam 42, [2009] 2 FLR 1; *Mercredi v Chaffe* [2012] Fam 22, [2011] 1 FLR 1293.

Integration In A Social And Family Environment:

39. 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 (Children: Habitual Residence) (Reunite International and Others Intervening)* [2013] UKSC 60.

The relevant question for me is whether the child has achieved 'some degree' of integration but it is not necessary for the child to become fully integrated before acquiring habitual residence - *Re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre Intervening), sub nom Re KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2013] UKSC 75.

Age of Child:

40. The analysis of a social and family environment of a pre-school child differs from that of a school age child and would include considerations of the geographical and family origins of the parents who had effected the move and the family and social connections of that parent and the child with the state to which they had moved. (See Lord Wilson @ [37] Re B (A Child) (Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam). The environment of a young child, particularly an infant, is essentially a family environment, determined by the reference person(s) with whom the child lives and by whom the child is in fact looked after and taken care of. In those circumstances it is necessary for me to assess the care-giver's integration in her social family environment in order to determine the habitual residence of the child - Mercredi v Chaffe [2011] 1 FLR 1293, [2012] Fam 22 at para 51.

Parental Intention and Unilateral Actions:

41. It is possible for a parent unilaterally to cause a change to a child's habitual residence by removing the child to another jurisdiction without the consent of the other parent (Re R (children) (Reunite International Child Abduction Centre intervening) [2015] UKSC 35. A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (In Re LC (Children) (Reunite International Child Abduction Centre Intervening) [2014] UKSC 1). Parental intention though relevant to the assessment, is not determinative (Re L, above; Re R, above) and Re B, above). Habitual residence is 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. (Re R, above). There is 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 (In re R (above)).

Stability of Residence:

42. 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, above; Re L, above; and Mercredi v Chaffe, above).

43. 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 (above)). The requisite degree of integration can, in certain circumstances, the "first roots" develop quite quickly it is possible to acquire a new habitual residence in a single day (A v A (above) and Re B (above) at paragraph 35. It was the stability of the residence that is important, not whether it is of a permanent character (Re R, above).

No Habitual Residence:

44. In Re B (A Child) (Habitual Residence: Inherent Jurisdiction) [2016] UKSC 4, [2016] 1 FLR 561 it was held that, although conceivable, it is highly unlikely that a child will be found to have no habitual residence. 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*, above, at paragraph 46). It is in a child's best interests to have a habitual residence and accordingly that it would be highly unlikely, albeit possible but exceptional, for a child to have no habitual residence (*Re B*, above). It is open to the court to find, on the facts, that a child who has had a peripatetic existence has no habitual residence - *Re F (Habitual Residence: Peripatetic Existence)* [2014] EWFC 26, [2015] 1 FLR 1303.

In *Re NH (1996 Child Protection Convention: Habitual Residence)*, [2015] EWHC 2299 (Fam), [2016] 1 FCR 16, Cobb J held that, while the impossibility of establishing a child's habitual residence may be rare, it would be wrong for the court to strain to find facts to establish habitual residence.

Inherent Jurisdiction And FLA 1986

45. In relation to S, the court's jurisdiction can only be argued to exist by virtue of article 14 of Brussels IIR (the residual jurisdiction) based on *parens patriae*. Where BIIR does not apply, and where jurisdiction for the court in England and Wales is not established on the basis of habitual residence and/or physical presence, it is possible for the court to exercise jurisdiction based on *parens patriae*, the child having UK nationality - *A v A and Another (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening); sub nom Re A (Children) (Jurisdiction: Return of Child)* [2013] UKSC 60, [2014] 1 AC 1, [2013] 3 WLR 761, [2013] 3 FCR 559; *A v A (Return Order on the Basis of British Nationality)* [2013] EWHC 3298 (Fam), [2014] 2 FLR 244.

46. The Supreme Court held in *A v A (Children: Habitual Residence)* that the court must approach the question of whether to exercise jurisdiction on the basis of nationality with 'extreme circumspection' but that all must depend upon the circumstances of the case.

- 46 Even though a child may come within one (or more) of these categories, the powers of the High Court with respect to him may, nevertheless, be restricted by virtue of the provisions of FLA 1986, CACA 1985 and CA 1989.

Convention Rights

47. The following provisions of the *Convention for the Protection of Human Rights and Fundamental Freedoms* as incorporated by section 1 (1) of *The Human Rights Act 1998* are engaged:- Article 8 right to respect for private and family life

The following provisions of the *United Nations Convention on The Rights of The Child 1989* are relevant to the application and exercise of the court's discretion.

- (i) Article 3 (1) the best interests of the child shall be a primary consideration;
- (ii) Article 8 (1) to preserve her identity, including nationality, family relations without unlawful interference;
- (iii) Article 10 ensuring family reunification.

The Legal Framework Fact-Finding

48. The applicable law in relation to the fact-finding element is a more straight-forward proposition and can be taken much more shortly. Although I have not had detailed submissions from the parties on it in the same way I have taken the uncontroversial approach below

49. In any fact finding exercise the burden of proof of proving any allegation is borne by the party seeking to prove it. The standard of proof to which allegations must be proved is the ordinary civil standard Re B (Children) [2008] UKHL 35. The inherent probability of an event occurring remains a matter to be weighted in the balance Re B (Children). I must base any findings of fact on evidence, which includes inferences which may properly be drawn, and not on speculation Re A (Fact Finding: Disputed Findings) [2011] 1 FLR 1817

50. I have, in the particular circumstances of this case reminded myself when assessing and weighing the impression I form of the parents of the observations of Macur LJ in Re M (Children) [2013] EWCA Civ1147 :[12] *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.*

It has seemed to me that notwithstanding the reminder Mr Jarman makes that this is a narrow jurisdictional dispute, the caution is apposite just the same since the matters which I have had to consider to determine that dispute have included intensely personal and emotional family experiences. In like manner I have had regard the caution of over reliance on demeanour articulated by Leggatt LJ in Sri Lanka v Secretary of State for the Home Department [2018] EWCA 1391

51. Especially important since so many years have elapsed between the events I am examining and the time of this hearing has been the reminder –from Leggatt J (as he then was) in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC of the fallibility of human memory and in particular @ [16] – [18] of the judgment the consideration of the way in which research in the field of psychology has demonstrated not only the passage of time but the process of litigation impacts upon the reliability of memory.

52. In relation to lies – as distinct from those matters impacting on memory – I have held in my mind and applied the well known principles of R v Lucas [1981] QB 720, imported into the Family Division through Re A (A Child) (No 2) [2011] EWCA 12; Re M (Children) [2013] EWCA 388 and, as expressed by MacFarlane LJ (as he then was) requiring proper and careful application Re H-C (Children) [2016] EWCA Civ 136

53. Finally, in the light of the Cultural and Social context of the case I have reminded myself of The Upper Tribunal (Administrative Appeals Chamber) [2019] UKUT 113 (aac)@ [44] giving rise, as I understand it to amendment to the Equal Treatment Bench Book that *a state of affairs that may be regarded as literally incredible by one community may be regarded as quite ordinary by members of another community.*

Evidence

54. At this hearing I have heard oral evidence from the following

- (i) The Mother
- (ii) The Mother's brother J
- (iii) The Father's brother Mr D
- (iv) Mr K (on whom the Father relies as witness to the Divorce)
- (v) Mr L (on whom the Father relies as witness to the Divorce)
- (vi) The Father

55. It had been intended that I would hear evidence also from another witness N on whom the Father relied and required for cross examination. She provided a statement of intended evidence in July 2020. In it she said that her understanding had been that the family in 2008 were moving permanently. The day before she was first timetabled to give evidence I was told that she had suffered a bereavement the night before and could not attend the following day nor, as it turned out later in the week. When the case resumed part heard I was told that she had not responded to further messages; that attempts to contact her had failed and that there were suggestions that the Mother or someone on the Mother's behalf had threatened her. Ultimately the position in respect of this witness before me was that I did not hear oral evidence from her. I was provided with no clear or forensically satisfactory evidence as to why she was not available. I had accordingly to attach such weight as I think appropriate to her recently made statement.

56. Mr Jarman, during the course of the hearing on more than one occasion submitted that I should be slow to hear or permit evidence which, should I determine that this court had jurisdiction, might be relevant to questions of welfare, but did not go directly to what he submitted were the very narrow jurisdiction issues on which my attention must be focussed. He objected, for example to Ms Hurworth on behalf of the children, exploring some of the evidence as to the circumstances in which the children have lived in the period between January 2008 and 2020. I understand why he makes that submission and objection and, in the ordinary course of events there might be much to commend it. In this case, which is far from ordinary, it is impossible artificially to filter out that evidence which might bear on the children's welfare which, I agree I am not at this hearing examining, from that which may shed light on those aspects of the case which are the focus of attention at this hearing such as questions of acquiescence or consent and the existence, loss or acquisition of habitual residence.

57. It is not my intention to recite here all of the evidence I have heard from those witnesses who did give oral evidence but rather to consider where appropriate the impressions I formed from it, and how it has assisted me in reaching the conclusions I have. Before turning to the evidence of any of the witnesses however, I make the following observations which, in the circumstances of this case are applicable to all, and which I have held in my mind when I have listened to their evidence:

- (i) The events in respect of which all of them were giving evidence in 2020 covered a period from about the middle of January 2008 until the end of 2009. Occasionally witnesses were asked questions about even earlier times – pertinent for example to how the parents came to settle in the UK; human memory is inevitably affected by such a passage of time
- (ii) Some of the written statements which had been made about events of 2008 – 9 were made for the first time this year, some 12 years later.
- (iii) All witnesses from whom I heard were giving evidence by remote link to a hearing configured entirely remotely and across different time zones which made giving evidence a difficult experience. The connectivity problems which from time to time afflicted the process and availability of suitable devices and/or unfamiliarity of operating them on the part of some of the remotely attending witnesses added to this
- (iv) Those witnesses who gave their evidence from Saudi Arabia when considering questions of time and date, gave their answers by reference to the Islamic or Hijri calendar rather than the Gregorian. So not only was it necessary on occasion to convert one to the other, but it also meant that in relation to more distant events it was sometimes hard to be sure of the extent to which, when I came to consider what conclusion I should draw from a lack of clarity or precision as to date, the use a different calendar added to the effect of the passage of time
- (v) All witnesses from whom I heard orally were giving evidence either through an interpreter or in a language which was not their first language
- (vi) In combination those latter two factors from time to time meant that, as Mr Perkins rightly submitted, the nuances in the interplay between question and answer may have quite literally become lost in translation
- (vii) Access to and navigation of the electronic court bundle was not straightforward
- (viii) In the case of the Mother, my decision as to her giving her evidence with her face uncovered was one which, I could not implement as I would have ordinarily by the use of special measures, such as screens such that she would have been visible only to those who needed to see as well as to hear her giving her evidence. An unforeseen consequence of a trial conducted by remote platform. I was aware that the Mother, despite expressing herself willing in the circumstances so to appear, was discomfited by the knowledge that she was visible to a wider pool of male participants in the case.
- (ix) Also in the case of the Mother the circumstances of this hearing meant that in order for her to give her evidence by remote link it had been necessary for her to do so from her solicitor's offices in London. I accept the submission of Mr Perkins that this meant she had to in a way which was culturally alien to her, travel from Sheffield and stay alone overnight in London to do so. I further accept this made the daunting prospect of giving evidence yet more so.

Mother:

58. The Mother began her evidence by telling me that it was only on seeing the documents in these proceedings filed on behalf of the Father that she had understood that her daughter, who she had always understood to have been named T had been formally given a different name, with a different meaning S by which she is now known. It underscores for her the extent to which she has been absent from the children's lives – since a time when S was little over a year old.

59. She had commenced proceedings in this court in 2011 by a without notice application supported by affidavit. The application came about 4 months after she had arrived back in the UK. Her affidavit in support set out the difficulties she has had in obtaining advice and funding to commence proceedings. No party challenged her as to that explanation for the time it took to start proceedings and I accept it. Exhibited to her first affidavit are copies of an e mail (in Arabic) sent from her e mail account 2 days earlier on 13th July 2011 to her solicitors and a certified translation of it. She told me that the e mail was written in her own words and she did not have help, she did it by herself. I have read carefully the e mail which represents the earliest account I have from the Mother and for me has the value of coming in her own words rather than in language drafted for her by legal advisers. She says, *inter alia*, in that email that she left Britain with her husband and children for a vacation and after staying a week in Yemen went to Saudi Arabia. She makes complaint in the e mail that she and the boys were subject to what she calls *harmful beating* and gives descriptions of beatings and physical ill treatment including an incident which she describes when the children saw him strangle her; repeated incidents when she would be hit and beaten in the presence of the children such that she would lose consciousness. Specifically in this e mail sent in 2011 she says that she was beaten in the presence of others giving as an example the father's brothers. As to timing she puts an occasion when the children saw her beaten at about 4 months after she gave birth to S – so that gives me by way of context that the boys would then have been aged about 5 and 4. The last occasion she was beaten she said was on the day of a divorce when the father as she put it expelled her.

60. She determined then that she would return to Britain so that her residency period would not expire. That I know to be a reference to the fact that having been given leave to remain but not yet having acquired a British passport, she could not be out of the country for a period longer than 2 years. The account which she first gave there is fleshed out in her much more recent statement directed by Mr Justice Williams on 20th May 2020. In her oral evidence before me she confirmed her accounts of her experience following arrival in Yemen, to the point in or about the middle of 2011 when she first sought the assistance of this court in relation to a departure from the UK which, her evidence remained had been for a holiday. She was clear, when cross-examined in detail by Mr Jarman that the Father had spoken since mid-2007 of a holiday to Yemen and Saudi Arabia once her immigration situation was settled. It had been 6 months in the planning.

61. Although it was put to her that amongst the entries in the boys' medical records it is recorded that their GP was told that if the father found a job during their trip the family might stay that was not something she knew about. The speaking at the surgery – which she agreed she had visited the week before the trip – was all done by the father who accompanied her. She did not speak English, nor did she attend without her husband. She accepted that he might have said something like that but she would not have known as conversations between the Father and professionals were in English. Which she did not understand. Her own medical records for the visit don't in fact make reference to any intention to remain permanently

away. She had packed 3 suitcases of clothes and presents for the family's trip. She knew nothing of a job. Her midwife was aware of the holiday and she was, she told me expecting to come back to give birth to the child. She did not accept when it was put to her that there had been a celebratory farewell meal with friends to mark their leaving for good though she agreed that they might well have gone to friends or relatives to eat which was something that they often did. She knew nothing she said of the sale of the family car – she herself had anyway no dealings with a car, it was the father who had a car. She agreed that she was a woman who kept and observed the tenets and customs of her own Faith but did not recognise what the Father said of her as someone who was keen to avoid the company of unbelievers. The playgroup with which she went with her sons she told me for example was held in either a Church of England church or possibly the church hall.

62. There had, she agreed been previous trip in 2004 to visit her mother and she had had to be out of the UK following her unsuccessful application for asylum and whilst her immigration position was resolved and Q had been born whilst she was in Yemen.

In relation to her own family she told me that she had one full brother and one half brother. Her full brother she had not seen since 2002 when she first left Yemen to come to the UK. She had in respect of that brother and of her father made complaint in 2002 to the Yemeni police after an assault, connected she said with an attempt to force her to marry against her will. This resulted in a conviction and term of imprisonment and the Mother, as she put it 'fled' from Yemen to UK in 2002.

63. In the trial bundle are documents said by the father to relate to a divorce and bearing the signature of witnesses to it. One of those is described as the wife's brother, but the Mother denied that she had a brother of that name. Although at the time she was cross-examined by Mr Jarman the father had not yet made the further statement in which he raised allegations not previously made as to the Mother's identity and the circumstances in which they were married, it was put to her that she had in reality 5 brothers which she denied. She similarly denied that she had other relatives – maternal uncles. The Mother did not know, she said, what the documents produced by the father were but she did not agree that there had ever been a divorce in the way that the father said it had happened.

64. It was also put to her that, as distinct from her case in these proceedings that she had been in 2008 – 2011 cowed by the father, unable by reason of what I will, for sake of convenience, call an oppressively patriarchal state of affairs in the countries in which she and the children were at that time living, to make complaint against him or to seek documents and arrange to travel independently back to Britain; she had in 2002 made complaint about her own male relatives who had been convicted and imprisoned as a result. What Mr Jarman asked was the difference? Why could she not, if the tales of ill-treatment were true take similar actions in relation to her husband? It made a difference the Mother explained that she now had children and was married to him. He held all her travel documents and she feared he would take the children. As indeed she observed he ultimately did. Both in 2002 and also between 2004 and 2008, Mr Jarman pointed out to her, she had been able to arrange to travel and had travelled. This she said had been on her Yemeni passport and with the assistance of her family and then, once married arranged by the Father whilst her immigration had been regularised and for a family holiday to Cairo. From the early part of 2008 when she believed they would be returning after the holiday until October 2009, she had hoped and wanted to go back – first in time to give birth in the UK and later to return as a family. She kept asking the Father, she responded to Mr Jarman, he kept promising to arrange a return but he did not. If she asked again he would beat her. He it was who had the documents and she could not arrange it. A

wife, she explained, in the culture of this family has to be patient and await her husband's decision even if it does affect her. To give birth in Yemen was not something she had wanted but when it was clear that the father would not arrange a return to the UK, then she was at least near to her own mother in Yemen.

65. Overall I found her oral evidence largely consistent with the written accounts she had given though not in the sense of sounding rehearsed so as to match up with them. It was consistent also in parts with what she is recorded as saying in the judgment of the upper tribunal in November 2010 where I read that *'her husband has now divorced her taking the children following persuading her to leave the UK for a holiday in Saudi Arabia'*.

Mr Perkins, in his submissions invites me to regard her affect and demeanour – submissive and deferential- as both supportive of her credibility and consistent with the description of her personality I later heard from her half-brother when it was suggested to him that she it was who had insisted that the family left the UK permanently to live elsewhere. There may be some force to the latter submission but I have guarded against the former. The demeanour of the Mother during her evidence is not something on which I have relied in assessing its truthfulness. What I did find of assistance however was the relatively straightforward way she sought to answer what she was being asked. As did – in a way which I regard as something quite different from reliance on demeanour – the emotional congruence on occasion with which she spoke of certain aspects of the evidence: the way in which she spoke for example of the impossibility of travelling herself to Saudi Arabia to follow the children, or back to the UK, a woman alone without travel documents, passport visa or status; the description she gave of the displeasure occasioned by her taking her son to school once and unaccompanied during the time the family were in Saudi Arabia before return to Yemen for Ramadan in 2009. That is not to say that I found all of her evidence easy to follow. She was not clear, for example why, if she was telling the truth about the Father casting her out and taking the children, her brother J, who was in England and who has otherwise been a great support to her could not have come to Yemen to help her had she asked him. His own explanation when asked in due course was that he was dealing with an immigration situation of his own in 2009 – having entered an asylum seeker – and could not have left to go to Yemen but the Mother's evidence on what help she had sought was not clear.

66. As with when I listened to other witnesses I found it useful to ask myself how easy or otherwise I might find it to recall and to recount my actions from some twelve years earlier.

J

67. J is the Mother's Half Brother. From his evidence it was quite clear that he was wholly accepting of the Mother's account of events and was in a real sense partisan. He has assumed a protective role in her life, he has been involved in seeking to assist her in her return to the UK, however it was that she came to find herself in Yemen following the departure of the family in 2008.

68. He has lived in Sheffield since 2004. Like the Mother he came as a refugee and lived near to the parties along with his wife and now five children. His application to remain was rejected but he made a further application in 2010 which was successful and from that position of relative security he has sought to help the Mother in her return to the UK. He describes the Mother as having been close to his wife when the families were each living in the UK. The families visited each other's homes. His evidence to me was that although from his own upbringing and background he was used to Yemeni men treating their wives in what

he described as a *traditional* way, he felt the Father exerted excessive control over the Mother. She had no English, was isolated and had no autonomy. In particular she had no access to professionals save through her husband and no financial independence. He questioned it at the time he said but did not feel it was his place to interfere. He did not, he told me, hear any suggestion of domestic abuse when they lived in the UK although he says that he had heard from others in the Yemeni community that the father was aggressive. He contrasted her position with that of his own wife who when she had come to this country had been similarly placed to the Mother but with his encouragement has been integrated into the wider community, has acquired good language skills and has much in the way of independence and her own life.

69. He was clear and remained so when cross examined by Mr Jarman that in 2008, when the parties left in January, it was to go on a holiday and not a permanent move. He was surprised that it was happening before she had applied for a British passport but his sister had been clear with him it was a holiday and that in turn her husband had been clear with her that it would not affect her ability to apply for the passport as it was a holiday only. When challenged by Mr Jarman he accepted that he did not know the date when the family were to return from their holiday. He was pressed hard on this and the seeming inconsistency that on the one hand he said he understood his sister to be going only on a holiday and had driven her to the airport to leave, but yet on the other he could not pinpoint the date when he was expecting her to return, but this he responded he did not regard as odd or inconsistent with a family holiday. He knew that the first part of the holiday would be to his mother and he and his wife sent presents. He was clear also that the Mother intended to return to give birth in the UK – his wife was pregnant at the same time and he knew that both women were expecting to give birth at the same hospital in Sheffield. I found his evidence on this straightforward. Put to him that it had been the mother's choice to give birth to S in Yemen he said that he had no knowledge of that and he thought it was perhaps the father's choice. Asked whether following the birth of S, his sister had complained to him of her treatment by her husband and asked for help to get back to the UK, he said he had not known of what he called her *suffering* and had kept it to herself. He agreed that he was in touch with his sister by telephone when she was once again in Yemen in June 2009 until the Father divorced her later that year but that she had kept silent about her difficulties. He was at the time he said seeking to regularise his own immigration position in the UK and would not have been able to go to Yemen but, he said she did not tell him. Once she told him of her problems he said, and asked for his help. He did his best to help her return. He it was who went to provide the information online which his sister had provided to him, including that the departure in January 2008 had been for a holiday. He did not agree when it was put to him that following the divorce the Mother could have gone to Saudi Arabia to be with the children, his understanding was that the Father had taken them and he thought therefore that the best way to help her was through the British Embassy to get back to the UK. He was appropriately and strongly challenged on the detail of his involvement with the Mother's appeal to the upper tribunal in 2010 at which he had raised the question of the Father having been seen in 2010 in Birmingham. That information, he said had come from the Yemeni community, denying as was put to him that it was something he had made up to bolster the Mother's chances of being granted residence in England. Although he had known in 2009 that the Father had taken the children to Saudi Arabia – because the Mother told him – he did not know they where they were in 2010. He was not when cross examined, challenged upon any of the parts of the father's changed case which he had not at that stage articulated, but to the extent that he was challenged his evidence did not depart in any significant way from his statement.

70. His characterisation of the Mother as submissive and the Father as domineering when the parties lived in England carried with it a flavour of the partisan and protective role which he has assumed in these proceedings. I had the impression, listening to him that he may be exaggerating the extent to which *at the time*, he disapproved of the Father's behaviour towards the Mother or at the time as distinct from 12 years on regarded the Mother's position in her marriage as contrasting unfavourably with that of his own wife. It seemed to me that he is contrasting the Mother's position then with his wife's now working as a translator and leading an independent life outside the home, but his evidence as to what he understood to be the position in 2008 was clear and unshaken. His understanding was that the family went on holiday; he was expecting his sister and her children to return; specifically he was expecting her to return in good time to be delivered of the child she was carrying. He it was who assisted her once she made complaint to him, to obtain documents to return to this country; to appeal the decision of the immigration tribunal and to seek the return of her children.

71. As to those factual matters which were within his knowledge in 2008 when the family left the UK and in the period when he helped his sister to return – including what she told him at the time – and to make the applications which have ultimately led to this fact finding hearing I found him to be, as Mr Perkins invites me to, a credible witness. I regard him as one who was doing his best to give me a truthful account of what he could remember and whose account withstood skilled and appropriate cross-examination on behalf of the Father.

72. Before leaving this witness's evidence I record also that he was involved in the logistics of the provision of a statement of oral evidence from the witness whose evidence I will next consider. Having heard the explanation he gave when asked about this during in his evidence in chief and in cross examination I am quite satisfied both that there is no evidence that J sought out or solicited such a statement or that he did more than act as a conduit or liaison between the Mother's solicitors and Mr D.

Mr D

73. Mr D is the father's younger brother. He gave oral evidence starting on the 14th August when he gave his evidence in chief, and completing on 27th October when he returned for cross examination.

74. The circumstances in which the Father's brother came to be giving oral evidence before me are ones which warrant some explanation here. On the third day of the hearing Mr Perkins made an application (of which notice had been given the previous day) to admit a statement from this witness and to call him to give evidence - he being available and willing. Mr D had approached the Mother by telephone on the first day of the hearing volunteering to give evidence. He was asked, once the Mother had made her solicitors aware of this contact, to put something in writing and the Mother's brother J had effected liaison between Mr D and the solicitor with conduct. The statement in translation was wide ranging and in it Mr D gave examples of how the father had treated the Mother during the course of their marriage and in his presence. It spoke also to the children's lives with their father following the separation from their Mother and contained allegations of the way in which Mr D said that the father had treated his third wife (who as it turns out is also his present wife) and her children at the time of and following on from a divorce from her.

75. Mr Perkins acknowledged that the way in which the evidence of this witness came about did not remotely comply either with the directions made by Mr Justice Williams on 20th May 2020 or with the requirements of Part 22 of the FPR 2010. He sought to admit it for the

following reasons: it was, he submitted, drawing my attention to the FPR 2010 r22.1 (2) – (4) evidence which was relevant. It had not been sought out by the Mother or anyone acting for her and it, prima facie bore directly on the events following the family having left the UK. Those events are directly in issue because part of the Mother’s case is that Article 10 of BIIR is engaged because there is wrongful retention whereas Mr Jarman submits that Article 10 is not engaged because there was no wrongful retention. This factual evidence, from a third party, is capable of shedding some light on the circumstances since the Mother’s case on wrongful retention in part relies on what in essence Mr Perkins characterised as coercive and controlling behaviour. Evidence of a third party as to what he saw and witnessed at the time was relevant to that. The more so, submitted Mr Perkins where there is little in the way of 3rd party evidence and the court is left with diametrically opposed accounts from Mother and Father. Significantly, so he submitted, this witness is less open to the charge that he is partisan coming not from the Mother’s family but from the Father’s. The late notice to the father was, said Mr Perkins, balanced by the fact that the witness was available for cross-examination.

76. Mr Jarman objected to the admission of any evidence from this witness. It came he said very late in the day. He reminded me how narrow are the issues of jurisdiction and how careful I should be not to widen the focus of evidence unduly. It did not, he submitted assist me with the Article 10 point which in any event he suggested did not arise on Father’s case because this was, he submitted a clear case of an agreed retention and acquiescence by the Mother. There were he said two possible relevant dates, one the divorce in October 2009 and the other when the Mother issued proceedings in July 2011 and that the Habitual residence had probably changed by October 2009 and certainly by 2011 as to neither of which dates this witness could assist me when I considered the narrow issue of jurisdiction. Mr Jarman made the further strong submission that were I to admit this evidence then I would have no option but to permit the father the file a statement in rebuttal from his third (and present) wife, in relation to that which is said about her, and the opportunity to file a further statement himself. Also he reminded me that it would have the additional case management consequence that to afford the father a fair hearing I would have to permit him to reserve his cross examination until the father had given further instructions. My focus he submitted should be on jurisdiction.

77. The Guardian’s short approach was that the evidence of this witness was relevant to jurisdiction. Notably from the Guardian’s perspective, he was able to give evidence as to the circumstances, including the degree of integration and stability of those circumstances in which the children had lived following their separation from their Mother.

78. I was quite sure that it was appropriate to admit this evidence. I agreed with Mr Jarman that my focus should be on those aspects which would assist me in determining jurisdiction but I did not agree with him that I would be better able to focus by excluding evidence which came from a third party; was volunteered; came from within the father’s own family and was potentially highly relevant to my consideration of acquiescence and/or wrongful retention and to be given by a witness the father would be able to cross-examine. I agreed with him also that, almost inevitably, were I to admit this evidence I would have to give the Father the opportunity to file not only a further statement himself but a statement from his wife. I gave him that opportunity. I gave it in permissive rather than mandatory form. As it turned out he did not take the opportunity to put before me a statement from his wife. I agreed also with Mr Jarman that it would be fair to the father to permit him to reserve his cross-examination until he had taken further instructions. I was sure also that it was better to

take this witness's oral evidence in chief as soon as possible even and although that would mean that, to be fair to the father, he would have to return to complete his evidence on another day.

79. Mr D confirmed the contents of his statement which, he told me, he had written himself. He knew that this hearing was underway because there had been discussion within the family (which from the context I take to mean the wider paternal family in Saudi Arabia) about the court proceedings over the course of about the preceding month. He had telephoned and spoken to the Mother, who he thought had been on a train when he rang to offer to help her, and thereafter to her brother when he made the statement. He wrote and sent attached to an e mail what he could say about his knowledge of the circumstances. Before his call to the Mother on the train, he thought he had probably spoken to her about 2016 when he thought the Father had wanted an agreement or a conciliation of some sort. The Mother's brother J he had met previously but he did not think he had spoken to him for something like 13 or 14 years before their telephone conversation following his offer to give evidence in these proceedings.

Mr D said that what had prompted him to telephone the Mother is that he had wanted to help in order to, as he put it *finalise the problem and I wanted the children to be between both parents*

80. That part of Mr D's evidence which related most directly to this Mother and these children with whom I am concerned at this hearing included that, at a time when the family were living or staying at the home of the paternal family and during the marriage, he – and he said other members of the paternal family - saw on the mother, on her face or on her hands, signs of what he called severe beating. In his statement and confirmed orally he said this was something he saw 'often'. His evidence was also that he had heard the father being verbally abusive to her on a daily basis and that he would threaten to take another wife. Of course, as the father himself later observed in his own oral evidence, the taking of another wife is something he is entitled to do, but this witness was clear that he was saying it as a threat to the Mother. Mr D said that the wider paternal family tried to get the father to modify his behaviour to be less violent to the mother but also as he put it that they would *convince her to endure this particularly after children were born*. The father and Mother had at some stage returned to Yemen he told me and they had there divorced. He was not there when the divorce happened. In his statement he said that his understanding was that this was on the grounds of maltreatment by the husband. Asked by Mr Perkins how he knew that, his answer was, in effect, that she had been maltreated by the husband – this he knew from his own observations - and then they were divorced. It is fair to say that it was not clear to me having heard his evidence how, and from whom he heard about the detail of the divorce and how it came about, but I am satisfied that however it was, it was not from the Mother. At another point in his evidence he told me he saw the father and children immediately after their separation from their mother and there had clearly been some conversation with the father about it at that point.

81. Mr Jarman in his submissions says that not only does the mother not produce any corroboration such as police records, photographs of injuries or documents of complaint as to the violence against her but that neither does this witness. If, submits Mr Jarman, his evidence is correct about the father's violence to the Mother then it must follow that he stood by and did nothing. It does not seem to me that even if Mr Jarman is right that he stood by and did nothing – and he may well be- that that necessarily means Mr D is not giving me an accurate account now. Similarly whereas Mr Jarman submits that there is no-one who

corroborates independently the mother's allegations of violence by the father, in the event that I accept Mr D's evidence then, to the contrary, he does precisely that.

82. I found his evidence as to the state of the children when they returned with their father and without their mother when they were separated following what he had understood to be the divorce, compelling. They were he told me unhappy dishevelled *not in a good condition* as he expressed it and the sense I had from him was that they were lost and adrift. S in particular missed the physical comfort of her mother's presence and they were he told me largely looked after by their grandmother on return. My impression was that Mr D spoke of his niece and nephews with real warmth affection and concern which I found entirely congruent with his expressed reason for getting involved in the giving of evidence before me to help and do his best for the children.

83. Mr D told me that he had acted as something of a family mediator in relation to the father's difficulties with, and divorces from, his wives. It was because of this status that he, Mr D had access to a range of documents arising from these mediations. Two documents he produced when asked, after he referred to them in evidence albeit that they did not in and of themselves take matters any further. He had also at some point been given a power of attorney by his brother – which the Father following on from the evidence of this witness agreed he had and complained he was seeking still to use so as to get copies of the fathers documents in Saudi Arabia for use in these proceedings. If that is true, I do not know how the father, who is in Oman, came to know that but it is a reasonable inference for me to draw that it is likely to have been from the wider paternal family or associates in Saudi Arabia. In his oral evidence, first in answer to Mr Perkins and later on resumption when asked about it by Mr Jarman, he made it clear that he had had various documents relating to what he said were rulings of the Saudi Arabian court in relation to the father's third (and present) wife. In relation to that wife, he said, at the time of the divorce the Father removed from her their 2 young daughters in a way which Mr Perkins invites me to find is strikingly similar to the allegations of removal of his older 3 children.

84. Mr D's evidence on this was ultimately not especially helpful to me either way: he promised to produce (whether I would admit them into evidence or not remaining to be determined) a large number of documents relating to the 3rd wife, some of these made it clear he said that the father was at risk of arrest for removing her two children. They would he said, show me what sort of man the father was. By the time he returned to give evidence, he said he had been unable to access them since they were with or had been removed by the paternal grandfather. So it was that the documents, in a way Mr Jarman is critical of in his submissions, never came. There were not documents forthcoming in relation to the Mother and her children. I did not find this aspect of his evidence helpful either way. I noted that by the time he returned on the second occasion his presentation was more nervous and subdued and it was clear from his answers that the fact that he had given evidence had been the subject of significant displeasure within his family. I accept his evidence that he had been discouraged from doing so.

85. Throughout both parts of his evidence – that before and after the adjournment part-heard – he expressed himself in terms which betrayed something between a disapproval of and an antipathy to the Father and in particular the way the Father had behaved towards his wives. I wondered in listening to this witness whether there might be some ulterior motive, some settling of scores which meant that I should be careful not to place undue reliance on his evidence. Neither from my own observation of him nor from the submissions advanced on behalf of the father did I detect such, but I bore in mind that his evident disapproval of some

of his brother's behaviour led him to place the least favourable interpretation on it and I was accordingly assisted by those factual matters about which he was able to give evidence of having seen, heard and had knowledge and less so by his expression of opinion or interpretation. He, in common with others, was not always clear as to matters of sequence and timing and dating. I did not find that wholly surprising given the passage of time and it struck me that had he, as seems to be the father's case on his evidence, simply made up for example the allegations of physical and verbal ill-treatment of the mother, to cause trouble for the father for some reason of his own, then I might have expected his evidence to have more clarity as to assertions of times dates and occasions when these incidents were said to have occurred. In fact his account appeared to me to be in keeping with two qualities -first as above that these were events that happened some considerable time ago and second that they were not unusual: the sense of what this witness was telling me was not that the father was a man who completely out of character on one memorable occasion lost his temper and hit his wife but that the verbal and physical abuse of her was, should I accept this witness's account of it, a near daily occurrence

There was no part of his evidence which gave any support to the father's late change of position as to the mother's identity; to the account of how they came to meet and marry or to any of the children having been born in Saudi Arabia.

86. Mr D also gave evidence in which he made allegations of the father's conduct in relation to the abduction from Saudi Arabia to Turkey of his two children from his marriage to his third wife at or around the time of his divorce from her. This he said had resulted in police involvement and that the father thereafter had been subject of an outstanding arrest warrant should he re-enter Saudi Arabia, all matters which he said he had documents to show but which documents were not ultimately forthcoming. I found this aspect of his evidence confused. It did not assist me in relation to the factual issues before me partly because it was confused and unclear but mostly because even if the evidence he gave as to the father's treatment of another wife made me suspicious that he might have treated the Mother in this case similarly – and Mr Perkins at one point invited me to see it as a pattern of similar fact behaviour – suspicion must be kept in its proper place and it was not evidence which I found helped me either way. In fact as I assessed the evidence of this witness it was in relation to this part of it that I found him least impressive. By way of illustration only, having first said, of the Father departure in or about 2015 from Saudi Arabia to Turkey, taking with him the five children (from his second and third Marriages) that this had been an abduction of which he knew nothing, when cross examined by Mr Jarman he accepted that he had known of the trip in advance and had in fact taken the father and children to the airport.

87. I have not in fact found the Father's departure to and stay in Turkey an issue which has assisted me in determining jurisdiction. It follows from that that it has not been necessary for me to rely upon the evidence Mr D has given about that. I did however find it necessary to pause to consider whether the unsatisfactory nature of the evidence I heard from him about Turkey made him less credible in relation to the evidence he had given about the Mother and the children. I concluded that his evidence in relation to Turkey and the Father abducting (I accept Mr Jarman's submission that there was no evidence before me of it) his two youngest daughters was not truthful or at least was exaggerated. It seemed to me that in those circumstances this aspect of his evidence fell squarely within the ambit of the *Lucas* Direction. It was my strong impression that this witness was seeking, by reference to the father's poor behaviour to his other wives to bolster and make more believable the evidence he gave about the Mother and her children in this case.

88. Notwithstanding the reservations I had about the quality of the evidence he gave about events with which I am not concerned, I found him in relation to the evidence he gave relating to those events with which I am concerned, credible. That credibility is enhanced by the fact that there was I find no reason for him to come forward other than to assist; by the fact that he returned on another day making himself available for cross examination. Notably, the Mother having identified in her e mail of 13th July 2011 that amongst those who saw her beaten was her husband's brother, he gives evidence directly corroborative of that independently in 2020.

Mr K and Mr L.

89. On behalf of the Father two witnesses were called who had made statements in support of his case that the Mother had asked for or demanded the divorce and that he should take the children from her to live with him. Those witnesses were Mr K and Mr L. Each of them had, so it was said by the father, signed documents, of which both the Arabic and the English translations were exhibited by the father to his statement and were said to be documents witnessing the divorce in 2009. The documents themselves were generated some time later and bore dates in 2011. Despite hearing a good deal of evidence about those documents, I did not at the conclusion of that evidence feel I had ever been given a truthful or even a clear account of how they came to be generated and signed. Mr Perkins submits that they cannot be relied upon as genuine documents and required that those who had signed them should be made available for oral evidence

90. Mr K made a statement dated 3rd August 2020. In it he confirmed that he had signed a document in December 2011 and that the document was genuine. His statement went on to say this: *I understand that when they were divorced in 2009 there were no documents and I recall that [...] contacted me approximately two years after his divorce to ask for a document to confirm that we were in attendance at the divorce in 2009*

91. He started his oral evidence on 14th August. Partway into his evidence an issue arose in relation to whether the 2011 document, the English translation of which began with the words '*Before Me, [name], Mr [name] has appeared and kindly requested me to head to his home to divorce his sister from her husband*' had been correctly translated. Importantly, the issue arose because the parties respective interpreters queried it. Further discussion between the interpreters led to a position in which the view that each of them expressed was that i) they were doubtful having read the original Arabic document that it was accurately translated ii) that their own respective translations of it differed in material respects and most notably as to whether I could rely on the translation that [name] had come to this witness iii) that each of the interpreters asserted that the other could be correct and that this had to do not with there being a want of linguistic skill but arose from the nuance of the language according to context. Neither felt able to assist further or to be confident of the correct understanding to be drawn from the document. To my mind the tentative parallel to be drawn, was to the way in which the English word '*cleave*' is capable of having entirely opposite meanings dependant on its context It mattered because the witness was being asked, as part of Mr Perkins cross examination about his knowledge of a person called [name] and whether such a person had come to him and had asked him to conduct a divorce, in answer to which the witness had thus far denied knowing any such person whilst simultaneously saying that he had signed the document in 2011 whose contents were correct and which he in his statement made this year invited me to accept as true.

92. Faced with a seemingly insurmountable difficulty in relation to a key aspect of Father's case, I acceded to the joint submission of all counsel to an adjournment for the instruction of someone with appropriate knowledge of the language to provide a further and certified translation of the original Arabic document.

93. When the hearing resumed, the certified translation indicating that he had been asked to go to conduct a divorce, Mr K said that this was not so, he had gone to Yemen to mediate, not to divorce anyone. He gave a description of a journey to the Mother's house in Yemen which was difficult to follow and lacked detail. Of course I bear in mind that at the time he was giving evidence to me it would have been more than 11 years earlier. He denied knowing anyone called [name] – despite that name appearing in the document he had signed and there expressed to be a brother of the Mother. He denied in fact having met any of the people present in Yemen although he had initially said that he saw the maternal grandmother then changed his answer to say he had heard her behind a door. In relation to the three references to 'Mr X' in his statement of this year I found his evidence confused, unconvincing and inconsistent as to whether he had intended to mean the father or the paternal grandfather. Cross-examined about whether he was asked to sign a document about what the father said had happened about a divorce in 2009, he said first that he had not, then that what he meant by that was that he did not remember and then finally '*I forgot the divorce matter totally*'. When re-examined, he did not agree even that he had signed a statement in August 2020 and went on to say he had only signed a document to say that the father had divorced his wife. Several times he said that he was an '*old man*' and that he didn't remember.

94. I did not find his evidence at all helpful. I found him vague and inconsistent and I did not find it left me confident that he had signed the document which forms part of the evidence in the bundle or that he had been involved in a trip to Yemen. Even allowing for the difficulties and the passage of time as I do, I had the strong impression from his evidence that as a friend of the father and/or the paternal grandfather, he had, when asked, signed a document in an effort to help the father.

95. The other witness on whom the father relied was Mr L who had been a business associate who worked with the paternal grandfather and had witnessed a document bearing the date March 13th 2011 which the father relied on as further support for his case that there had been both a divorce and transfer of the children to him at the mother's behest. Curiously, when he came to give his evidence, he did not accept that his name was as recorded on the document he had signed: telling me instead that it should read differently but he did accept that the name which appeared is his family name. It seemed to me on balance that this discrepancy or misunderstanding was likely to have its roots in cultural nomenclature rather than an indication of anything more troubling. There was however, it soon transpired, much else that was troubling about his evidence. He knew, he told me that in March 2011 the father and mother were living apart but he said that the mother was living in Yemen – he did not have any idea that she was by then back in the UK. He, like Mr K also spoke of events which related to an intended mediation but, crucially he was unequivocal when cross-examined by Mr Perkins that the events to which the document related were ones which took place immediately before the date on which he signed it in 2011 and not some earlier time. In the light of that, it is not evidence which although relied on by the Father supports his account of a 2009 divorce at mother's insistence and a consensual transfer of the children to her care.

96. However the unsatisfactory nature of this witness's evidence did not end there. He was asked how it was that in the document he had signed it was recorded that '*we*' had contacted the mother and he responded that that was not correct, he had spoken only to the paternal

grandfather – at that point it emerged by way of explanation for having signed an inaccurate document, that he had not read it; could not read and did not know what the document contained when he signed it. He had signed it because his old friend and colleague has asked him to. That short outline serves to underline how unsatisfactory was the evidence of this witness. I have placed no weight on his evidence or on the document he signed. It does not support the father's case of a divorce at the insistence of the mother and a consensual transfer of the children. That the Father later said in his oral evidence that he had produced 'made' as he put it the document himself added to the unfavourable impression I had formed of the evidence given by these two witnesses and of the documents bearing their signatures.

The Father

97. The Respondent is the father of all three children and is presently living in Oman from where he joined the hearing. He has been married, as I understand it, five times to four women. The Mother in this case is his second wife. His third and fifth wife are one and the same person, and with her he has two other children, both girls who are half-sisters to the children with whom I am concerned at this hearing. Both his English – he needed no interpreter for his evidence - and his ability to navigate the documents when giving his evidence was markedly better than other witnesses but I bear in mind that there were from time to time difficulties with the connection and with having an immediacy of contact with his legal team which will have posed many of the same difficulties as affected the Mother.

98. His position, at this hearing as set out in his first statement made in February of this year is that he has never stopped the Mother seeing her children, that he has tried without success to engage in mediation; that he believes that children should have relationships with both of their parents despite the parental relationship breaking down. He says in terms that the Mother has fabricated the allegations made against him and that she is trying to take the children from him as a form of punishment. He and the children are he says happily settled in Oman with their stepmother who he re-married in 2012 and their half siblings. P and Q have not now lived in England for more than 12 years and S has never lived in or even visited England since 2008 when they left their Mother's care – he says with her consent – they have lived with him first in Saudi Arabia; then in Turkey and since 2016 in Oman. S, he says does not remember her mother. In his statement he says that this is something he understands having read the Guardian's note of her conversation with S for these proceedings. From that I infer that the Mother is not a topic of conversation as between the father himself and S. In passing and on that aspect I notice that in the judgment given in November 2019 of the First Tier Tribunal of the Father's appeal in relation to the loss of his British citizenship it is recorded that he told the tribunal that his current wife is S's mother although before me the Father said that was a mistake by the tribunal.

99. In 2014, the Father says he applied to the Yemeni Court for full custody of the children and that the Yemeni Court at that point considered itself to have jurisdiction in relation to the children. There were a number of things which remained unclear to me about that application following the father's written and oral evidence: why it was the Yemeni Court considered that it had jurisdiction; why it was that he living in Saudi Arabia at the time application was made to the Court in Yemen; what it was that prompted the father to make an application for custody at all at that point; why it was that the Yemen court was told that the Mother's whereabouts were unknown and what appear to be standard notices to advertise the proceedings taken out in Yemeni newspapers.

100. The father's case so far as it had been advanced in the statements filed on his behalf and, on his instructions through cross examination of those witnesses whose evidence I had heard before it became necessary to adjourn part-heard may conveniently be summarised as follows:

- (i) He came to the UK as a refugee in 1998. In 2002 he met the mother here and they married.
- (ii) Their first child P was born here in 2003 and the family lived in Sheffield but in 2004, the mother, because her claim for asylum had been unsuccessful had to return, in fact he says was deported, to Yemen whilst she re-applied.
- (iii) Q with whom the mother had by then been pregnant, was born in Yemen. The father had travelled there to be with her but had to return to England to work and progress the Mother's claim to return.
- (iv) The Mother and both children returned in 2005/6
- (v) In 2008, the family left for Yemen. This he said was at the mother's insistence, she being very unhappy living amongst unbelievers and was completely unwilling to leave the home – sometimes to the detriment of the children such as when one of them cut his hand quite badly and he had to await the return of his father to be taken for medical attention. Although elsewhere the father had made the point that the Mother so far from being isolated had had the freedom to come and go and socialised with many professional people meeting, amongst others, solicitors, Judges Police Officers and Doctors.
- (vi) She was he said jealous if he so much as spoke to his elderly female neighbours and was fully able to assert herself
- (vii) He completely denies the allegations that he was abusive in any way to the mother or to the children either in the UK or after they travelled to Yemen and on to Saudi Arabia. He denies also that he removed her travel documents or that he removed the children from her against her will
- (viii) It was the Mother's choice to give birth to S in Yemen -she travelled there from Saudi Arabia with the children to be with or near to her mother whilst the father remained in Saudi Arabia and saw his daughter for the first time a few weeks after her birth. The family returned to live in Saudi Arabia and the boys started school all by agreement and with the full willingness of the Mother, it having always been their intention to settle there once they left England in early 2008. They remained there until, at the mother's urging they travelled to Yemen in or about the summer of 2009 and at her insistence a flat was rented for her. He again, working hard to provide and support his family travelled between Yemen and Saudi Arabia. When she demanded he buy her a home and he could not afford to do so she insisted at once on a divorce— quite contrary to his own wishes- and she refused to look after the children insisting that he took them.

101. That summary is not intended to reflect the father's case in exhaustive detail. The detail is much more fully recited in his statements dated 1st February 2020, when he was acting as a litigant in person and 6th May 2020, by which time he was represented. As to that first

statement, rather as I observed in relation to the Mother's e mail of 13th July 2011, the fact that it comes in his own words rather and is not filtered through the language of a legal professional had some advantages to me in having an understanding of his position. The reason that I have felt it useful to remind myself of the father's position as it was when the case adjourned part heard, and before he filed a further statement for which he had been given permission to respond to his brother's evidence in the circumstances I have outlined above, is that when that statement came, it represented a radical shift in his position.

102. In his statement of 18th September he said that his relationship with his younger brother was not good and had not been for a number of years. There had been arguments over money within the family – and in particular Mr D owed him about £10,000 for a car he had sold him in 2015. This the father says is a cause of bad feeling between them and has motivated his brother to give false evidence against him. The father denies that he, the mother and Mr D have ever lived in the same property – although he says that at one stage he and the Mother did move into a flat in Saudi Arabia which had been owned by his brother but on which he could not keep up the payments. These details of living arrangements I understand are emphasised by the father to reinforce his denial of beating and ill-treatment of the Mother which Mr D said that he witnessed since the father says they never lived within the same household. That there was bad feeling and a history of dispute between the brothers was not surprising since as I have already observed there was detectable antipathy in the way Mr D spoke of his brother when giving his evidence and which I have been careful to take into account when considering that evidence. What the father went on to say in his statement was however far more of a surprise. In summary form (and again I do not set out here every last detail of it) he said the following:

- (i) He had thus far in these proceedings agreed with the mother about the events of their relationship until he left the UK in 2008 but this had not been true
- (ii) He had agreed because he did not wish to cause her unnecessary trouble
- (iii) He now asserted for the first time that he and the mother are first cousins, their mothers having been sisters
- (iv) The mother he says is someone called [Name 2] and not [Name 1] as she has been named throughout these proceedings
- (v) He met the mother first when she attended as a guest his wedding to his first wife in 1995 or 1996 – he does not commit himself to one or the other year in his statement
- (vi) In about 1997 he divorced his first wife -with whom he had no children and came to the UK until he returned to Saudi Arabia in 1998
- (vii) In the summer of 2000, his family recommended the Mother to him as a wife (his second wife; he by then being divorced)
- (viii) In September 2002 they married. In Yemen. His family and the mother's family, attended the wedding. He now says that the mother is lying when she says that they met and married in the UK. He says that when he in his previous statements gave a similar version he too was lying.

- (ix) He now says that following their marriage in Yemen he and the Mother travelled to Saudi Arabia; that she remained there for about a year before returning to live in Yemen and that he visited her throughout this period once every 4-5 months. She applied to come to the UK on a tourist visa and was rejected.
- (x) His Father tried to persuade the Mother to move back to Saudi Arabia and get a visa to the UK from there where it would be easier than from Yemen but she refused. In his statement the father says that the Mother's brother J was there when she refused and that there was an argument because he was not happy with her attitude. None of this had been put to him when he gave evidence.
- (xi) The father now says that ultimately he travelled to Yemen, he and the Mother went from there to Saudi Arabia and on to England on a visitor's visa. Once here the Mother applied for Asylum using the name which she has been known throughout these proceedings. The mother's account with which he had previously agreed, of a rejected asylum claim and thus her return to Yemen whilst pregnant with Q is, he now says partially true in that the claim was rejected and he took her back to Yemen and thence to Saudi Arabia where Q he now says was born.
- (xii) To this statement the Father attaches what he says are the original Saudi Arabian birth certificate for Q and a false Yemeni birth certificate. The necessity for the latter he says occasioned by the need to re-enter the UK with a document for the child which bears the name by which the Mother had secured her immigration position here.
- (xiii) Finally, as to matters directly referable to the children with whom I am concerned in these proceedings, the father asserts that S, contrary to that which is said by the mother and has previously been said by him was not born in Yemen but in Saudi Arabia. He attaches to the statement what are said to be copies of her birth records.

103. The father by this statement revisited certain other aspects of the earlier parts of his history he had hitherto given the Court. He now says that the Mother was born in Kuwait (accepted as her place of birth on her behalf in final submissions) but that she and her family moved to Yemen in or about the time of the Iraqi invasion of Kuwait. In his statement he gives details of those who he says are the mother's five brothers and sisters – as to which detail of family make up the mother was in fact cross-examined *before* the father changed his position although not as to the other aspects now alleged. The father goes on to say that the Mother's father is someone who is alive and whom he has met on each of his visits to Yemen up to and including 2009 and that it is completely untrue that he was arrested or imprisoned as the Mother's case has always been. I pause there to recall that a specific plank of the father's case against the Mother in relation to what he said was an incredible account of her being cowed by his treatment of her such that her will was overborne was that she had been perfectly well able to stand up to her father and brother. Which he now says was untrue.

104. He himself applied for asylum as a Saudi Arabian rather than as a Yemeni, when he first came to the UK he now says, as he had been told that his claim would be rejected as a Yemeni. The father having given certain details – his name and place of birth – in connection with his claim for asylum which he later – in January 2008 – 'corrected' by statutory declaration at the Magistrates Court in Sheffield later came to a time when he applied for

renewal of his British passport. The Home Office compared he says, at that time, the details as to identity on his application to renew with those provided on his initial application and removed his British Citizenship. In the witness box the father maintained that his most recent version of events was one which he invited me to accept.

105. I held firmly in my mind whilst listening to and watching him give his evidence the cautions as to the danger of reliance on ‘demeanour’ as indicative of truth or otherwise. I reminded myself that giving evidence on these important issues was likely to be nerve-racking for the father just as it was for the mother. I specifically reminded myself that whereas the mother’s nerves might have shown themselves as submissiveness, deference and obvious anxiety I should be careful not to mistake as bravado arrogance and flippancy the way in which perhaps the father’s anxiousness manifested itself. I understand why in submissions Mr Perkins draws my attention to for example the father’s *broad grin* when denying putting his hand around the Mother’s neck and choking her but that along with the occasions he appeared to laugh and express amusement is precisely the sort of trap of ‘demeanour’ I had in mind to avoid.

106. He was however for all that a witness I found unimpressive and unconvincing. I did not think he was trying to assist me in knowing what went on in the months following the family leaving the UK, still less with the plans they had made at the time. I found his account of the Mother’s ‘demand’ for a divorce in 2009 incredible and her insistence that he should take the children immediately including the still breast feeding S still more so. His oral evidence on the point of the divorce was such that at times, and even allowing for the difficulties of the remote hearing, he appeared to be giving evidence which departed noticeably even from his own accounts. Thus at times in his evidence having said that the Mother insisted on the divorce, he moved to say that her own mother pressurised her into it and in fact it was the maternal family asking for a divorce. Entirely new was his assertion from the witness box that his own father had tried to dissuade him from talking to the maternal family or giving her a divorce and flew down on the first flight coming straight from the airport. There followed a long account of the 2 families in dispute over whether there would or would not be a divorce – the impetus for it coming from the Mother’s family, the Father’s trying to resist. When finally he gave in and agreed to divorce, the father described to me, from the witness box his mother in law making sounds of great joy. I found this late and new version of events wholly unconvincing and not at all helpful.

107. He was, perhaps unsurprisingly, given his change of position as to his and the family’s past history confronted in cross examination with evidence or accounts given previously which contradicted it. He responded with long unfocussed speeches in place of short, focussed answers. He asserted that the Mother is someone with psychological health problems and that this, along with her wish to live in an Islamic country, had intensified her desire and her insistence that the whole family should leave the UK – he was unable to address how if that account were true, she had apparently elected to return in 2011 and had remained here since. Ms Hurworth in her submissions queried whether if he sincerely considers it to be the case that the Mother has psychological health problems he *made any allowance for this state of poor mental health when he felt the mother’s consent to move the children abroad and keep them there* . My understanding of his evidence is that he says the plan was entirely hers.

108. The father’s statement and change of position was an unexpected development in a case where there was already plentiful factual dispute. It came about, so Mr Jarman explained because, faced with the prospect of going into the witness box the father could not in all

conscience continue to maintain the lie. That is of course an explanation to which I have had to give serious consideration. It is an explanation that, for me, carried less weight than it might have done had he not apparently been able to maintain the lie for different purposes to different agencies and in different countries. Similarly it was striking to me that as part of his change of position his explanation included -without any apparent appreciation of the irony – that he had obtained so as to re-enter the UK with his son a false Yemeni birth certificate to present in place of what would have been, he said, the genuine Saudi Arabian one. It was, he explained to me not false in the sense of it being a forgery but in the sense of being a genuine document obtained by the giving of false details. That is a distinction which the Father perceived to matter more than I do.

109. In support of his assertion that Q and S had each been born in Saudi Arabia, the father produced documents said to evidence this. These late produced documents were not ones on which I felt able to place reliance. A booklet said to be a record relating to Q did not appear to have the child's name entered. A booklet said to be that relating to S has a handwritten entry of her name and a photograph of a child stapled to it. A document entitled *Child Vaccination and Health Record* was produced even later than the other documents and did not, as I read it, contain material purporting to relate to the birth of a child. The context in which I find myself considering these documents is one in which there is a significant history of the father seeking to rely on false documents in a range of legal and official circumstances.

110. In the judgment of the upper tribunal – consequent upon which last appeal the Father has been deprived of his British Citizenship, the tribunal judge, having heard the evidence of the Father in relation to a range of what were false documents – on that occasion Somali and Yemeni birth certificates on which he has sought to rely - expressed herself in the following terms:

[30] 'Taking all the evidence together I find the Appellant's entire account unreliable and fabricated. I do not believe a word he says. Even at the hearing he could not give his name consistently. I am entirely satisfied he lied when he claimed he was a Somali national who had fled Somalia in 1991 to the Yemen. He was born in the Yemen, his parents were born in the Yemen and his grandparents were born in the Yemen. He has sought to assume a different identity to pursue a false asylum claim. Given his claim was based upon him being a Somali nationality who was a minority tribe member. I find the Respondent has show on the balance of probabilities the Appellant would not have been granted refugee status if his true identity had been known. I also accept he knowingly submitted a false Somali birth certificate to bolster a claim he knew to be false. In turn but for his continued false identity he would not have obtained naturalisation'

I have not relied upon the impression of the tribunal judge in those proceedings to form my own, I have had and taken the opportunity of seeing and hearing the father, and considering the evidence which he has filed in these proceedings to form my own. When as part of the evidence before me I re-read the judgment of the upper tribunal, I note that the impression I have formed of him is entirely congruent with it.

111. In his closing submissions Mr Jarman on behalf of the father said this: *it is important to note that his change of evidence is potentially wholly detrimental to his case and his credibility,. The court is respectfully requested to simply ask itself why the father would lie about such a significant issue and put at risk the whole of his case.* His observation as to the detrimental potential of the father's change of evidence is well made. I have thought carefully about Mr Jarman's submission as to what could be the father's motivation to lie given that

potential. I note that the father in changing his position explicitly seeks to undermine the account and credibility of the Mother. It is not always possible, or for that matter necessary, to understand why someone has lied about significant issues, falling out with the ambit of the Lucas direction. It is sufficient to be satisfied that they have.

112. The father's statement led to a number of intended applications from each party

- (i) The Father in advance of the resumed hearing gave notice of an intended application by C2 to introduce a further statement from his maternal uncle
- (ii) Mr Jarman on the morning of the resumed hearing indicated an intention also to seek to a direction for disclosure into the proceedings of all documents held by the Home Office in relation to the mother's immigration applications and adjournment for the same
- (iii) Mr Perkins gave notice of an intended application that the Father should not be permitted to place the exhibits to his statement before the Court and further that those paragraphs of his statement which went beyond responding to the evidence of his brother (for which he had been given permission) should be struck out and he should not be permitted to rely on them.

I indicated my intention hear and rule on those applications if pursued following the completion of the part heard witness Mr K but that if the parties so wished I would give a preliminary indication on the basis of having read the documents only and without yet having had the opportunity to hear argument. My indication was as follows:

- i) I was inclined not to admit a further statement from a further witness, the maternal uncle at this late stage in the proceedings
- ii) I was not attracted to the notion of seeking disclosure of records held by the home office having regard to the issues to be determined and the inevitable and very significant further delay.
- ii) I was not inclined either to strike out parts of the father's statement or to disallow exhibits to it in circumstances where it was open to Mr Perkins to make such submissions as he wished as to the weight to be attached.

Emphasising that those were my preliminary views only I indicated that I would hear full argument the next listed morning were they to be pursued. I was not asked to rule on any of the intended applications as none of them were pursued.

Discussion and Conclusions

113. Assessing the evidence on the basis of which I am invited to make determinations at this hearing has been very problematic indeed. As I recognised earlier a contributor to this is the effect of the passage of time. I have however, regrettably also come to the view that some of the evidence placed before me has been misleading and intended to mislead.

114. From the final written submissions of the parties, it appears that there is not agreement even as to that which I am invited to consider and determine. The parties identify the following issues as falling to be considered:

- (i) The circumstances in which the family came to leave the country in January 2008 whether that was for a holiday or an intended permanent relocation out of the UK
- (ii) In relation to that departure whether the Mother consented to the removal of the children and if so whether her consent was to a holiday or a permanent move.
- (iii) Whether the eldest two children were habitually resident in England and Wales immediately before the date of any wrongful retention if I conclude that the family left for a holiday.

115. Those matters are ones which Mr Perkins and Ms Hurworth submit I should determine but Mr Jarman does not

- (iv) The next (or on the father's case the first) issue is whether there was, following the departure, a wrongful retention;
- (v) Whether the Mother acquiesced on the retention as to the purpose for which the Mother consented to that departure;
- (vi) Whether in relation to acquiescence by the Mother to the retention of the eldest 2 children out of the UK; whether the Mother's will was overborne in relation to any consent or acquiescence.
- (vii) On the Father's case (but not on that advanced for the Mother or the Children) whether in the light of a referral by Mr Justice Mostyn to the CJEU whether Article 10 applies in relation to any wrongful retention and acquiescence.
- (viii) Whether there was a wrongful retention (and/or a further or continuing wrongful retention) at or about September/October 2009 when children and the Mother were separated
- (ix) Whether the eldest two children were habitually resident in England and Wales on or about September/October 2009
- (x) Whether the eldest 2 children remained habitually resident by the time the Mother commenced proceedings in 2011
- (xi) Whether the eldest 2 children had acquired another habitual residence by then
- (xii) Does the *parens patriae* jurisdiction apply to S at the date of the Mother's application and if so should it be exercised
- (xiii) In the event that there is jurisdiction in relation to any of the children, should that jurisdiction be exercised in the circumstances

Those last two aspects as to whether it is appropriate to exercise any jurisdiction I may find, are ones on which pursuant the order of Mr Justice Williams dated 18 May 2020 are not for

this hearing and are ones on which will require further argument and subject to further directions the input of the Guardian.

116. I take as the starting point the departure in January 2008 and whether in particular having regard to the mother's application she and the 2 eldest children of the family (S not at that stage having been born) left the UK on 31st January 2008 for the purposes of a holiday, or as part of a settled intention by the family permanently to re-locate out of the UK, as is contended on behalf of the Father. Since, as I have already observed the only fact as to which the parties were agreed by the end of the hearing is that 31st January 2008 is the date on which they left the country, I have found it useful to look at what can be gleaned by way of information which does not come only from the parties' own assertions now, more than 12 years later, but from such contemporaneous evidence from the parties or from others as is available.

117. The Mother, when she gave her evidence told me that she was about 20 weeks pregnant with S at the time they left. Just over a week before they left, on 22 January 2008, she attended at her GP for an out of hours consultation in relation to a pregnancy related difficulty. The visit is detailed in the notes made at the time in her medical records. I regard two aspects of that visit as notable. The first is that the visit is one at which she was accompanied by the Father. That was something that was usual in this family both as a matter of culture, as the Mother did not readily go to appointments alone and without her husband but also as a matter of practicality since she had no or very little English in contrast to the Father whose English is, and was then, good. The second is that in her medical notes for that visit is recorded the following *Going to Yemen for several weeks next week. Midwife does know about this. Has 20 week scan this week ...* It is, I find noteworthy that there is not in this entry any sense of a permanent move to Yemen or any sense of it being expected that she will cease to be a patient or that this is a visit to transfer or obtain copies of her antenatal care to date so that it may be picked up in a new country of residence. A later recording in her medical notes for an appointment on 7th May 2008 reads *'did not attend. No reason'*, indicative as I see it of an expectation on the part of those providing her ante-natal care that they would be continuing to do so. The Mother was fully engaged with midwifery and antenatal services at the time. This chimes with the evidence I have heard and which I accept from her half-brother that he was expecting that she would return to give birth to the child. Further indications of what was being said to others contemporaneously is to be found in the notes made in the medical records of the two boys. P, had medical attention for eczema and in his medical records I see recorded in relation to a flare up on of his eczema: *travel to Yemen next week for several weeks and may stay permanently*. It is clear that P remained registered with his GP since there are recorded missed appointments until mid-November. His brother Q had a range of health problems for which he was receiving medical care. The entry in his notes for the same visit includes the following: *Travel to Yemen next week for several weeks. May stay there permanently if dad gets job*. Like his brother, he remained registered with this GP and there were, following this recordings of expected but missed appointments for him on 5th March 2008, 7th May 2008, 11th September 2008, 22nd October 2008 and 25th November 2008 in respect of which chasing letters were sent. It could only have been the Father who was speaking of the plans to those who recorded the words. I accept the Mother's evidence (which in fact was not challenged before me) that she did not speak or understand English at the time and I accept also her brother's confirmation that that was the case. Her evidence to me was that she did not know if the father spoke of a *possibility* of a permanent move – to Yemen and no mention of Saudi Arabia - but I accept that, as she said, had he done so, she would not have understood. She does not know for certain whether

she was even present when he spoke in relation to the boys but it is, to me, notable that there is no mention of a permanent move even as a possibility in her own notes. It is reasonable to infer that had there been, those planning for her imminent delivery would not only have recorded it but to have been likely to ask, and record, questions (through translation) about what would now be her plans for delivery. There are none.

118. The Mother and Father lived in a council house in Sheffield before they left the UK on 31st January 2008 and the father was in the process of exercising his right to buy. The completion of this purchase – at a price of £66,000 – took place on 8th February 2008 so just over a week after the family left. Looking as I have to see what might be gleaned from what was going on at the time, I did not see in this purchase of the home in which they had always lived in England the actions of a family severing links with England and Wales. Later still in March 2010, Mr Perkins points, out a company with which the Father was involved was registered at the family address and, before that in November 2009 – so on either party’s version after the divorce and separation of Mother and children – the Father registered with Companies House another company in which registration he recorded himself as a director resident in the UK.

119. I have seen no evidence that the household furniture and possessions were put into long term storage, or that there were arrangements for shipping out of the country either of which would have been consistent with a permanent move. I accept the Mother’s evidence that for a family of (then) 4 going on holiday to visit family in Yemen and then to Saudi Arabia she packed 3 suitcases of clothes and presents to take for family. Whilst the Father says that the family sold and/or gave away many of their possessions preparatory to a permanent move I have (subject to what appears below in relation to the family car) only what he asserts about that and I have found him to be a most unimpressive and unreliable witness.

120. In like form I have seen no evidence of any preparatory measures taken in advance to secure housing – exploring rental possibilities; education for their elder son or perhaps most tellingly making advance preparations for ante-natal care in relation to the pregnancy. It is a striking feature of the visit to the GP a week or so before departure that there is nothing recorded as to for example taking information about the pregnancy care to date (she was then 20 weeks) so as to inform whoever would be taking over her care in Yemen or Saudi Arabia as the case may be. Similarly in respect of Q, who had significant health issues, no preparatory steps as to the way in which his health needs would be met and/or transfer of his medical notes to date. By contrast as I have already observed there were appointments for him in the UK which were expected to be kept

The Mother’s half-brother, who also lived in Sheffield in 2008 and whose wife was pregnant at the same time as the Mother, made a statement in these proceedings and attended to give evidence. I accept his evidence that he was expecting the Mother to return to be delivered of a child and that he was, at the time, troubled by the possibility of the impact on her recently achieved leave to remain should she leave the country, but that he was reassured by the fact that since it was, as he understood it, for a holiday, it would not jeopardise her situation by offending against the prohibition of leaving the country for more than 2 years.

121. In contrast to this Ms U from whom I did not hear oral evidence made a statement of intended evidence dated 23rd July 2020 to say that that her husband had bought from the Father for her the family car a green Nissan Micra, when they, as she puts it in that statement *moved to Saudi Arabia*. She went on to say that her brother had invited the family round for a meal to say goodbye. The Mother when cross-examined by Mr Jarman told me that she

herself did not have a car and didn't know anything about the sale of it though it may well be the case that it was sold and that there were neighbours from Yemen who would from time to time invite them for meals, she did not recall a meal to say goodbye. Notably this witness does not give any account of direct conversation with either the Mother or the Father as to what were their plans or intentions at the time and so does not help me to know what those were expressed to be so far as she understood it. I agree with and accept Mr Perkins' submission that the sale of the car and whether there was or was not a farewell meal does not assist me in determining whether it was for a holiday or permanent relocation that the family left. A farewell meal, if such a meal happened, is as I see it as consistent with the family leaving to take a long holiday as it is with them leaving the country to relocate. The more so that the statement of the witness giving this evidence comes more than 12 years after the events from which I am invited now to determine what were the intentions in January 2008.

122. I have considered what if any weight to give to the statement of intended evidence of Ms N, on which the father relies and which is challenged on behalf of the Mother. Her statement dated 23rd July 2020 is short. It says that the Father is someone she has known for a long time; that he came (on a date she does not specify) to her house with his wife and children and 'they' family came to say goodbye because they were moving permanently to live in Saudi Arabia where 'they' had found a job. She goes on to say that she had not kept in contact regularly since the family left but that the Father contacted her on special occasions such as religious holidays. I have not attached any weight to this statement given the fact that she was not made available when required and the various differing explanations as to why that was so. In any event taken at face value her statement – which says that a job had been secured in Saudi Arabia- is at variance with the father's case as advanced now.

123. The evidence of the father on this aspect of the case I found unconvincing. What he now says is that the mother was insistent that the family should leave the country and that was not his wish but he gave in to what, the thrust of his evidence is, was her domineering and forceful character. I do not see before me evidence other than what the father says which supports that characterisation of the Mother. What he now suggests does not fit with what such limited evidence as I have emanating from the time. Taken at its highest what he relies on from the entries in the boys' GP records is that there was or may have been a plan which was contingent upon him finding employment when he was abroad. To the extent that there was, or may have been such a plan, I am satisfied that it was his own contingent plan or more likely an opportunistic intention and not what the Mother believed was happening when she agreed to leave Sheffield. I am not satisfied that there is evidence that it was a plan in which the mother joined him in making or that there is evidence that she was aware of his intentions in this respect.

124. I have thought carefully about the fact that on the Mother's evidence either in her statements or when she was cross examined in a focussed and effective way by Mr Jarman, she could not give any indication of how long the holiday was to be, or when was the date she had expected to return to the UK. Does that, I have asked myself, make less likely her account of an intended holiday? Pressed by Mr Jarman the mother responded that she had not booked the tickets and timing of what was booked was within the father's control not hers. Her evidence as to when she had expected to return was Mr Jarman submits to me and put to her, vague and gave not even the sense of whether she expected to be away from home for a number of weeks or a couple of months. Although accepting as I have, that she packed 3 suitcases – and that she it was and not the father who packed – that gives me some idea as to the period which she had in mind at the time. I was similarly asked to pinpoint when, if he

understood it to be a holiday, he was expecting his sister to return. My impression at this point in his evidence was both that he had been untroubled (at the time) by not knowing the precise date and nonplussed (when being asked about it now) that there would necessarily be a fixed date of return. His account of an expectation that she would be back in time to give birth was however one which I accepted. I have cautioned myself about taking too narrow a view of what a trip for a holiday may mean. In circumstances in which it is a trip centred around visiting different branches of the family living in different parts of a country or adjacent countries it is reasonable to expect a degree of flexibility and fluidity to the arrangements. I take into account also that in a family where – as I accept to be the case here – the man of the house made the bookings and formal arrangements, it may well be that his wife even at the time, still less so 12 years on, is not able to give chapter and verse of what has been booked or was intended by way of return date. I do not regard the points made by Mr Jarman as to the lack of a definitive date of return as undermining the Mother's case that what was intended was a holiday and I am satisfied on the balance of probabilities that her expectation was that the return to the UK would be at a point when her pregnancy permitted her still to travel and that she would give birth to her daughter here. It follows from the above that as to the first question, I find that the family left – and certainly the Mother consented to the children's departure from - England and Wales on 31 Jan 2008 for the purposes of a holiday and not as a permanent relocation.

125. To the extent that the Father may have intended a permanent relocation, taking the evidence before me at its highest, what it may be taken to show is a contingent plan of his own. What I am satisfied it does not show is consent to it by the Mother nor am I satisfied that it is more likely than not that the Mother knew of it.

126. I am satisfied that immediately before leaving, the Mother, the Father, P and Q were habitually resident in England and Wales. The Mother was settled and had been granted indefinite leave to remain in 2007. I accept her evidence that it was her long held ambition to achieve British Citizenship and to live here and that she was integrated into a family and social life here. Whilst she and her brother have each given evidence – which I accept - that the father curtailed to quite a significant degree her activities and independence, she nonetheless had family friends, often the wives of Father's friends, with whom she socialised; connections of family with her brother and his wife; she had had her first child here and was registered with health and medical services – as were the children each of whom were registered with GPs at a Medical Centre. The children attended playgroups at the local church St Thomas. It was, I accept her evidence, intended that the boys should start at a local primary school. Child Benefit was paid for each child and continued to be paid. The family lived in Sheffield in a council property which the father was in the process of buying. The father had business interests and connections here and continued to have after their date of departure when, I accept Mr Perkins' submissions, he expressed himself to Companies House as resident here. There is ample factual evidence of integration and connection which satisfies me that these two boys and their parents were habitually resident in England and Wales as at 31 January 2008.

127. Finding as I do that the Mother understood and consented to a holiday, to see her family in Yemen and then the Father's family in Saudi Arabia, I have little difficulty accepting also as a matter of logic her evidence that once there she expected to return at the conclusion of the holiday. For the avoidance of doubt as well as being logically consistent with my finding as to the purpose of the trip I also found her evidence of her wish to return persuasive and believable. I accept her evidence that she was anxious to be back in Sheffield in time for the

birth of the child she was carrying. I found her evidence believable also that she had experienced giving birth in an NHS hospital in Sheffield and giving birth in Yemen and that she was clear that the former was far preferable; that was what she wished for this birth and that she asked the Father to arrange for the family to return. I further accept her evidence that the father once they had arrived in Saudi Arabia beat her and was violent to her and that this was the response when she raised the question of return. Hearing her describe that she was intimidated by the father and that she felt trapped and unable to escape, I found that those parts of Mr D's evidence in which he spoke of seeing and hearing the Father's violent treatment of the Mother and of seeing the marks on her hands – all of which I accept-corroborative of her evidence to me in this respect and consistent with her report to her solicitors in July of 2011 that she had been beaten in the presence of her husband's brother. I reject the argument – put to her also in cross examination – that just as she stood up to her own father and brother in 2002 so too she could and would have stood up to her husband. Her answer that as a married woman she had to be patient and abide by her husband's will and wait for him to book their return rang true as did her answer that he held the travel documents and wherewithal to arrange travel and that she was now a mother of children and feared he would take them. Furthermore, to the extent that the father still seeks to argue this point it is undermined entirely by the fact that he also now says she never did in fact stand up to her own father and brother because that never happened.

128. The Mother's evidence that there came a time when she realised that the father was not going to arrange a return in time for her to give birth in the UK and so she opted to travel with the father, back to Yemen for the birth to be near her mother as the next best option was given with an air of resigned disappointment. I accept her denial when it was put to her on Father's behalf that it had been a positive choice by her to give birth in Yemen because that was what she wanted and furthermore that it demonstrates that it is not the case that she was overborne by the father since she had been perfectly well able to travel to Yemen. His credibility on that is again undermined now by the fact that now he says S was born not in Yemen but in Saudi Arabia. In fact I prefer the Mother's account as to S's birth having been in Yemen but, supposing for a moment she was as the father says (which I do not regard as more likely than not) born in Saudi Arabia, I have found already that the family were only in Saudi Arabia at the time because they had not returned as expected at the conclusion of that holiday.

129. Having listened to the evidence of the Mother and the Father and setting it in the context of that such other available evidence of third parties and contemporaneous or near contemporaneous recordings and documents I prefer the Mother's account to the Father's. I do not find on the evidence before me that either before or once they had left England and Wales the mother indicated consent to a relocation. Ms Hurworth in her final submissions submitted that the Mother's case that she was subject to control and abusive behaviour from the father and rendered powerless and that as a result was both psychologically and culturally unable to seek help or assert her views might be relevant should I find that she had indicated assent to the children going abroad for more than a holiday because I might need to consider in those circumstances whether it was as Ms Hurworth expressed it '*true consent*'. I am not however satisfied that the mother did in fact indicate consent to such.

130. Taking all of these circumstances together I am satisfied that there was a wrongful removal on 31st January in the sense that the Mother consented to a holiday but not to a relocation and/or that there was a wrongful retention when the Father, as I find he did, failed to arrange the return of the children and their Mother to England and Wales at the conclusion

of the holiday which return should have been by the last date on which the Mother's pregnancy permitted her to fly. Mr Jarman submits that because the mother accepts in her very first statement she left England for an 'extended holiday' I cannot find that there was a wrongful removal. I reject that submission and in doing so I note that the paragraph of the Mother's statement to which he draws my attention in support of it is the very one in which she also says that the father assured her she would be back in time to give birth in England.

131. I turn now to consider the question of acquiescence in relation to that wrongful retention and then to go on to consider whether there was a further or continuing wrongful retention in or about September/October 2009 and if so whether in respect of that, the Mother acquiesced. I have reminded myself in considering these aspects of the relevant legal framework which I have set out above and included within it those authorities to which Counsel have directed my attention in submissions.

132. It is the Father who must discharge the burden of establishing that the Mother has acquiesced. His evidence to me is that both before S's birth in Yemen – or as he now says in Saudi Arabia – and after her birth he, the Mother and the children lived happily in Saudi Arabia. It is not he says that there was a change of plan and she then acquiesced to the children remaining out of England and Wales as it had always been her plan. I have already by my earlier finding rejected that it was her plan.

133. The Father submits that the mother did not when living with her mother at the time of S's birth make any reference to asking to return to England at that time when away from the Father who was visiting but returning to Saudi Arabia to work, and could he says have sought help, and that she accepted as much in cross-examination. That is a bold submission which the father makes given that his own case now is that the Mother was *not* living with her own mother at the time of S's birth but was in Saudi Arabia where S was born in a hospital.

134. Mr Jarman submits that the Mother has gone along with what she alleges was a wrongful retention and spent long uninterrupted periods away from the Father in Yemen where she had an opportunity to raise complaints with her own family and medical authorities but did not do so. She said she had the support of her brother in the UK – who she did not tell or ask for help; and of Mr D in Saudi Arabia. That she did not enlist that support he says in effect should drive me to the conclusion that it was her subjective intention to stay with the family both in Yemen and Saudi Arabia

135. I accept and prefer the mother's evidence that far from acquiescing she repeatedly asked him to arrange a return to England; that she did not change her mind and agree but that there came a point where she faced the reality that she would not be back in time to give birth and so gave birth in Yemen. I accept and prefer the mother's account that she needed the Father to make the arrangements because he it was who had the power to do so; that when she asked the Father to do so it resulted in ill treatment and beatings and that she was unable to compel him and felt unable to seek help elsewhere. The father denies beating the mother saying that she is lying about that and he is opposed to all violence and that furthermore she never reported it to the authorities in Saudi Arabia. That a woman in Saudi Arabia does not report to the authorities that her husband has beaten her may not necessarily assist me in assessing whether it happened. He had also made the point that he could not have, as she alleged, been more violent to her following S's birth in Yemen since he was at the time in Saudi Arabia. This is another of the aspects of the Father's case which has become curious in the light of his altered stance. Now he says that the mother gave birth not in Yemen but in

Saudi Arabia. Removing, as a matter of logic were I to believe that, at least the geographical impediment to the beating. The point is made on his behalf that there are no medical reports photographs police records or contemporaneous complaints to support her allegations. I agree of course with Mr Jarman that it would strengthen the Mother's case as to violence if there were but I do not accept that in their absence it is weakened. It is well recognised that very often and regardless of cultural considerations Domestic Violence goes unreported and may therefore be uncorroborated. The father's submissions as to lack of corroboration are not ones which I have found persuasive and in any event whilst I do not require corroboration to be satisfied that the Mother's account of violence is true, I have it from Mr D.

136. At one stage Mr D in his evidence spoke of the Fathers inclination to be violent to others not only within the family but outside it. He described him as '*a very agitated person*'. What I found more striking than his general characterisation of the Father, when the focus of my interest is how the father did or did not treat the Mother and the children who are the subject of this application, is the example Mr D gave of what he meant by a very agitated person '*the hitting he used it disproportionate to the damage done so like if the child break a glass*'. To my mind that resonated and was consistent with the Mothers evidence before me and from the early stages of her application in 2011 that the father had beaten not only her but also the children. I do not accept the father's evidence on this point. I do however accept the evidence of Mr D when asked by Ms Hurworth whether it was known in the family that the Mother wanted for herself and the children to go back to England, that this was indeed known and further his evidence that in 2008 – one of the conditions, as he put it that the Mother (for whom he used the name by which she has been known in these proceedings) had for conciliation to take place was that she would go back to the UK and, that the father was physically abusing her and the children. I am not satisfied on the evidence before me that the Mother acquiesced to what I have found was a wrongful retention of the children.

137. The events surrounding the parties' divorce in September/October 2009 are ones about which I have heard and read a very considerable amount of evidence, much of it wholly unsatisfactory. In an echo of the way in which the Father said the mother insistently and determinedly drove the permanent relocation of the family from England in January 2008, and which I have rejected as untrue, he says that the Mother to his great surprise and determinedly insisted on a divorce in September/October 2009 and would not be swayed by reason or negotiation from this. Though he also said in his evidence, sometimes almost simultaneously with that account, that it was her own mother who was insisting on the divorce. As I have considered in detail above, the father relied on later produced documents in support of his account of the divorce and called two witnesses to speak to those documents which, it is said they had signed. The father placed great emphasis on this aspect of his case in part to demonstrate that the mother is as he put it a serial liar. The reason why the competing accounts of the divorce assumed so great a prominence at this hearing is that they bear directly on whether the father has removed the children from their mother and thereafter kept them from her as she says or whether as he says, she insisted following the divorce that he should take them – effectively abandoning them (as the children it seems have come to understand over the intervening years). If the father is right, then whatever conclusions I have reached about the purpose and circumstances of the departure from England in January 2008, the Mother must surely be said to have acquiesced at least by September/October 2009.

138. I did not believe the Father's evidence that the Mother had suddenly because he would not buy her a house in Yemen demanded a divorce and would brook no argument. Nor did I believe his amended version that it seemed to him that the maternal grandmother was

pressurising the Mother into a request for a divorce. Each of the witnesses called by the father in support of his case on the divorce point were wholly unsatisfactory. I do not repeat here the detailed consideration above of the evidence they gave but far from supporting the father's account the effect of it was to satisfy me that it was not true. The father's decision to put before the court a document created by him and signed by a witness who had not, indeed could not, read it and knew nothing of its contents is one which is very much to the forefront of my mind when I consider his credibility. It is also behaviour which has a strong resonance with the judgment of the upper tribunal in reaching strongly adverse conclusions about the father's credibility and his willingness to rely on false documents. I have seen and heard for myself sufficient of the father to form a similarly adverse view. It is of particular note to me that within these proceedings he has given me an account of what I regard as his casual approach the obtaining and use of false documents. Even on the father's case these documents on which he relies to evidence the divorce were not contemporaneously signed at the time of the divorce but were generated sometime later, one of them he told me he made himself. Ultimately I could make no real sense either of the witnesses on whom he relied in respect of the divorce or for that matter of the documents to which they spoke. I was however quite sure that I was not being given a truthful account or that the documents were ones on which I could rely as supporting the Father's account. I concluded in fact that they were documents by which, and witnesses through whom, the father sought to mislead.

139. Nothing I had heard seen or read about the Mother made me believe that it was at all likely, far less more likely than not, that she would suddenly and for no apparent reason thrust the children, one of whom she was still breastfeeding, into the Father's care. The evidence is that she had always provided the primary care for the children, adopting what she and the father both described as a 'traditional' role in the marriage. The Father himself suggests no reason, both this and the divorce having been to him a complete surprise '*there was no reason for the divorce*' he told me. Mr D whose evidence I accept on this told me that he was present at the paternal family home in Saudi Arabia when the Father arrived with the three children. He described how surprised were the family to see the children who they had not been expecting, especially without their mother with them. I found his description of the children themselves from his observation at the time compelling: '*the way the children had arrived in Saudi Arabia was*' he said '*very terribly because they had been without any care for the last 3 -4 days and they needed attention and care but they were not provided for*'. Having paused to remind myself of the antipathy of feeling I had sometimes detected in the way he spoke of his brother, I nevertheless accept also his evidence that '*the way [the Father] was explaining his position it was like he felt proud that he has prevented her or taken the children away from her*' . It was striking to me that when Mr D spoke of his nephews and niece during his evidence he did so with warmth and affection and that when his spoke of their condition on arrival he did so with flavour of distress congruent with what he was describing. I suspect that reason for the detectable antipathy towards his brother which I have mentioned already may in part be explained by this.

140. The descriptions which the mother and the father each give of how they came to be divorced in or about September or October 2009 - the date being something else about which there is no agreement- are not capable of being reconciled. There is no room for a misunderstanding or a difference of emphasis to explain the different accounts. I reject the Father's evidence about the divorce and how the children came to leave their mother. I do not believe he was telling me the truth about any part of those events. I prefer and accept the evidence of the Mother as to the divorce. I do not believe that she demanded that the Father

should take the children or even that she consented to his taking them. I find that he removed them from her care against her wishes. I find that he has kept them from her ever since.

141. Mr Jarman submits that if I find there has been a wrongful retention in which the Mother has not acquiesced, I must go on to consider Article 10 BIIR. It is his submission that the interpretation of Article 10 is not *Acte Claire* despite and although the Court of Appeal has reached a conclusion on the application of Article 10 in *Re H (children) (Reunite International Child Abduction Center Intervening)* [2014] EWCA Civ1101. It is Mr Jarman's submission that Mr Justice Mostyn, in a case which has since submissions were delivered been made available to me, has made a referral to the CJEU in relation to the interpretation of Article 10 in a case involving a non-member state. I may not therefore he submits proceed to make orders on the basis of a retained Article 10 jurisdiction where the children in this case have been removed to/retained in a non-member state until such time as the CJEU has reached a decision on the reference made by Mr Justice Mostyn. I recognise that Mr Jarman seeks to raise there a novel legal argument. I adopt the straightforward approach commended to me on behalf of the Mother by Mr Perkins that as the authorities are currently configured the Court of Appeal decision is binding. That a first instance judge has, in an unrelated case, instigated a referral does not alter that state of affairs. Nor does it require me to await, and delay yet further a decision in this case, the outcome of the referral. If I have understood correctly Mr Jarman's submission, the logical end point of it is that no case in which there is a wrongful retention to a non-member state could conclude following the referral to the CJEU by Mostyn J or, to put it another way all such cases must grind to a halt pending determination of the CJEU referral. I have considered Mr Jarman's submission on this point – both as to the wider logical consequence of it and as to the effect in the circumstances of this case – and I reject it and the submission that Article 10 is not engaged. I turn therefore to consider the question of Habitual Residence, where, as I am satisfied, Article 10 is engaged.

Habitual Residence

142. Habitual Residence is, as is well established a question of fact. I have already made clear that I have no difficulty in finding on the evidence before me as to the children's circumstances and living arrangements, that immediately before the family left the country on 31 January 2008, the habitual residence of P and his brother Q was in England and Wales. They remained, I am satisfied, so Habitually resident at the time it had been expected – and I accept the Mother's evidence that the father had assured her- that the holiday would conclude so as to return in time for the birth of S in England. I have paid close attention to the analysis of Hayden J in *Re B (A Child) (Custody Rights: Habitual Residence)* [2016] EWHC 2174 and most particularly that which appears @ para [16]-[19].

Given the ages of these children they were more rather than less likely to share -as they did when they left – the Habitual Residence of their parents. Parental intention, whilst not determinative has been relevant to my assessment. I have been satisfied on the evidence that their mother in consenting for them to leave England and Wales intended that they should return following the holiday for which she gave consent and has always intended that they should return and has never intended otherwise. To the extent that the father's intentions were or may have become different, I recognise that he may have intended unilaterally to cause the children to change habitual residence by removing (and so too by retaining) them to another jurisdiction without the consent of their other parent. In the period following the wrongful retention at the conclusion of the holiday there is much less in the way of factual evidence on which to base an assessment of whether P or Q lost their habitual residence and/or gained a new one. I have rejected Mr Jarman's submission that the mother's subjective intention was

to remain in Yemen and Saudi Arabia with the family and I do not accept his submission that parental intention does not assist the Court in determining the exercise of habitual residence. It is not determinative but it assists.

143. During the period January 2008 – September/October 2009 the evidence is that the family lived variously between Yemen and Saudi Arabia. Some of the time staying with family, some of the time in rented accommodation or accommodation provided by the paternal grandfather. The quality of the evidence does not permit me – and nor in fact is it necessary - to find precisely how accommodation was paid for and by whom over which periods. Ms Hurworth in her submissions described the children as having had something of a peripatetic life and it seems to me that that word is equally applicable to the family's arrangements from 2008 through to 2009. The father has given me within this hearing at least 2 quite different versions of when the parties were spending time in Saudi Arabia and when in Yemen and I made clear that I have found his evidence unsatisfactory but I am satisfied that wherever as between those countries the family were from time to time spending time, it was not with the parental intention on the part of the Mother that she and the children should be living there. I have some limited evidence of some degree of connection and integration of the children in Saudi Arabia – P was enrolled in a school in what appears to have been some time after about May 2008. I have little or no evidence of how that came about, the Mother's evidence is that on one occasion she took him to school. There was no attendance at any school in Yemen. I did not hear, in the course of this hearing, other evidence about the children being integrated, at that time, into a community; having friends or social events outside school or putting down roots in Saudi Arabia or in Yemen. Mr Jarman in submissions is critical of Ms Hurworth's approach to the extent that she directs attention to whether the children have acquired a habitual residence other than in England and Wales when the question for me must be whether they were habitually resident in England and Wales. That is, as I see it a misinterpretation of Ms Hurworth's examination of the factual circumstances so as to determine whether in the period when the children were living with their parents between Yemen and Saudi Arabia they had lost their Habitual Residence in England and Wales. Such evidence as I have before me as to their degree of connection and integration, other than the enrolment of Abrulrahman at school in Saudi Arabia satisfies me that, taken together with the Habitual residence of their mother and the findings I have made as to parental intention P and Q's Habitual residence immediately before the removal from their mother in September/October remained England and Wales.

144. S, the third child of the family is in a different position to her brothers. She has never lived in or even, so far as the evidence shows, visited the United Kingdom. Jurisdiction in respect of S exists by reason of the doctrine of *Parens Patriae*. For the reasons set out by Moylan LJ in *Re M (A Child)* [2020] EWCA 922 to which the parties have directed my attention, I am satisfied that there is *Parens Patriae* jurisdiction for S. Mr Jarman acknowledges that (without prejudice to his contention that it should not be exercised) the same analysis means there would also be jurisdiction under the doctrine of *parens patriae* in respect of P and Q.

Summary of Conclusions:

145. Drawing together my conclusions I find that:

- (i) P and Q left England and Wales with their parents on 31 January 2008 for the purposes of a holiday

- (ii) The Mother consented to their departure for the purposes of a holiday and for no other purpose
- (iii) The intended length of the holiday was for a period of weeks; the date of return was not fixed but was intended to be such as to permit the Mother to return in time to give birth to her third child
- (iv) To the extent that the father may have had an intention permanently to leave the jurisdiction and settle elsewhere this was not yet a settled plan and in any event was unknown to the mother and she did not consent to any relocation.
- (v) To the extent that the father removed the children from the jurisdiction of England and Wales intending a permanent relocation that was a wrongful removal.
- (vi) The father wrongfully retained P and Q out of the jurisdiction at the conclusion of the intended holiday
- (vii) The Father removed P and Q from the Mothers care in or about September/October 2009 and wrongfully retained them outside the jurisdiction of England and Wales
- (viii) The father subjected the Mother, and the two eldest children to domestic violence and behaved towards the mother in a coercive and controlling way such as to undermine her autonomy. The mother did not acquiesce in the subsequent retention of P and Q from the jurisdiction of England and Wales either at the conclusion of the intended holiday or at the time of their removal from her care in September/October 2009
- (ix) P and Q were immediately before the wrongful retentions, ie at the intended conclusion of the holiday and in or about September/October 2009 habitually resident in England and Wales.
- (x) The removal and/or retention of P and Q was in breach of the mother's rights of custody by operation of the law of England and Wales and was therefore wrongful.

I find therefore that this court also has jurisdiction in respect of P and Q.

146. The order of Mr Justice Williams dated 18th May 2020 specifically limits the consideration at this hearing to the determination of whether the Court of England and Wales has jurisdiction rather than the exercise of any jurisdiction the court may find. It further provides for a hearing following the determination to be listed before him with a time estimate of 60 mins subject to any application that it should be reserved to me. Although Mr Perkins in particular has included in his detailed submissions which are directed to whether I should exercise any jurisdiction found. I will list the matter for consequential directions in consultation with Mr Justice Williams in the light of my findings.

Post Script

In the period between this judgment being sent out in draft form to Counsel for typographical corrections and hand down, the CJEU referral to which reference is made at para 141 was heard and the decision reserved. I was invited by Counsel to delay formal hand down of this judgment until the Opinion of Advocate General Rantos in case no C-603/20 PPU was to hand. I acceded to that request. The Opinion was delivered on 23rd February 2021.