

This draft judgment was circulated to the parties by email on 31 May 2024. The approved judgment was circulated by email on 20 June 2024. The judgment was handed down at a remote hearing at 9.30 a.m. on 10 July 2024

FZD v MQB (summary return from Scotland)
Neutral Citation Number: [2024] EWFC 205 (B)

IN THE FAMILY COURT AT OXFORD

Date: 10 July 2024

Before :

HHJ Vincent

Between :

FZD

Applicant
father

- and -

MQB

Respondent
mother

Simon Rowbotham (instructed by **Stowe Family Law, solicitors**) for the **Applicant Father**
Giorgia Sessi (instructed by **Samuel Phillips Law, solicitors**) for the **Respondent Mother**

Hearing dates: 16-17 May 2024

APPROVED JUDGMENT

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

HHJ Vincent :

1. I am concerned with Sophie [*not her real name*], now sixteen months old.
2. Sophie's mother is thirty-seven. Sophie's father is thirty-five. The mother was born and raised in Scotland. The father was born and raised in England. Both were living in Oxfordshire in 2016 when they met at work. They started their relationship towards the end of that year. They moved in together in September 2018.
3. Sophie was born in Oxfordshire in February 2023.
4. On 27 July 2023, when Sophie was just under six months old, her mother took her to Scotland, to live with the maternal grandparents.
5. The parties' relationship ended on that date.
6. On 3 October 2023 the father submitted an application to the Family Court at Oxford seeking Sophie's summary return to England. The application was not progressed because the Court advised him to make an application to the High Court and referred him to the International Child Abduction and Contact Unit.
7. The father sought further advice and made an application to the Family Division of the High Court, for summary return of Sophie to the jurisdiction, a child arrangements order, and prohibited steps orders. The application was issued on 15 December 2023.
8. On 21 December 2023 the parties came before Mr David Rees KC, sitting as a s9 Deputy High Court judge. He found that at the time the father's application was made (3 October 2023), Sophie was habitually resident in England and Wales. He found that Sophie's mother had removed Sophie from the jurisdiction without the father's consent.
9. The judge made no order on the question of summary return, but allocated the applications to the Family Court at Oxford. He directed the mother to file a schedule of allegations and a statement of evidence in support of them, for the father to respond, and for a further directions hearing to be listed.
10. That hearing was listed before me, in February 2024. Unfortunately, there was no safeguarding report from Cafcass – due to some confusion over whether the Cafcass team in London or Oxford should have prepared it. I gave permission for the mother to make a cross-application for relocation to Scotland. I made directions for the safeguarding report to be filed, for hair strand testing to be carried out on the father, and for police disclosure.
11. I directed the parties to file statements on the question of the father's application for summary return to the jurisdiction and listed this hearing to determine it, unfortunately after a further delay of three months.

12. At the hearing I heard evidence from each of the parties and have considered helpful written and oral submissions from both Mr Rowbotham for the father and Ms Sessi for the mother.

The law

13. The United Kingdom as a whole is a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention). Where a child is removed from England to Scotland (or vice versa) the Hague Convention does not operate, because the child has remained within the United Kingdom.
14. The application for return is for a specific issue order, pursuant to section 8 of the Children Act 1989. There is provision for the automatic recognition in Scotland of an English order for summary return, pursuant to section 25 of the Family Law Act 1986.
15. The mother has accepted that the Court of England and Wales has jurisdiction.
16. Although the applicant is not seeking to invoke the court's inherent jurisdiction, the approach the Court should adopt in this case is aligned with those non-Hague Convention cases in which the Court is invited to exercise its power under the inherent jurisdiction and order the summary return of a party.
17. In non-Hague Convention cases, the welfare of the child is paramount. The specialist rules and concepts of the Hague Convention are not to be applied by analogy in a non-Convention case, (per Baroness Hale in Re J (Child Returned Abroad: Convention Rights) [2005] 2UKHL 40.
18. In Hague Convention cases the starting point is that a return should be ordered unless a defence can be demonstrated.
19. In J v J (Return to Non-Hague Convention Country) [2021] EWHC 2412 (Fam) Cobb J summarised eleven 'key quotes' from Baroness Hale's judgment in Re J, as follows:
 - (i) "... any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];
 - (ii) "There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it" [22];
 - (iii) "...in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];

- (iv) *“... the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases.” [26];*
- (v) *“Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child” [28];*
- (vi) *“... focus has to be on the individual child in the particular circumstances of the case” [29];*
- (vii) *“... the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever” [32];*
- (viii) *“One important variable ... is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this” [33];*
- (ix) *“Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests” [34];*
- (x) *“In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned” [39];*
- (xi) *“The effect of the decision upon the child's primary carer must also be relevant, although again not decisive.” [40]*

Baroness Hale summarised her views in this way: “These considerations should not stand in the way of a swift and unsentimental decision to return the child to

his home country, even if that home country is very different from our own. But they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here.” [41].’

20. Each of these eleven quotes provides helpful reflection on the approach the Court might take to the welfare exercise, but does not constitute a new test or checklist to follow. Neither Cobb J nor Baroness Hale suggests that any of the points raised (other than the child’s welfare being the court’s paramount consideration) should carry more weight than others.
21. In accordance with section 1 of the Children Act 1989, the Court must determine what is in the child’s best interest, having regard to all the circumstances, in particular those set out at section 1(3) of the Children Act 1989. Each case will turn on its own particular facts.
22. Further guidance comes from Re NY (a child) [2019] UKSC 49, in which Lord Wilson posed eight questions he suggested the Court should give ‘some consideration’ to, when deciding an application for summary return of a child to the jurisdiction. Those questions are set out at paragraph 55 of the judgment:
 - (i) *The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);*
 - (ii) *The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child’s habitual residence) ([57]);*
 - (iii) *In order sufficiently to identify what the child’s welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);*
 - (iv) *In a case where domestic abuse is alleged, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);*
 - (v) *The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);*
 - (vi) *The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;*
 - (vii) *The court should consider whether to obtain a Cafcass report ([62]): “and, if so, upon what aspects and to what extent”;*

(viii) *The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63]).*

Domestic abuse

23. In directing the mother to file a schedule of allegations, Mr David Rees KC no doubt had in mind Lord Wilson’s question (iv); the court’s duty to consider whether in the light of Practice Direction 12J, an inquiry should be conducted into disputed allegations made by one party of domestic abuse and, if so, how extensive that enquiry should be.
24. At the directions hearing in February 2024, I decided that the urgent question for the court to determine was the father’s application for summary return of Sophie to the jurisdiction. I considered that awaiting a fact-finding hearing into the mother’s allegations would lead to unacceptable delay. Such a delay may lead to the Court in effect endorsing Sophie and her mother’s continuing residence out of the jurisdiction, without first having given proper consideration to the father’s application, first submitted in October 2023.
25. Nonetheless, the mother’s allegations of abuse are central to the issues in this case and the Court must have regard to Practice Direction 12J.
26. The Practice Direction requires the court to identify the factual and welfare issues involved, consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms.
27. Any interim child arrangements order (considered before determination of the facts, and in the absence of an admission) can only be made having regard to the guidance at paragraphs 25, 26 and 27 of the Practice Direction:

25

Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an unmanageable risk of harm (bearing in mind in particular the definition of “victim of domestic abuse” and the impact which domestic abuse against a parent can have on the emotional well-being of the child, the safety of the other parent and the need to protect against domestic abuse).

26

In deciding any interim child arrangements question the court should–

(a) take into account the matters set out in section 1(3) of the Children Act 1989 or section 1(4) of the Adoption and Children Act 2002 ('the welfare check-list'), as appropriate; and

(b) give particular consideration to the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child and that parent is likely to suffer as a consequence of making or declining to make an order.

27

Where the court is considering whether to make an order for interim contact, it should in addition consider –

(a) the arrangements required to ensure, as far as possible, that any risk of harm to the child and the parent who is at any time caring for the child is minimised and that the safety of the child and the parties is secured; and in particular:

(i) whether the contact should be supervised or supported, and if so, where and by whom; and

(ii) the availability of appropriate facilities for that purpose;

(b) if direct contact is not appropriate, whether it is in the best interests of the child to make an order for indirect contact; and

(c) whether contact will be beneficial for the child.

28. I have not heard submissions from the parties about what the interim child arrangements should be; much will depend on the decision I make about where Sophie and her mother should live. However, I have in mind the provisions of the practice direction, because that decision will in part be informed by consideration of whether, in light of the allegations made, direct contact between Sophie and her father could or should realistically be in the court's contemplation.

29. Paragraph 7 of the practice direction provides as follows:

In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The court must in every case consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm.

30. The kind of domestic abuse that may lead to the statutory presumption being disapplied will vary from case to case. The Court has to consider the type of behaviour that is alleged, the impact upon both child and parent, and the safeguards that could be put in place to reduce risk of harm.

31. Definitions are set out at paragraphs 2A and 3 of the practice direction.

32. “Domestic abuse” has the same meaning as in the Domestic Abuse Act 2021 and includes physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, psychological, emotional or other abuse. It does not matter whether the behaviour consists of a single incident or a course of conduct.
33. “Economic abuse” means any behaviour that has a substantial adverse effect on [a person’s] ability to acquire, use or maintain money or other property, or obtain goods or services.
34. “Coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.
35. “Controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
36. In the leading judgment of Re H-N and others (children)(domestic abuse: finding of fact hearings) [2021] EWCA Civ 448 the Court considered the definitions in the practice direction in more detail. It was noted that a pattern of coercive and/or controlling behaviour can be as abusive as, or more abusive, than any particular factual incident that might be written down and included in a schedule in court proceedings, and is as relevant to the child as to the adult victim (per the President at paragraph 31).
37. In the next paragraph, the President remarked that it was, *‘equally important to be clear that not all directive, assertive, stubborn or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.’* The judgment of Peter Jackson LJ in Re L (Relocation – second appeal) [2017] EWCA Civ 2121, at paragraph 61, was cited with approval:

“Few relationships lack instances of bad behaviour on the part of one or both parties at some time and it is a rare family case that does not contain complaints by one party against the other, and often complaints are made by both. Yet not all such behaviour will amount to ‘domestic abuse’, where ‘coercive behaviour’ is defined as behaviour that is ‘used to harm, punish, or frighten the victim...’ and ‘controlling behaviour’ as behaviour ‘designed to make a person subordinate...’ In cases where the alleged behaviour does not have this character it is likely to be unnecessary and disproportionate for detailed findings of fact to be made about the complaints; indeed, in such cases it will not be in the interests of the child or of justice for the court to allow itself to become another battleground for adult conflict.”

The mother’s allegations

38. The first section of allegations are of physical abuse, as follows:

- In the early stages of pregnancy the father drunkenly elbowed the mother in the stomach twice in succession and claimed it to be an accident;
- In July 2022, when the mother was pregnant the father pulled a duvet on which she was sitting, causing her to fall off the sofa;
- In May 2022 the father forced open the toilet door knocking over Sophie who was in a chair behind the door;
- On 13 June the father snatched Sophie from her mother's arms;
- On 25 June 2023 the father tried to forcibly grab Sophie from the mother's arms and to push the mother over.

39. The next section contains allegations of financial abuse (in summary) that the applicant put the respondent under pressure to pay for bills, including for an electrician and building insurance, that he told her she was a tenant in their property (which was in his name), and should pay him rent even while she was on maternity leave, and that he repeatedly threatened to evict her from the property if she objected to something about his behaviour such as having guests over or taking drugs in the property.

40. There are then allegations of verbal abuse. It is alleged that the father once screamed at the mother demanding that she get an abortion, and that he called her a bitch in front of fellow guests at a wedding. The mother alleges that in June 2023 he shouted and screamed at her when he came home from an evening out in response to her asking him to be quiet so as not to wake Sophie, and on two further occasions in June 2023 that he shouted, screamed and berated her. Following her departure from the property she alleges that on two occasions he screamed at her down the phone. Once after some fish and chips had been thrown away, another time about a food delivery.

41. The allegations of coercive and controlling behaviour are summarised as follows:

- It is alleged that the father repeatedly made comments to the mother about her appearance and weight, often in the presence of third parties, and tried to control what she ate, for example by sticking 'not for [*mother's name redacted*] stickers on food;
- It is alleged that the father required the mother to be available to him and to answer calls from him in a timely manner. It is alleged that on an occasion when the mother did not answer the phone to the father he told her that this behaviour would be added to a 'training list'. It is alleged that the father required the mother to book in time with him and if she had not done so, he would spend time with friends in priority to spending time with the mother and, after she was born, Sophie;

- The mother alleges that throughout the relationship the father would mock her, make impressions of her if she tripped over words, and would criticise her if she did not answer his questions. It is alleged that he would belittle her in front of others for example by asking them if they could cook and if so would they teach the mother;
 - It is alleged that the father would gaslight the mother with comments such as ‘I bet you really believe that’ and ‘that probably is how that sounded to you’. After Sophie’s birth, it is alleged that on one occasion the father said to Sophie, ‘mummy is crazy and makes things up in her head’;
 - It is alleged that throughout the relationship the father would discuss ways of punishing the mother – ‘suggesting that if he were able to hit her when she did something wrong that she could hit him back when he was wrong – but that he needed to find a way to make [the mother] learn’;
 - It is alleged that the father said he would not collect the mother from the airport unless she agreed to do chores for him. It is alleged that in October 2022 the father called the mother and asked if she would allow him to have sex with a prostitute while he was away on a stag weekend.
42. The next category of allegations is entitled ‘Harassment/coercive and controlling behaviours/dangerous and neglectful behaviours to the child’. The allegations concern the state of the house, failure to clean up after the dog, the applicant continuing to vape throughout the mother’s pregnancy, a time when the father is alleged to have propped Sophie up against his computer so that he could continue gaming rather than interact with her, and a time he is said to have held Sophie at the same time as holding a pair of hot hair straighteners. It is alleged that he once put Sophie in the dog bed to sleep (the father accepts he did this but says he was with her at the time, and it was a brand new soft padded basket with sides), that he tried to feed her a profiterole when she was only three weeks old, would not listen to advice on co-sleeping with Sophie, and has left drugs around the house.
43. It is alleged that since the first court hearing on 21 December 2023 the applicant *‘has missed two calls with his daughter and been late for a third’* and that this is evidence of his showing no commitment to his daughter.
44. The father denies all of the allegations in each of these categories. He says they are either completely fabricated, or are events which have been reinterpreted or reimagined in a way that paints him in a completely different light from reality. He alleges that the mother has deleted a significant number of messages between them, which would convey a different picture from the one she is now advancing. He says the relationship was one of equals, that Sophie was a planned for and much wanted child, and that he was a fully involved father. He says he was completely taken by surprise when the mother left with Sophie. He denies that he ever shouted or screamed at the mother, denies all the allegations of coercive control, physical and emotional abuse and neglect.
45. He denies the allegations of financial abuse, but accepts that they did have difficult discussions about money. He says they agreed to split the bills equally,

although the mother in fact earned more than he did. He says that the property in which they lived was purchased for them by his mother in 2018, and he and the mother paid £300 a month each back to her as repayment towards the funds she had advanced. The mother says no, the house belongs to the father and the arrangement with his mother is a convoluted one to avoid paying tax.

46. The last section of allegations relates to alcohol and drug use. It is alleged that the father was a habitual user of illicit drugs throughout the relationship and that although he promised to give this up, he has failed to do so, and in fact his drug use increased after the mother became pregnant. There are then eighteen allegations relating to the father's drug use, both in the family home and when out socially during the time that the mother was pregnant with Sophie and after Sophie's birth.
47. The father accepts he has used drugs, but says the mother has exaggerated the extent of his use. He accepts a number, but not all of the allegations. He says that he would take cocaine on occasional weekends only. He says that since September 2023 he has used drugs only three times (once in October, once in December and once in early January) and has no intention of using drugs again.

Evidence

48. I heard evidence from each of the parents. I have read the documents in the bundle, which include lengthy statements from each of the parents, in which they reflect back on their relationship in some detail.
49. There is a major factual dispute between the parents about the allegations of abuse, on which the need for fact-finding has yet to be determined. I have not embarked on a fact-finding exercise in respect of these issues, but have focused on issues that are relevant to the question of summary return.
50. In general the father presented well as a witness. He gave straightforward answers, did not seem to be striving to get any particular information or point across, but appeared to be trying to respond honestly and openly to the questions put to him.
51. There are clearly some issues to explore around his drug use. His case is that he was an occasional and recreational user, regrets that he continued to use drugs after the mother became pregnant and after Sophie was born, but says this was a series of isolated incidents, and there is no need for concern. However, there is evidence that there have been a number of times, during the relationship and continuing until as recently as January 2024, when he has not been able to set a boundary for himself and could not stop himself from taking cocaine. An exchange between him and [K], the man who sold drugs to him, is concerning:

<i>Yeah I understand mate. I won't be doing it for a while after today. It's just for the gaming sesh. I will cut it down after today.</i>	
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	You said that last week bro lol
	I know how it is
<i>I forgot [O] was coming over</i>	
<i>I'm happy for you to cut me off after today if that's ok man? I'm sharing it with [O] so it's lg for me</i>	
	I will be mate. I'm sorry
	You were meant to quit for your family. I don't want me not saying no to be a part of everything going tits up just makes me feel horrible
<i>Yeah I know what you mean but [mother] has gone to stay at [X's] so I could have the gaming session. I don't want to make you feel that way man, I swear I will stop for a while after today</i>	

52. The results of the hair strand tests are broadly consistent with his account of drug use over the period of five months that was tested (24 September 2023 through to 24 February 2024). The levels are low and reducing over time, reportedly 'consistent with infrequent misuse reducing over time'. The extremely low level in the most recent section is below the cut-off given to suggest active misuse. The expert suggests that this is likely to be 'washout' i.e. exposure to the drug has stopped, but is still present in the hair from previous ingestion.
53. The marker for crack cocaine was detected at a very low level in the four earlier sections of hair. This has caused the mother to be significantly concerned. The father denies ever using crack cocaine and has queried this result. He has raised questions of the expert, who has given the opinion that heating cocaine in a microwave is an unlikely explanation for the finding, but posited a theory that the use of hair straighteners may have affected the sample. The expert notes that the results must be regarded as only one piece of the overall evidential picture.
54. The evidential value, reliability and limitations of hair strand testing is underlined in the recent case of Re D (children: interim care order: hair strand testing) [2024] EWCA Civ 498. At this stage of proceedings, I take note of the results, but make no findings. The extent of the father's drug use in the past and the likelihood of him using again in the future will be a matter for determination for the court, as well as an assessment of its impact upon his ability to parent, and the risk of harm it presents to Sophie and to her mother.

55. The mother's evidence was more florid, and her answers more loaded with the points she wished to put across. Given the detail she has put into her witness statements, it was unfortunate that there were some significant omissions in her evidence, which led to a misleading impression being given.
56. The most significant of these omissions was about her job. In her first witness statement she wrote, *'I left a job. I left friends. I left a home.'* The father's solicitors wrote a number of letters asking for clarification about where she was working, but did not receive a response. In her subsequent statements she mentioned that she was working, but did not say who she was working for. It was only in an answer to Mr Rowbotham in cross-examination that the mother conceded that she remains employed by [*organisation based in Oxfordshire*], and is working remotely. She then said that she regarded herself as having left her job, because now she is working remotely. She said when she was in Oxfordshire she was working to an 'agile' working pattern that had her working principally at home, but able to attend meetings and training sessions in person. This was unconvincing as an explanation for the omission.
57. She has not provided any details in her witness statement about her income, her liabilities or the costs of moving back to Oxfordshire. She has not put forward any proposals at all.
58. In response to questions in cross-examination she accepted that she earns £52,000 gross a year (that equates to around £3,200 a month net), receives £350 a month in maintenance from the father, and about £80 a month in child benefit.
59. On any view, if she had to relocate to Oxfordshire she would be in a worse financial position than she is currently, where she pays no rent to her parents, or when she was living with the father, when she contributed £300 towards the repayments to the paternal grandmother and paid half the outgoings on the bills.
60. She told me she has liabilities, but again has not provided any details of this in her statements.
61. The court has not heard any evidence in detail about the allegations of domestic abuse. I am cognisant that domestic abuse takes many forms, that the impact of emotional abuse and of controlling behaviour can be devastating and long-lasting, and often harder to recover from than physical abuse. I accept the mother's emotion as she gave evidence was genuinely felt, that she is having weekly counselling to help her process and recover from her experiences of the relationship and the father, and that she would not be able to have any form of direct contact with him at this time.
62. Nonetheless, it was at times difficult to square the mother's responses to the father with the schedule of allegations. On occasion it seemed as though she was describing a person who had committed the most heinous of acts. She described herself as being disgusted by the father, who she said was not able to consider his daughter's needs beyond his own. She describes him as *'a deceitful individual, who will do whatever it takes to get his way, regardless of the damage it does to*

me, and most importantly to my daughter.' At this time, she does not consider that even contact in a contact centre would be safe for her daughter.

63. She was grudging in accepting the father's efforts in having maintained video contact with his daughter three times a week since she was six months old. She did concede that (as far as she is aware as it is her mother who supervised contact), the father has kept Sophie entertained, and engaged for around twenty or thirty minutes at a time, singing her songs, and sending activities for them to do online together.
64. Some of the assertions that she made were not borne out by the evidence.
65. Firstly, she alleged that if forced to return to Oxfordshire she and Sophie would be in fear of their lives due to the father's association with drug dealers. The father obtained drugs from a person called [K] with whom he socialised and with whom the mother also was in contact both before and after the relationship. The only piece of evidence I have of interactions between either of them and [K] do not support a finding that he presents any threat to any of the parties. There is no evidence of drug debts or gang involvement or threats being made. In her own evidence, the mother says that in her communications with [K] he was not aggressive or nasty, and was trying to appear supportive, while seeking to remove himself from being a conduit between the parents (to sort out returning the mother's possessions to her).
66. A short text conversation between the mother and one of the father's friends was put into evidence by the mother to support her claim that the father is seeking to intimidate her in these proceedings. This individual had been earlier mentioned within these proceedings as someone who the father might call upon to give a statement about one of the allegations of physical abuse. There is no evidence to suggest that the friend made contact with the mother as a result of being prompted by the father, and there is nothing within the exchange itself to suggest that it was anything other than well-intentioned.

Welfare checklist analysis

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding);

67. Sophie is too young to express her wishes and feelings about where she would wish to live while her longer-term future is determined.

(b) her physical, emotional and educational needs;

68. Sophie is wholly dependent upon her adult carers to meet all her daily needs, to keep her safe, warm, clothed, fed, washed and clean, and in a routine of rest and play. Her care giver needs to attend to all her health needs and support her in her development, learning, and ability to make safe attachments to significant people in her life who will infuse her with feelings of safety, belonging and love.

69. Section 1(2A) of the Act provides that the court will presume, unless the contrary is shown, that involvement of each parent in the life of the child concerned will further the child's welfare.

(c) the likely effect on her of any change in her circumstances;

70. Sophie has been living in Scotland for ten months, having spent the first six months of her life in Oxfordshire. She lives with her mother in the maternal grandparents' home. She has been going to nursery since January 2024. It is a house with a garden and both Sophie and her mother have their own room. Sophie is happy, settled and thriving.

71. The mother works remotely. Sophie is taken to nursery four days a week by either her mother or her grandparents. If the mother is still working by the time Sophie's nursery day ends, one of her grandparents will collect her and bring her home, where she will be taken care of until the mother has finished work.

72. The mother finds the prospect of a move down to Oxfordshire almost intolerable to contemplate. She is extremely concerned about how she would cope without the support she currently has, and the impact this would have on her ability to care for her daughter.

73. If Sophie were to move to Oxfordshire with her mother, she would miss her grandparents, and this would be a significant loss for her, although of course she would still be able to go with her mother to visit them, and they could travel to England to visit her. She would experience some disruption from being moved to a new home and environment, and to a new nursery. Her mother may need to find alternative support to help with the wrap-around care, and Sophie would experience having to get to know new faces.

74. Sophie would be able to spend time with her father. At the moment, her relationship with him is maintained by video contact three times a week, but that is not the same as seeing him in real life. She would have the opportunity to meet other members of her extended family; her maternal uncle who lives in Oxfordshire, her paternal grandmother and other relatives on the father's side.

75. In the longer term, Sophie's mother wishes to relocate to Scotland permanently with Sophie. She proposes that the father undergoes treatment in respect of his drug use, takes responsibility for his actions and then, in time, builds up his relationship with Sophie first by visits in a contact centre. In the longer term she proposes visiting Oxfordshire in the holidays so that Sophie can spend time with her father. If the ultimate decision of the court is that Sophie and her mother should relocate to Scotland, there is a risk that a move to Oxfordshire now would

cause unnecessary disruption to Sophie, for a relatively short period of time, only for her to return to where she is now.

76. At this time, and if Sophie and her mother remain in Scotland, it is difficult to see contact progressing to direct, even supervised contact. Sophie's mother at this moment does not see a benefit in direct contact between Sophie and her father and only harm to both her and to Sophie. The tenor of her evidence is that she and Sophie are well settled in Scotland, all arguments weigh heavily in favour of them remaining there in the long-term, and she and Sophie should not have their lives disrupted to meet the father's needs in the short term.
77. I acknowledge that the mother does consider the prospect of the father having contact with Sophie in due course, and that she has given reasons for her current stance against any form of direct contact. I further acknowledge that she is supported in her view by the author of the safeguarding report, who advised against direct contact until after a fact-finding hearing had taken place.
78. Even if supervised contact is established in Scotland, it is unlikely to take place regularly because of the distance to be travelled.
79. On the other hand, if Sophie does move down to Oxfordshire now, there is arguably a greater prospect of regular contact being established in a contact centre.

(c) her age, sex, background and any characteristics of hers which the court considers relevant;

80. There are no additional factors to address under this heading.

(d) any harm which she has suffered or is at risk of suffering;

81. There are serious questions about the father's ability to safeguard Sophie's welfare, given his admitted history of using cocaine in the home he shared with Sophie and the mother, and the allegations the mother has made of domestic abuse.
82. The allegations in respect of drug use and domestic abuse require investigation by the Court. If proved, the court will need to evaluate any risk that the father may pose to both the mother and to Sophie, and consider how those risks may be mitigated and Sophie's safety during contact with her father be secured.
83. It is welcome news that the recent hair strand tests show a reduction in use of cocaine over the past few months and that the father is now engaging with Turning Point. However, this has happened only in the last month. The father still

does not accept that his drug use has been problematic, where there is a body of evidence that points to a conclusion that it has been.

84. Considering any risk of harm to the mother or Sophie if they were to return to Oxfordshire.
85. The day before she left for Scotland the mother visited her GP. She reported that the father had been verbally and psychologically abusive, that he resented the baby but would never harm the baby. The note records concerns about drug and alcohol use and the mother's concern that the father might put Sophie in danger through neglect.
86. I have not been shown any evidence to suggest that since separation the father has made any threats to the mother. There is no evidence of verbal or emotional abuse in messages. There is no evidence that he has sought to contact the mother save in respect of arrangements for him to have contact with Sophie. He has not sought to travel to Scotland to see the mother or Sophie against her wishes. He has not contacted Sophie's nursery. I accept his evidence that sending flowers and a card on Mother's Day was well-intentioned, in line with a tradition within his own family which he had sought to continue, but ultimately misjudged. I accept his evidence that he understands it was poorly received, and he will not repeat it. The father has communicated with the mother through solicitors, and notwithstanding he received no responses to requests about setting up supervised contact, or for clarification, he has not sought to contact the mother about the case directly.
87. The messages that I have seen the father has sent to the mother within the Our Family Wizard app in respect of his contact with Sophie are polite and respectful. He thanks her for any information about Sophie but does not push for more. He is entirely accepting of the contact she offers him.
88. I understand that the mother will contend that during the relationship the picture was very different and that she says any contact at all with the father, even just hearing his voice, is triggering for her.
89. I accept that the mother would find it distressing and difficult to return to Oxfordshire, and that this would affect her ability to care for Sophie in some respects, particularly where she is without the support of her parents. It would present a challenge to her, of course, but there is no evidence to suggest that these difficulties would be such that Sophie would be at any risk of harm as a result.
90. I accept the father's evidence that he would give undertakings or abide by orders requiring him not to go to the mother's home or place of work or to Sophie's nursery, and that he would not contact her, save for as happens now, through Our Family Wizard, for the purpose of arranging contact, or through solicitors.

(e) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;

91. There is no question that the mother is more than capable of meeting Sophie's needs, and that Sophie is happy and thriving in her current situation.
92. If Sophie's mother were ordered to return with Sophie to Oxfordshire, she would immediately lose that network of close family support. It would be difficult for her to settle back, and the pressures upon her as a single mother would be great without the live-in support network that she currently has.
93. She would be able to continue working for [*organisation based in Oxfordshire*], and arguably would be in a better position to do that work as she would be able to attend in person meetings and training events that she cannot do from Scotland.
94. She could enrol Sophie in a nursery in Oxfordshire, but it would be harder for her to manage drop-offs and pick-ups as she could not rely on her parents. She does have a brother who lives in Oxfordshire but he has a full-time job, and she says he is planning to move abroad. Her brother would present moral support but not anything like the level of practical and emotional support that her parents are currently providing. She has two good friends who live in Oxfordshire, but they are at a different stage of life, without children. Again those friends may be on hand to give emotional support, and in time could no doubt help in more practical ways, but not to the extent her parents support her.
95. Financially, she would be in a worse position than she is now, and from when she was living with the father, sharing the costs of living with him. However, the mother will be able to continue working in her present role which provides her with a regular income, albeit there is no question that living costs in Oxfordshire are high. The father has offered to pay her first three months of rent, will continue to pay maintenance and half Sophie's nursery fees.
96. Because of the concerns attached to the father, he is not in a position to share in caring for Sophie at this time.
97. To the extent that the father has spent time with Sophie, he has demonstrated a good ability to meet her needs. He has spent time three times a week with her on video calls and no concerns have been raised. The mother did accept under cross-examination that he had managed to engage Sophie in these video calls, give her his full attention and engage her with activities. However, this does not help her in the short term – in Oxfordshire she would be responsible for Sophie's care on her own for all the time.

98. The father has a network of extended family in Oxfordshire who could potentially support the mother in caring for Sophie. In the longer term members of the paternal family may be the means by which he is able to develop his relationship with Sophie, by providing supervision and support. But Sophie does not have an established relationship with any member of the paternal family at this time. The mother could not rely upon any of them to support her in the way that her own parents have supported her.

(g) the range of powers available to the court under this Act in the proceedings in question.

99. I remind myself that whatever orders are being sought the court can make a whole range of Section 8 Children Act Orders or indeed no order at all if I consider that to be appropriate.

100. An order that requires a person to move from the place they are living and where they feel safe and supported, should not be made lightly. In this case, a move to Oxfordshire for the mother presents a number of challenges and removes her from her main source of support.

101. I must balance the mother's rights to a family life of her choosing against the rights of the father to a family life, and, as my paramount concern, Sophie's right to a relationship with both her parents, which, the Children Act 1989 tells me is presumed to be in her welfare.

102. I must also have regard to the parties' right to a fair trial.

The NY checklist

103. I consider each of Lord Wilson's eight questions in turn.

The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);

104. The parties were directed by me to file statements relating to the question of summary return.

The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);

105. A finding has already been made in the High Court concerning Sophie's habitual residence.

In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);

106. I have considered all the circumstances with particular reference to each of the factors on the section 1(3) welfare checklist.

In a case where domestic abuse is alleged, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);

107. I have reflected upon Practice Direction 12J, which comes into play in this case as a result of the allegations made by the mother.

108. I remind myself that at the present time these are allegations not findings. And I remind myself of the limits of the question that I am asked to determine. I am asked to consider whether or not Sophie should be brought back to this jurisdiction for her case to be resolved. At this stage of proceedings it is premature to come to a view about whether those allegations are likely to be proved or not, or what the ultimate outcome of the proceedings may be.

109. It is relevant to my determination to consider the nature of the allegations and whether ultimately if proved they would be such as to rebut the statutory presumption that it is in Sophie's welfare for her father to be involved in her life.

110. My assessment, noting that we are at an early stage of proceedings, is that the nature of the allegations in this case are not such that if proved they would necessarily prevent Sophie from having a relationship with her father.

111. The author of the safeguarding report has recommended no direct contact between Sophie and her father until such time as a fact-finding hearing has taken place. This view is one that the Court will take into account when considering the question of interim contact, but it is not determinative of that issue, and nor is it determinative of the immediate question of whether Sophie should be brought back to the jurisdiction for the Family Court proceedings to be resolved here.

The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);

112. I have heard some evidence about the basic living arrangements for the child and the mother. The mother has not set out in any detail her proposals for living in Oxfordshire, because it is not an outcome that she envisages.

Nonetheless, I have heard evidence from both parties about this. The mother has a job in Oxfordshire. Her brother lives in [town X in Oxfordshire]. The father has offered to pay for three months' rent in the first instance and will share the costs of Sophie's nursery attendance.

The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;

113. I heard oral evidence from each of the parties, tested by cross-examination.

The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";

114. I do not consider a Cafcass report is required in order to determine the question of summary return.

The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63]).

115. I do not need to carry out an exercise comparing the respective judicial systems in England and Scotland. Firstly because the question of jurisdiction has already been determined, the Courts of England and Wales are seized of the applications and there are no competing proceedings in Scotland. Secondly because the Family Law Act expressly provides for recognition of orders made between Scotland and England and Wales.

Conclusions

116. The mother removed Sophie from the jurisdiction without the father's consent. This was wrongful. Summary return is not to be used as a means of penalising the mother for her conduct. However, the context is significant. The parents share parental responsibility for their daughter. Their intention had been to raise her in Oxfordshire, where they had established their lives.

117. A judge of the High Court has found that the dispute between the parents about child arrangements for Sophie should be resolved in this jurisdiction.

118. The Court needs to ensure that the dispute between the parties can be resolved fairly.

119. I have considered Practice Direction 12J carefully. The allegations of domestic abuse raise serious questions about the father's ability to care for his daughter, and about the risk he may present to the mother and Sophie. Those

allegations are denied and he is entitled to ask for the Court to make determinations in respect of them.

120. The question whether those allegations should be determined at a separate fact-finding or together with the mother's application for relocation remains to be determined by the Court.

121. Even if most or all of the allegations are proved, it is not inevitable that Sophie's relationship with her father will remain as circumscribed as it is now. If only some, or none of the allegations are proved, the father is likely to seek progression of his relationship with Sophie to significantly increase the time she spends with him.

122. In either circumstance, the court which has jurisdiction over the parents' dispute will be in a better position to consider the way forward if Sophie is based in Oxfordshire.

123. The effect of allowing Sophie and her mother to remain in Scotland would risk undermining those proceedings, for the following reasons:

- the more time that Sophie and her mother spend in Scotland, and put down roots there, the greater the risk is that her application for relocation will be settled by Sophie having gained habitual residence there. This would convert a wrongful move, without the father's consent, into a *fait accompli*;
- assessments the Court may direct to be carried out by Cafcass or the local authority cannot be carried out cross-border;
- even if the father were to be assessed in isolation in this jurisdiction, he would be significantly disadvantaged if he had not had the opportunity of spending time with Sophie in this jurisdiction;
- If the mother and Sophie remain in Scotland, it will remain difficult for Sophie's father to see her regularly. The mother has not been able to facilitate direct contact between Sophie and her father, and has shown reluctance to do so. Even if contact is set up in Scotland, it will necessarily take place infrequently, due to the distances involved.

124. Requiring the mother to relocate to Oxfordshire, even temporarily, until the Family Court proceedings are resolved, will be difficult for her. She is likely to regard such an order as a significant infringement of her rights and a threat to her feelings of security and safety. She will be stripped of the significant support she is currently receiving from her parents.

125. Against that I have to balance Sophie's rights to the opportunity of a relationship with each of her parents, and the father's rights to that relationship and to a fair trial.

126. Having given due consideration to the difficulties for the mother, I have nevertheless concluded that it is both realistic and reasonable to expect the mother to return to Oxfordshire with Sophie, for the following reasons:

- The mother has a job based in Oxfordshire and her employer has been supportive of her. It can be expected that she will be further supported when she returns to Oxfordshire, so that she can continue to work remotely if she needs to, and that her hours will be organised around childcare;
- The mother would be moving back to a familiar environment. Before she left for Scotland she was living in Oxfordshire for eight years. Her brother lives locally (although I understand he is planning to move abroad) and she has friends and work colleagues in Oxfordshire;
- The mother would be worse off financially as she would have to pay rent. However, she receives an income of £52,000 a year gross supplemented by maintenance from the father and child benefit. I have not seen a detailed breakdown of her finances, nor has she put forward any evidence of the cost of rental properties, so I cannot come to a clear finding on this. If this puts her at a disadvantage it is because she has not produced the evidence. Sophie would qualify for 15 hours' a week at nursery and the father has offered to split half the remaining costs. The father has offered to pay the first three months' rent and half Sophie's nursery costs. It was not put to him, nor submitted to me that this contribution would be insufficient.
- The loss of stability and the disruption that both Sophie and her mother are likely to feel can be mitigated by regular visits to Scotland to stay with the maternal grandparents, and they could visit her in Oxfordshire, as happened in the early months of Sophie's life;
- I do not underestimate the threat to the mother's own feelings of safety and stability of being directed to return. However, I must reach conclusions based on the evidence that I have heard and read, and not on the basis of assertions. I am not satisfied on the evidence before me that the mother has established that she is at risk of harm from any person who sold drugs to the father, nor from the father himself. Any risk that may arise from them coming into contact with one another can be managed by his giving undertakings or orders being made confirming that he will not go to her property or place of work, that he will not remove Sophie from her care or from any person she has entrusted with Sophie's care;

- The mother does not have to live in [town X in Oxfordshire], and could choose to live somewhere closer to her work in Oxford. The father has been paying to keep Sophie's place at nursery available, but he is happy for Sophie to be enrolled at any nursery the mother chooses. The father has put forward a number of contact centres within reasonable distance.

127. Having considered all the circumstances of the case, in my judgment the arguments in favour of a summary return outweigh those against. The mother removed Sophie from the jurisdiction without her father's consent and is required now to return to the jurisdiction, so that the Family Court proceedings between the parents may be resolved fairly within this jurisdiction, and Sophie and her father are afforded the opportunity to establish a relationship with one another.

128. That I have made this decision in the interim, does not mean that I have reached any conclusion about the eventual outcome of the case. I recognise that there is a risk that Sophie and her mother may come down to Oxfordshire for a period of months, only to experience further disruption if the mother is successful in her application, and then returns to Scotland on a more permanent footing. However, for the reasons given in this judgment, I am satisfied that this is what is required and is in Sophie's welfare interest. I remind myself again of the words of Baroness Hale:

"... the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever" [32];

129. That is my judgment.

HHJ Joanna Vincent
Family Court, Oxford
Draft judgment sent: 31 May 2024
Approved judgment sent: 20 June 2024

Annex: Requests for clarification of the judgment

1. The draft judgment was sent out to the parties on 20 May 2024.
2. Following receipt of the draft judgment, the mother changed her legal representatives.
3. On 31 May 2024 I received a list of requests for clarification from Miss Meldrum, of Rayden's solicitors, submitted on behalf of the mother. As a preface to the questions, Miss Meldrum helpfully drew my attention to F and G (Children: Sexual Abuse Allegations) [2022] EWCA Civ 1002. From paragraph 54 onward of the leading judgment of the Court, Lord Justice Baker said the following:
 54. *The approach to be adopted by advocates and judges to requests for clarification of judgments has been considered by this Court on a number of occasions since the decision in English v Emery Reimbold and Strick Ltd* [2002] ~~EWCA~~ ~~Civ~~ 605. In the family law jurisdiction, the two key authorities are *Re A and another (Children) (Judgment: Adequacy of Reasoning)* [2011] ~~EWCA~~ ~~Civ~~ 1205 ("the Practice Note") and *Re I (Children)* [2019] ~~EWCA~~ ~~Civ~~ 898. The procedure to be adopted is set out in the Family Procedure Rules 2010 Practice Direction 30A paragraph 4.6 to 4.10.
 55. *In the Practice Note, Munby LJ emphasised two points at paragraph 16 and 17:*

"16. First, it is the responsibility of the advocate, whether or not invited to do so by the judge, to raise with the judge and draw to his attention any material omission in the judgment, any genuine query or ambiguity which arises on the judgment, and any perceived lack of reasons or other perceived deficiency in the judge's reasoning process.

17. Second, and whether or not the advocates have raised the point with the judge, where permission is sought from the trial judge to appeal on the ground of lack of reasons, the judge should consider whether his judgment is defective for lack of reasons and, if he concludes that it is, he should set out to remedy the defect by the provision of additional reasons."
 56. *In Re I, King LJ (with whom the other members of the court agreed), considered the use of this process in detail between paragraphs 25 and 41 of her judgment. At paragraph 36, she drew attention to the perception of this Court that*

"requests for extensive clarification, going well beyond the perimeters identified in the authorities, have become commonplace in both children and financial remedy cases in the Family Court. It has become, as we understand it, almost routine for a draft judgment to be followed up with

extensive requests for 'clarification' which in many cases can be regarded as nothing other than an attempt to reargue the case or, as here, water down the judge's judgment."

At paragraph 38, she observed:

"The family court is overwhelmed with care cases. Judges at all levels often move seamlessly from one trial to the next without judgment writing time between them. Routine requests for clarification running to a number of pages are not only ordinarily inappropriate, but hugely burdensome on the judges who have, weeks later, to revisit the evidence and their judgment when their thoughts and concerns have long since moved onto other cases. This is not conducive to the interests of justice."

57. In the three years since the judgment in Re I was handed down, there has been little if any discernible restraint in the practice of seeking clarification of judgments. Meanwhile the pressures on the family justice system have grown ever greater and King LJ's observations about the burdens imposed on judges having to deal with such requests are of even greater relevance than they were in 2019.

58. In the present case, counsel submitted carefully crafted and detailed "points of clarification raised on behalf of the intervenor". It is neither necessary nor appropriate to set them out in full in this judgment. I make it clear that counsel was manifestly not seeking to reargue the case nor water down the judgment. But in my view the points of clarification raised went beyond what is intended by the authorities and the recorder was not obliged to answer them. The recorder's refusal to respond to any of the points of clarification was not a ground of appeal raised on behalf of the intervenor. In my view, had it been raised, it would not have led to a successful appeal.

59. When giving judgment in a complex children's case, no judge will deal with every point of evidence or every argument advanced on behalf of every party. The purpose of permitting requests for clarification to be submitted is not to require the judge to cover every point but rather, as the Practice Note emphasised, "to raise with the judge and draw to his attention any material omission in the judgment, any genuine query or ambiguity which arises on the judgment, and any perceived lack of reasons or other perceived deficiency in the judge's reasoning process." It is therefore rarely if ever appropriate for counsel to enquire as to the weight which the judge has given to a particular piece of evidence. If, as frequently happens, a judge draws together various strands of the evidence in giving reasons, it is neither necessary nor appropriate for counsel to separate out each strand and enquire what weight the judge has or has not attached to each piece, unless it can be said that in giving his reasons in a general way the judge has failed to address material parts of the evidence, or has created an ambiguity, or failed to provide sufficient reasons for his decision.

4. With those paragraphs in mind, I take each of the requests in turn.

i) *Can the Court please clarify the consideration it gave to the risks posed not just to the child, but also to the mother of a return to the jurisdiction*

of England and Wales, including confirming risk of any complaint to the police.

5. I believe the judgment sets out the consideration given to the question of risk. I am unclear to what the 'risk of any complaint to the police' refers.

(ii) Can the court please confirm the weight afforded to the delays which may be incurred in reviewing whether direct contact should be started, delays in securing housing for mother and child alongside the courts having time to hear and full consider the extant applications (ie relocation and child arrangement orders) within the framework of PD12J

6. This request comes across as an attempt to raise a new argument about delay, which was not raised in evidence or submissions.

(iii) Can the court confirm the consideration the court had to managing the mother's return "soft landing' and 'protective measures".

7. The judgment did consider the question of a 'soft landing' in noting the father's offer to pay for three months' rental and through an appraisal of the mother's circumstances. The question of 'protective measures' is closely linked to the assessment of risk. It was noted that the father offered undertakings but that with no protective measures in place, there had been no incidents giving rise to a concern that the father might seek to approach the mother's home, place of work, Sophie's nursery or otherwise disrupt or destabilise them. I do not believe the judgment requires further clarification on either point.

(iv) Can the court please confirm the approach taken to assessment of the mother when the full range of findings of domestic abuse were not considered and the approach to the mother and her evidence could not have been within the framework of PD12J (it being understood that the mother was cross examined about some allegations but not all)

8. The case management decision to deal with the question of return before having a full fact-finding hearing was not appealed. The Court weighed in the balance the time that a full fact-find would take, the delay that would be caused, against the need to resolve the father's application for summary return expeditiously and fairly. The Court did have schedules and detailed witness statements to enable, in line with the framework of PD12J and guidance from case law, consideration of the nature of the allegations, and their relevance to the issues.

7. The next set of questions are not clarifications, but set out an agenda of matters to be considered by the parties in response to the judgment, with focus on the practical implications of the order for return. That the mother has such a large number of questions is indicative of the fact that before the substantive hearing she had made no practical proposals at all about her relocation. It is not for me now to respond to all the matters raised; they are new points that were not put before the Court and cannot be categorised as requests for clarification. The parties will need to discuss these issues and if not resolved then can be worked through at a hearing.
9. The final question posed asks if there is going to be another hearing or the matter listed for final hearing.
10. When I sent out the draft judgment, I asked the parties to let me know any typographical errors and clarifications, whether or not they had agreed an order, and if not, or for any other reason, whether a hearing was required. I have not had an explicit response to the last two questions, but it is evident from the questions put that a hearing will be required in order to consider the timetable for the mother's and Sophie's return to the jurisdiction, any consequential orders, and to consider directions to enable the substantive issues in the proceedings to be resolved.

HHJ Joanna Vincent
Family Court, Oxford
20 June 2024