

**IN THE FAMILY COURT SITTING AT READING**

Neutral Citation Number: [2024] EWFC 381 (B)

Date: 20 December 2024

**Before: HHJ Vincent**

-----

**Between:**

A father

Applicant

and

A mother

Respondent

-----  
-----

**Jenny Wilson** (instructed by **Stowe Family Law**) for the applicant father  
**Anita Guha KC** (instructed by the **International Family Law Group LLP**) for the respondent  
mother

Hearing dates: 26, 27, and 28 November 2024

-----

**Approved Judgment**

This draft judgment was handed down remotely at 10.00 a.m. on 2 December 2024 by circulation to the parties or their representatives by e-mail. The approved judgment was handed down in the parties' absence at 10.00 a.m. on 20 December 2024.

.....  
*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.*

## Introduction

*[The children's names have been changed.]*

1. I am concerned with the welfare of two children named [Ben] and [Lara].
2. The applicant in this case is the children's father, *[name redacted]*. The respondent is the children's mother, *[name redacted]*. They met and started their relationship at university in 2008. [Ben] was born in 2011. When he was just under two years old, the parties separated, but later reunited. They were married in May 2015. [Lara] was born in January 2016.
3. The parties separated again in July 2017, and divorced in April 2018.
4. The parties agreed that the children would live with their mother and see their father on alternate weekends and for one day during the week during term times. The children were to spend half the school holidays with each parent.
5. [In] July 2019, the mother married *[the step-father]*. He had been living together with her and the children since the previous September. [the step-father] is an Australian citizen.
6. In around 2020, contact arrangements became increasingly irregular, and [Ben] was sometimes reluctant to speak to his father on the phone.
7. The mother, children and [the step-father] travelled to Australia over Christmas and New Year of 2023/2024 to spend time with [the step-father]'s family. While there, they started to talk about the idea of moving permanently to Australia. Over the next six or seven weeks, in both Australia and after their return to England, they had a number of conversations with the father about this. The father says he was open to exploring the possibility of the children and their mother relocating, on the condition that he too could find work, get a visa, and create a new life for himself in Australia. However, he says he never gave his formal consent to the move. He says that when it became apparent that it would not be possible for him to achieve this, he made it clear that he did not consent to relocation to Australia. He says he informed the mother of this in a conversation on 1 February 2024.
8. The mother says the father was wholeheartedly engaged in the discussions around moving to Australia, and was supportive of it from the outset. She says that in reliance on the father's agreement to the move, both she and [the step-father] resigned from their jobs, found school places for the children in Sydney, a rental property in Australia, and tenants for their house in England. The children were involved from the start, and were excited about the move. The

mother says there was no conversation with the father refusing consent on 1 February 2024, but he did write a letter on 12 February, in which he said that things were moving too fast, and he anticipated it would take him up to twelve months to obtain his skilled migrant visa. He did not object to the move taking place, but he wanted more time.

9. Contact between the children and their father stopped around this time. The children's understanding is that their father agreed to them moving to Australia and then changed his mind.
10. On 12 February 2024 the father contacted the police reporting his concern that the mother would abduct the children to Australia without his consent.
11. On 14 March 2024 the father submitted an application to the Family Court for a prohibited steps order to prevent the mother from taking the children out of the jurisdiction, and specifically to prevent their permanent relocation to Australia. At the same time, he applied for a child arrangements order, alleging that the mother had been restricting the time he spent with the children.
12. On 19 March 2024 the mother cross-applied for permission to relocate to Australia. On 4 April 2024 she applied for an interim order, because by that time [the step-father] had accepted a new job in Australia, and moved there. The application was refused. The Court directed an independent social worker to prepare a section 7 report, making recommendations to the Court.
13. Following a hearing in May 2024, in which an order was made providing that the children were to spend time with their father, the children had some days out with their father in July and August, around once a fortnight. A final hearing listed on 28 August 2024 was adjourned, because the time estimate was insufficient. Following that hearing, the father started speaking to the children every Tuesday and Thursday evening. The children continued to spend time with their father at weekends. They had their first overnight stay with him this year on the weekend before the final hearing, where they stayed in a hotel with him.
14. The final hearing took place over three days commencing 26 November 2024. I heard evidence from Mr William Walker, independent social worker and author of the section 7 report, and from the mother and the father. Having heard submissions from Ms Guha KC on behalf of the mother, and Ms Wilson on behalf of the father, I reserved this judgment.

### **Parties' positions**

15. In short, the mother seeks permission to settle permanently out of the jurisdiction. The father opposes her application, and seeks a child arrangements

order for the children to spend time with him on alternate weekends, once during the week in term-time and for half the school holidays.

## **The law**

16. The children's welfare is the court's paramount consideration. The court's welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.1(3) Children Act 1989.
17. Section 1(2) provides that any delay in determining a question with respect to the upbringing of a child is likely to prejudice the welfare of that child.
18. Section 1(2A) provides a presumption in favour of both parents being involved in a child's life unless that is proved to be contrary to the child's welfare. That involvement need not be equal and may be direct or indirect (s.1(2B)).
19. In *Re C (A Child)* [2019] EWHC 131 (Fam) Williams J provided a useful summary of the approach to be taken in considering an application for international relocation, at paragraph 15:

*15. The most recent and authoritative appellate decision on the approach to permanent overseas relocation cases is Re F (A Child) (International Relocation Case) [2015] EWCA Civ 882 [2017] 1 FLR 979. The material paragraphs of the judgment are 3, 4, 30-35 (Ryder LJ) and 45-52 (McFarlane LJ). Re F together with the earlier authorities of Payne, Re F, K-v-K and Re C (Internal Relocation) makes clear that that whether the applications are configured under s.8 or s.13 Children Act 1989 the following framework applies.*

*(a) The only authentic principle is the paramount welfare of the child*

*(b) The implementation of section 1(2A) Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent*

*(c) The welfare checklist is relevant whether the case is brought under s.8 or s.13 Children Act 1989*

*(d) The effect of previous guidance in cases such as Payne' may be misleading unless viewed in its proper context which is no more than that it may assist the judge to identify potentially relevant issues.*

*(e) In assessing paramount welfare in international relocation cases the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent. In complex international relocation cases this may need to be of some sophistication and complexity.*

*(f) In addition to Article 8 rights – indeed probably as a component of the Art 8 ECHR rights and s.1(2A) one must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis (unless that is contrary to her interests) in accordance with Article 9 of the United Nations Convention on the Rights of the Child ("UNCRC").*

*(g) Furthermore, the court must also take into account the Article 8 rights of the parents. In the usual case the child's Art 8 right will take priority over the parents but that should not cause the court to overlook the Art 8 rights of others affected and the court should balance the competing Article 8 rights.*

*(h) The effect of an international relocation is such that the Article 8 rights of a child are likely to be infringed and the court must consider the issue of proportionality of the interference. There remains some degree of uncertainty as to how the proportionality evaluation is to be applied in relocation cases. In Re F it was said one should be undertaken, In Re Y [2015] 1 FLR 1350 it was said in private law cases it doesn't need to be, The Court of Appeal in Re C (Internal Relocation) expressed doubts about how it was to be undertaken. I consider that in most cases in practice the proportionality issue will be subsumed within the overall holistic evaluation in particular when considering effect of change and risk of harm. In reality in the judicial consideration of the welfare checklist it simply is likely to mean the judge will be that much more alert to the importance and thus weight to be afforded to the child's right to maintain contact with the left behind parent and their rights to a stable and secure family life with their primary carer, if there is one.*

## **The evidence**

### **The mother**

20. The mother was an impressive witness. Her oral evidence was consistent with what she said in her written statements, and with Mr Walker's accounts of the conversations she had. She was reliable in respect of relevant dates and key conversations. She described the underlying context where relevant, which convinced me that she was accurately positioning a particular event in the overall timeline, and that her account of the event itself was likely to be reliable.
  
21. For example, the father had alleged that in 2022 the mother had arranged for [the step-father] to take the children to Australia, and that he had only been informed after the event. Initially he described this as an abduction. The mother explained that at the time she, her husband and the children had been in Singapore visiting her father who was very ill. He had been discharged from hospital back to his home. It would not have been a good idea for the children to stay in Singapore while their grandfather was recuperating and their mother

nursing him. They therefore cancelled their planned holiday to the Maldives and arranged for the children to travel to Australia with their stepfather. This was a last-minute plan, but understandable in all the circumstances. The father was told about the change of plan as it unfolded. Having been reminded of all this, and that he had cheerily responded to a text message from [the step-father] telling him they had landed safely in Sydney, the father accepted that the account he had first given to the Court was not correct.

22. The mother's father returned to England later that year, and died in November. Since 2018 she had travelled on four separate occasions to visit him and care for him, leaving her husband and children at home. Having gone through the experience of caring for her father in his last years, she and her husband had a number of conversations about his parents, who live in Australia. They reflected on the impact of living so far away from one another, and the difficulties that might arise in particular if one or other of his parents should become ill, as her father had done. The mother told me how a number of [the step-father]'s family members, including siblings and his parents, had come over to England in 2019 for their wedding, and stayed for some weeks. She told me that she has felt a strong sense of love and belonging to this new family, and that from the moment she first met [the step-father]'s mother, she felt she was someone who could be a 'new mum' to her, her own mother no longer being alive.
23. The mother enjoys a loving, stable and secure relationship with her husband. She acknowledges that his family, his work, his longing to return to Australia was the initial motivation behind their shared desire to move to Australia, and she wishes to support him in that. However, it was clear from her evidence that her children come first, middle, and last for her. They are her priority. She has explored in detail all aspects of the life they might lead if they were to move to Australia, looking at schools, houses, work, activities for the children, and the characteristics of different boroughs. She said to me that unless she was absolutely sure that she could provide her children with the same or better quality of life than they have in England, she would not contemplate the move. She is keenly aware of the consequences for the children's father, and for the children's relationship with him. She has made a number of proposals to try and mitigate the potential harm.
24. Those proposals include forgoing child maintenance payments to enable the father to save for the cost of visits to Australia or other locations for holidays in another midway point, which she is committed to bringing the children to. She has offered to maintain a fund of £15,000 to enable the father to take up an earlier offer of specialist immigration and relocation advice if he decides again to explore moving to Australia, alternatively to be used for flights and accommodation for visits. She intends to return with the children to England on a regular basis and says that she will make their contact with him and the wider

paternal family her priority. She will facilitate and encourage the children to stay in contact with their father through video calls, emails or messaging.

25. Having had regard to the way the mother has facilitated and supported contact between the children and the father over the years, I am confident that she would continue to do so in the event that the children were living in Australia. It cannot be ignored that this would of course put the relationship on a wholly different footing than if the children remained in this country and continued to live only forty-five minutes' drive away from him.

### **The father**

26. There is no doubt of the father's love for his children. It was good to see the children's mother smiling warmly in recognition of the descriptions he gave of [Ben] and [Lara], which chimed strongly with the picture she had painted for me in her evidence. The father described [Ben] as a driven and caring young man, with a sense of humour, and who above all was an incredibly loving big brother to [Lara]. The father said that [Lara] was a bundle of joy, a child with a lot of energy who made everything a challenge to overcome. If you took her swimming, she would test herself to see how long she could hold her breath, if she had the impulse to run, she would ask to be timed, challenging herself to run as fast as she could. She adores her brother and is very attuned to his feelings, as is he to hers.
27. The father described how recently he has been watching [Lara] play football at weekends. He recounted seeing her score the winning penalty in a match, and run in celebration. He said watching her play football had been a highlight of his life.
28. The stakes could not be higher for the father in this application. He faces the prospect of his children moving to the other side of the world. In the circumstances, it is not surprising that he was overcome with emotion a number of times during the hearing. He found the process of cross-examination challenging, and said he felt as though he was on trial. I do take note that the strain of the proceedings may have had some adverse impact on his ability to give a clear account of himself, but even so, his evidence was significantly lacking in a number of ways.
29. He often gave answers which were lengthy, but missed the central focus of the question. Many of the significant assertions made in his witness statements were not supported by any contemporaneous evidence, and a number of times letters, emails or screenshots of messages directly contradicted what he had said. The father was not able to give a coherent narrative in his oral evidence that matched what he has said in the applications or witness statements filed in these

proceedings. There were often significant gaps in the account he gave, which he was not able to fill, or explain.

30. The father challenged the mother's version of events in a number of respects, but when taken through the details, often ended up accepting the essential factual elements of the mother's account. Notwithstanding this, he maintained his original position. For example, he has asserted that the mother had obstructed contact, and sought to alienate the children from him. However, when taken carefully through the evidence, he had to accept both that there was no evidence to suggest the mother had ever sought to block his contact with the children. To the contrary, the evidence shows that it was she who had repeatedly taken the initiative, found ways to encourage, reassure and sometimes cajole the children to spend time with their father, had been the one to suggest to the father that the children might spend time with him, booked time at bowling alleys, or stayed around at the beginning of contact to ease them all into it. Notwithstanding the father accepted these individual pieces of evidence, he maintained his broad assertion that she was the one to blame for the deterioration in his relationship with the children.
31. I prefer the mother's evidence to the father's that [Ben] spoke to his father on the phone on 18 December 2023 asking him if he might think about allowing them to move to Australia, and the father then spoke to the mother. I find that there were then a number of lengthy conversations, both in Australia and after the mother, the children and [the step-father] returned to England, in which they formulated a plan for them all to relocate to Australia, for the mother and [the step-father] to support the father in obtaining work and a visa, so that he could relocate. I find that the father was enthusiastically supportive of the plan in the first instance. I accept the mother's evidence that conversations took place largely face to face, but the text messages between the adults provide context and are consistent with the mother's version of events. The father was fully aware, and supported the steps the mother and [the step-father] were taking; going for job interviews, hiring a skip to clear out their home ready for tenants to move in, booking appointments for visas, and exploring schools, houses and the job market in Australia.
32. The father's evidence about the steps he himself took to apply for jobs and a visa was inconsistent and confused. In his oral evidence he referred to one email sent to the Sydney Opera House. In his oral evidence he said he had applied for 'one dozen or two dozen' jobs and heard nothing. I am not sure much turns on this. If he had made such efforts I would expect him to have exhibited documentary evidence to his witness statement. To the extent that he now asserts that it would be impossible for him to find work in Australia to suit his skills and experience, I do not accept that he has properly explored this.



33. The father saw the children a number of times in January 2024, and they spoke excitedly together about the plans.
34. I reject the father's evidence that he had a conversation with the mother on 1 February 2024 in which he withdrew his consent. But it is clear that the father was beginning to feel that things were going at too fast a pace. On 8 February 2024 the mother sent a message asking if he could come over for a discussion for 1.30 p.m. the next day. The father replied:
- 'Hey what did you want to do tomorrow? I can't sign off on the kids visas until I have certainty that I can move there permanently also. It's just too risky for me to gamble with my kids and they mean too much to me to do that. I think this needs to slow down. I'm not against the move but I'm being left behind the way things are headed.'*
35. On 12 February 2024 he wrote a letter affirming that message. He said that he was unwilling to agree to the children leaving for Australia as soon as March 2024. He pointed out this was in the middle of the Australian school year. He confirms in the letter that he is willing to try to emigrate, to ensure he could continue to live close by [Ben] and [Lara], and that he was actively applying for sponsored work and to apply for a skilled migrant visa. He proposes the timeframe for doing this might be up to twelve months. He asks that they *'work together to establish a more realistic timeframe that works for us all.'*
36. On the same day the father called the police to report concerns about abduction.
37. However, the mother then found it difficult to contact the father and his position thereafter became difficult to discover. I find that the father's outright opposition to the plan as set out in his application to the Court in March 2024 would have come as a shock to the mother and the children.
38. The father accepts that he has over the years had struggles with the illness of addiction, in relation to gambling, alcohol and drug misuse. He repeated a number of times that the behaviour, whether gambling or alcohol misuse was not the problem, but was a solution to another problem, that was not working. It is to his credit that he is now abstinent from alcohol and that he goes to AA five times a week. He is a sponsor to others.
39. He has evidently gained some insight into his addictive behaviours and made progress, which must be acknowledged. However, although he was able to say that he took responsibility for the difficulties that had arisen over the years as a result of his addictions, it was hard to discern in what way he perceived he did bear any responsibility. It seems that when he said that his addictions were a poor solution to another problem, that what he means is that he identifies that

‘other problem’ to be the root cause of difficulty. In short, he continues to blame the mother for ‘extra-marital affairs’.

40. He repeated a number of times that his addictive behaviours were a response to him discovering after the marriage that the mother had an affair with a doctor (I do not know whether this is accepted or not, but it is not relevant to this case. I note the parties separated after [Ben] was born, but before they reunited and got married.) He accepted that in January 2024, he had asked to meet with the mother, to ‘make amends’ to her, as part of the Alcoholics Anonymous twelve-step programme. In Court, he was not able to say clearly what it was he had wished to make amends to her for. He said it was for not being the person the mother wanted him to be.
41. The mother had a clearer memory of this. Her account was consistent with what she has said in her witness statement. She recalls that on 13 January 2024 they met for the father to do his ‘making amends’ step. She says that the father told her he was very keen for the Australia plan to move quickly. She says he confided in her that he was in debt, and that he had used company funds to pay a loan shark. He was due a meeting with his employers the following week. She says she expressed concern that if he was ultimately convicted of a criminal offence related to this that this would likely affect his ability to get a visa, and whether this might mean the children couldn’t go to Australia. She recalls the father saying that *‘the children were too excited about the move and that he could not do that to them as they would hate him and not speak to him again.’* She recalls that in subsequent days the father asked her if he could borrow money, but then he told her the meeting hadn’t been so bad and he had ‘just’ been fired for gross misconduct.
42. The father denies this. He repeated a number of times that he was the one to resign from his job, and that his employers had offered to write him a reference. However, the letter I have seen from his employer does not in fact contain any offer to write a reference for him. It does not thank him for work done or his contribution to the company. The letter acknowledges and accepts his resignation, deals with pay, reminds him he is required to return all company property and equipment, and wishes him the best for the future.
43. Having regard to all the evidence I have heard and read, I prefer and accept the mother’s version of events. I find that in January 2024, the father was struggling with anxiety which focused on the difficulties he was evidently having at work.
44. With respect to taking responsibility for the difficulties that have arisen over the years in his relationship with the children, the father was not able to show any reflective ability about the part he had played in this.

45. He said after the marriage ended, apart from seeing [Lara] in a nativity play, and going to one sports day for each of them, he had never gone to see any events involving the children at school, and never gone to a parents' evening. He suggested this was because he assumed that he would have to go through the mother, and she just seemed to be the one doing everything. He did not suggest he had ever asked the mother if he could be more involved, or that he had asked and she had refused. He accepted that he had never thought of approaching the school direct. He said covid had caused difficulties, but was not able to give a convincing reason why he had not seen the children around that time.
46. It is a long time since the children have lived in the same household as their father. [Ben] may have some memories of living in the same house as his father, but [Lara] will not; the parents separated when she is eighteen months' old. Although there was initially an arrangement for the children to spend half the holidays with their father, it is not clear to me when the last time was that the children spent any length of time together with him. They have never been on a holiday longer than a few days with him; once to Butlins and once to a hotel in Bournemouth.
47. It is not disputed that since 2020, the father's relationship with the children has sometimes been strained. There have been some difficult incidents. The father accepted that he had been upset with the children on two separate occasions when he saw them for Father's Day. Once when a card that was meant for [the step-father] had accidentally come to him instead of the one for him. He said he had found this hurtful, which may well be the case, but he showed no insight into the impact on the children of him showing him that he was hurt, and being angry with them.
48. There was a dispute on the evidence about what had happened on another Father's Day lunch at a Toby Carvery restaurant. The mother said that [Lara] had wanted to play on a grabbing machine in the arcade, and the father had said no, she had become upset and in the end the father lost his temper and told [Lara] she had ruined Father's Day, and left them alone in the restaurant. The father accepted that there had been difficulties with [Lara] and the grabbing machine, but said he had not left the children alone in the restaurant, he had left just for a few minutes to pay the bill. On another occasion at a Zizzi restaurant, the children told him they were planning a Father's Day celebration with [the step-father] later that day, and again he said his feelings were hurt that they had plans, a card and a present for [the step-father]. Again, while he seemed to accept that he had become angry with the children, he showed no insight into the impact of this upon them. Following this, [Ben] did not then want to speak to his father. The father suggested this was because [Ben] would have been upset that he hurt his father's feelings, and did not relate it to his own inability

to regulate his emotions. He said he had not left the children alone in the restaurant, he had left just for a minute to pay the bill.

49. There is no evidence that the father did anything to try and repair the relationship with either of his children after these incidents. It was the mother who supported them to rebuild the relationship. After the father changed his mind about supporting the relocation to Australia, he asked for the mother and [the step-father] to convey to the children that the decision was one made 'out of love', but he himself has not been able to write or text either child to reassure them or explain himself to them.
50. On 12 February 2024 the father called crisis line for support. He then went away for a time and the mother was not able to contact him. Upon his return he did send a number of messages to the mother asking her if the children were available to talk to him or to spend time with him. It is not evident that he acknowledged anywhere that there would likely be a need for some steps to be taken to address the enormity of what had happened, and to manage the children's feelings of disappointment. He appears to have left it in the mother and [the step-father]'s hands.
51. The children gave further examples to Mr Walker of the father leaving them in a car when he was going to collect money from people's houses, of the father losing his temper with [Lara] at home, and once more recently in an arcade and storming off, leaving them alone. [Ben] described being left alone in a hotel in Bournemouth. The father said he had sometimes had the children in the car when he went to collect or drop off building tools or materials for his work, but this was never in 'sketchy' areas as [Ben] said, that he would always have been in the children's sight, and this would not have been for long.
52. There is no need to make findings in respect of each of these matters. The father broadly accepts that currently, his relationship with the children is in the early stages of repair, following a significant break in them spending time together this year, and a pattern over a number of years of the father's engagement with them falling away and becoming irregular.

### **William Walker**

53. Mr Walker met with each of the parents three times, and with [the step-father]. He had separate meetings with [Ben] and [Lara], and observed them spending time with their father. He also obtained information from the school. His report gives a clear and comprehensive view of the children's lives, their relationships with each of their parents, and their expressed feelings about their father, mother and step-father, and about the plan to move to Australia. Mr Walker met with the children in the summer, at which time they had not seen their father since February. Both children

were preoccupied with the idea of going to Australia, and were missing their step-father a great deal, who by then had moved there to take up his new job. They clearly understood the father to be the reason that they and their mother had been prevented from joining [the step-father]. They spoke of their father in wholly negative terms, did not identify him as an important person in their life, and spoke much more warmly of their mother and step-father.

54. The children were aware that Mr Walker was there to find out their feelings about going to Australia. Given that they have expressed in the strongest terms that they want to move to Australia, it is perhaps not surprising that they may have, consciously or subconsciously, sought to stress the negatives they saw in their father and staying in England, and highlight the positives associated with their mother and step-father and everything to do with Australia, in order to strengthen the case for relocation. Nonetheless, these are highly articulate children, who were able to explain not just their wishes and feelings, but the reasons for them, which were grounded in memories of their own experiences.

55. Mr Walker described the mother as having gone *'above and beyond in facilitating contact between the children and [the father], more than I have seen from other parents.'* There is overwhelming evidence that the mother has persevered with compassion, patience, and determination over many years, to maintain the children's relationship with their father. Although the father has levelled a number of accusations against the mother in documents filed with the Court, that she has obstructed contact, or sought to alienate the children from him, or to abduct them, or that she has used his mental health against him, or otherwise sought to undermine his relationship with his children, I have found no evidence at all to justify any such conclusion. In contrast to his written evidence, the father did at times in his oral evidence seek to impress upon the court that he still cares deeply for the mother, feels emotional to see her upset, that he regards her as a friend and acknowledges she is a wonderful mother to their children. Nonetheless, when asked if he retracted any of the allegations he has made, he declined, saying that he stood by *'his own truth.'*

56. In his oral evidence Mr Walker presented as perhaps more ambivalent in his views than comes across in the written report. To be fair, that is likely because he was taken on behalf of each of the parties to various pieces of evidence that the Court will weigh in the balance, and invited to agree that such matters would be likely to be significant in the overall assessment. He readily agreed that they would be relevant, but none of this caused him to move from the views he gave in the report, which give the most significant weight to the impact upon the children and their father of being separated by living half way across the globe from one another.

57. Mr Walker's recommendation is against a move to Australia. He concluded that the children's relationship with their father was *'good enough'*, which he described as

*'one that is not perfect but has room to improve and be made better.'* He noted that a move to Australia would be *'bound to restrict and diminish and positive changes that have recently happened between the children and [the father].'* He continued, *'as long as a parent can present as safe, reliable, consistent, and attuned to their child's needs, it wouldn't be in any child's best interests for a decision to be made to reduce or restrict that child from having a relationship with their parent, as this can have lifelong consequences.'*

58. Mr Walker weighed a number of factors in the balance, but in reaching his conclusion, has said the disruption to the children's attachment to their father was the most important. He said, *'separation of this nature can disrupt attachment, leading to feelings of insecurity and abandonment. In the long-term, if the relationship between the children and [the father] is not satisfactorily maintained, the children's prolonged separation can lead to psychological and identity issues, impact their learning and academic performance, impact their adult attachments later in life, and they may have difficulty trusting others and maintaining close relationships. There may also be behavioural symptoms from the separation, such as aggression, withdrawal, and difficulty regulating emotions.'*
59. As a general proposition, it is not controversial to suggest that children whose relationship with a safe, reliable, consistent and attuned parent is threatened by separation are at risk of suffering lifelong consequences. However, there is no evidence that these children have so far suffered psychological and identity issues, with all the consequences outlined by Mr Walker, when they have been separated from their father in the past. At the time they met with Mr Walker, the children had been separated from their father for nearly six months, and had experienced two relatively recent periods of prolonged separation before that. There is no evidence that either of them had demonstrated any of the behavioural symptoms described. No aggression, no withdrawal, no difficulty regulating their emotions. There has been no impact on learning or academic attainment, nor the key relationships in their lives. I accept that Mr Walker is looking at the longer-term picture.
60. This was the most significant factor for Mr Walker, but he did weigh in the balance other matters. He took time to explore the children's wishes and feelings with them, but rightly did not consider that the children's expressed wishes and feelings should on their own be determinative of the outcome.
61. Mr Walker said that the children, *'lack the foresight and consequences of most significant decisions, such as how a move to another country might have on them over time.'* The children have some idea about what Australia is like, but they spent only four weeks in total there. There is some risk that they are picturing themselves there on an eternal holiday, without having an idea of what it might be like to adjust to an entirely different life in a new culture, new school system, far away from everything they have known to date. Mr Walker suggests it is *'likely that at some*

*stage, [Ben] and [Lara] will be hit with an overwhelming sense of sadness, confusion and fear about abandoning their father or struggle to understand why their father chose not to relocate with them; either way, blame and guilt will be something that will be weighing on them.'*

62. I accept Mr Walker's professional view that this is a risk for the children. However, if they do not go to Australia, it appears likely that they would similarly experience overwhelming sadness, a sense of responsibility and concern for their mother and step-father, whose disappointment they would be aware of and would share. They would remain confused about why their father chose not to support them. In this scenario too, feelings of blame and guilt would weigh on them.
63. Mr Walker noted [Ben] had said they would be only '*quite sad*' if permission were not given. He said, '*I didn't get a sense that their current life in their community or school was intolerable. The main thing that would make staying intolerable would be if [the step-father] could not return to the UK.*' If the decision is that the mother cannot relocate with the children, the adults in their lives will do all they can to help them come to terms with the decision. They will be very disappointed, but their lives will not be intolerable. This is right. This is not a situation where the children have to relocate. This is one of many factors to take into consideration, but is not determinative.

### **The section 1(3) welfare checklist**

*(a) the ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding);*

64. Mr Walker's report must have been difficult for the father to read. The children's views are clear and unequivocal. They are wholly invested in wanting to live in Australia. I accept their mother's evidence that this is something they have been talking about since they first went to Australia with their stepfather in 2022.
65. Even accepting that [Lara] is likely to be aligned with [Ben], and that both [Ben] and [Lara] will have been influenced by the weeks of excited conversations that took place with their mother, [the step-father] and their father over December 2023 and January 2024 about the opportunities that relocation may offer, they have their own experiences to draw on, which will have informed their opinions. They have travelled to Australia twice, most recently spending three weeks there.
66. They are hurt and angry with their father for changing his mind, and it is him they blame for their separation from [the step-father], which has caused them a great deal of worry and sadness. But they have also formed their views about their father from their own experience of their relationship. [Ben] did describe his father as fun, and there is no dispute that the children have had many lovely times with their father

over the years. The time they have spent together since July has been enjoyable and beneficial for all. However, the children's relationship with their father had ups and downs. He has not always managed to be consistent in the way that he parents them. Their experience, as articulated by [Ben], is that often their father's feelings have come before theirs. They perceive the father's motivation in opposing the application to be that he puts his own wishes for them to stay ahead of their strongly expressed wish to move to Australia.

***(b) their physical, emotional and educational needs;***

67. The children are still of an age where they are dependent upon the adults in their lives to meet all their daily needs, to keep them safe, to look after their health, to support them in their education, and in making friends and having fun.
68. Their relationships with each of their parents and of members of their extended family network need to be nurtured and supported. This will ensure they feel loved, secure, grow up with a good understanding of their identity, and place in the world. Their stepfather is an essential part of their family network, and members of his extended family have over the years become important figures in the children's lives.
69. [Ben] and [Lara]'s relationship with their father and members of the paternal family is fractured at the moment, but they are loved by them, and they have a right and a need for those relationships also to be sustained and nurtured. Their relationships with them will be of a very different quality if they live on opposite sides of the world.

***(c) the likely effect on them of any change in their circumstances;***

70. If the mother is permitted to move to Australia with the children, they will be reunited with her husband and they will embark together on a new life. The move is proposed to happen in January 2025, which would mean both children would transition into the Australian school system at the start of a new school year in February. [Ben] is in year 9 and has not started the GCSE course, so it is a good time to transition for him. [Lara] is in year 4, and could be anticipated to make a change to a new school fairly easily. The children are academically capable, hard-working, and have friends at school. Their mother and stepfather have supported them both with their schoolwork and to pursue a wide range of activities outside school. Both children love swimming. They are sporty outdoorsy children. They are excited about the opportunities they see in Australia and are ready to embrace all that it offers.
71. There are likely to be some bumps in the road here and there, missing friends from home, adjusting to a totally new educational environment and lifestyle, but children all over the world move from one country to another all the time and are



able to adapt to a new culture. There is nothing about [Ben] or [Lara] to suggest they would have any particular struggle with this. To the contrary, they are motivated and invested in the move, have their stepfather and his extended family to guide them through the differences they might encounter in Australian culture, and a devoted mother who is utterly attuned to their needs and well capable of providing the practical and emotional support that they would need.

72. The children would miss their father. It is likely that they may feel guilty that they have left him, when they know that this was not his choice, and they know that he will miss them terribly. They would miss other members of their family on both sides, and friends.
73. There is a risk to the children's long-term emotional stability if their relationship with their father cannot be repaired. However, as to that:
  - (i) I do not accept the potential damage outlined by Mr Walker is an inevitable consequence of the children moving to Australia, in circumstances where they will be brought up within a loving, stable, secure home environment, by their mother and step-father, who are well capable of meeting all their physical, educational and emotional needs. Their mother has a proven track record of supporting them emotionally and in practical ways to sustain their relationship with their father;
  - (ii) There are a number of ways that the potential damage to the children's relationship with their father can be mitigated. The distance and time difference presents a challenge, but it is easier now than it ever was to maintain links through video calls, making videos to exchange, and thereby sharing experiences virtually, or by writing emails or text messages regularly. Further, there are opportunities for direct contact. The mother is committed to bringing the children back to England regularly and to meet with the father for 'mid-way' holidays. The father is employed, and has the freedom to travel when he has time off. The mother is offering financial support to supplement his savings so that he could travel to Australia to spend time with the children.
74. If the mother is not permitted to relocate with the children, they will remain living in their current home and going to the schools they go to now. Their step-father will likely resign from his new job, and return to the UK as soon as he can secure work here. He estimates this would take about six months. The children are likely to feel huge resentment and disappointment towards their father. As has happened in the past, it is likely that [Ben] would be resistant to seeing his father at all, and that [Lara] would follow his lead. As has happened in the past, it is likely that their father would struggle to address their feelings

with them, and would be heavily reliant on the mother to help repair the relationship.

75. [Ben] said to Mr Walker that he would feel *'quite annoyed because it would all be for nothing. [The step-father] would have gone out there for nothing. Dad was open minded about a move and said It was a good idea.'* When asked how much time he would spend with his father if they stayed in the UK, [Ben] said, *'Not that often, I would be upset that we couldn't go, so I wouldn't want to see him that much. Maybe once a month.'* He said during his conversation with Mr Walker that he was confused by his father, for saying they would be fine to go, *'but now he is like no, he never said it; it is so confusing'*. [Ben] said the thing that was upsetting him at the moment was [the step-father] being in Australia and not with them, and so was the indecision about moving or not. He said *'I've told people that I was going to move, and now I haven't, so everyone asks why I didn't move or when I am moving.'* Mr Walker suggested this amounted only to a bit of social awkwardness, but it seems to me that being perpetually asked about the one thing that has preoccupied you and your family for a whole year and has been the source of great confusion and upset, and having no idea what is going to happen, is likely to be the source of significant stress and upset to a thirteen year old boy. [Lara] also spoke of her distress at being separated from [the step-father]. Her mother described how [Lara] has been extremely clingy towards her since [the step-father] left in March, has struggled with sleeping on her own, and can't even manage being in a different part of the house from her mother, so follows her round everywhere at home.
76. If the children remain in the UK, it is likely that these feelings will continue, certainly while [the step-father] remains away from them, but also thereafter, because they will feel confused about why there was all this drama, uncertainty and difficulty, when in the end they did not move to Australia.
77. The children are likely to feel worried for their mother and [the step-father], knowing that they would have chosen to move to Australia if that were possible, and having a far clearer knowledge now of the life that [the step-father] and they would be missing, having had a window into his life in Australia through the contact they have had with him while he has been away. The mother spoke with great emotion when she said that she feared for the impact of this on her relationship with her husband. She knew that he would come back to the UK to be with her and the children if that was what was decided. However, she would bear a great guilt that she would have been the reason that he came back.
78. Having said that, the mother fairly gave evidence that she and [the step-father] had discussions about this from the early stages of their relationship. She made clear to him that her children were British, and their father lived here, and that a move to Australia was not something she could contemplate. She says it was

only when the father expressed interest and enthusiasm about the idea in December 2023 that it became a dream with any substance. But it remains the case that [the step-father] signed up to being the step-father of British children, and while the disruption of the past year would take some time to recover from, they would ultimately be able to rediscover themselves as a family based in this jurisdiction, as they envisaged at the start of their relationship.

79. Nonetheless, the father's relationship with the children is still very fragile. I consider him to be somewhat naïve in thinking that if permission was refused, life would return to how it was before.

80. If the children stay, Mr Walker says the father must make *'a more concerted effort to be present in [Ben] and [Lara]'s lives.* Mr Walker says the father has a small window of opportunity to close the gap in his relationship with the children as they get older. He says the father must listen to [Ben] and [Lara] when they say he needs to be more involved and that he broke everyone's heart by not allowing them to move. Mr Walker says the father, *'must begin by addressing their hurt, pain and confusion through his actions around his ambivalence for them to move to Australia, which has ultimately caused them to be separated from someone they love and care about dearly, [the step-father].'*

81. I regret to say that the father has not presented to the Court as having much insight into the steps that he would need to take in order to improve that relationship and give it more stability. By taking the stance that he never agreed to the move in the first place, and saying that he made clear his outright opposition to it on 1 February, he places responsibility for the children's current difficulties wholly with the mother and [the step-father], for pursuing the move in the face of his clear opposition. He does not accept responsibility for his own actions. He has not so far been able to address this with the children or their mother, as Mr Walker says he must do if he is to have any hope of mending their relationship.

82. The mother has more insight and ability, but it would require an enormous dose of goodwill to continue to work as hard as she has to foster the children's relationship with their father, in all the circumstances. History suggests that she does have the generosity and the resource to do this, and that she does believe it is in the children's interest for them to have a good relationship with their father. However, on any view, the damage caused by the events of the last year will take time to move on from, and it cannot be guaranteed that if the children remain in the UK, their relationship with their father can be repaired as easily as he hopes it will be.

***(d) their age, sex, background and any characteristics of theirs which the court considers relevant;***

83. If they are going to relocate to another country, the children are at a good stage of life to do it. [Ben] is in year 9 and has not started his GCSE course. [Lara] is rising nine years old. Both children are very bright and enjoy school. [Ben] has a diagnosis of ADHD but there is no reason to suppose this will not be managed in Australia.
84. [Lara] is described by her parents as a 'tomboy'. From the age of four she asked to wear boys' clothes. She likes football, wears her hair very short, and she does not like pink. She is very clear that she is a girl, is confident in her identity and her likes and dislikes. Neither she, nor either of her parents perceive any difficulty in any of this. She is not confused, nor does she wish to be called by a boy's name, nor does she express any wish to be a boy, now or when she is older. None of this is relevant to the question I have to determine about which country she spends the rest of her childhood in.

***(e) any harm which they have suffered or are at risk of suffering;***

85. The children are at risk of suffering emotional harm as a consequence of the dispute between their parents.
86. If they move to Australia, there is a risk of emotional harm if their relationship with their father and wider paternal family cannot be sustained. Mr Walker considers they will likely feel an overwhelming sense of sadness, and the feelings of confusion, blame and guilt described above. The risk can be mitigated if the father can maintain regular contact with them, through video calls and other indirect means, through their visits back to the UK and him taking up the offer of travelling overseas to see them.
87. There is also a risk of emotional harm to the children if they remain in the UK. In the first instance they will be extremely disappointed. They will worry about their mother and their step-father having to continue to live in the UK when they know that they wanted to live in Australia. They may feel an increasing sense of guilt and responsibility for this themselves, feeling that through their connection to their father, they are the reason their mother and [the step-father] had to stay.
88. There is a likelihood that the children's relationship with their father will deteriorate further, because they will hold him responsible for not giving permission for the move, and for causing them to have been separated from [the step-father] for over a year, in [Ben]'s words, 'all for nothing'. A lot would be required of the father to repair and improve the relationship, but at the moment,

he has not shown a great deal of insight or understanding as to what would be required of him. In the past, he has not always been able to take the initiative in this regard, but has been dependent on the mother.

89. The mother's focus will continue to be on her children's physical, educational and emotional well-being day to day. On top of this, she would be managing theirs and her overwhelming disappointment at the decision not to go to Australia. She would be concerned about her husband, his move back to the UK, the potential adverse financial consequences for the family, and the emotional toll of all this on him, his family and their relationship. In the absence of the concerted effort that Mr Walker says is needed from the father, it would be understandable if the level of work that would inevitably be required to bring the children towards rebuilding their relationship with their father presented some challenge to her.

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

90. Both the mother and the father are well capable of taking care of the children when they are with them in all practical ways, in meeting all their needs, and in supporting them in their education, interests and activities.

91. The father loves his children beyond measure and they are everything to him. However, due no doubt to the struggles that he has had in his life, the father has historically been less able to be a consistent presence in the children's lives, and has not always been able to acknowledge or prioritise their needs.

92. The mother also loves her children fiercely and is wholly devoted to them and to their welfare. Together with her husband, who has lived with the children for many years now, she is able to meet all their physical, educational and emotional needs consistently, and to a very high standard.

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

93. This is a difficult case. I have had careful regard to all the circumstances, and to each of the factors on the welfare checklist. There are strong arguments in both directions, but ultimately in the particular circumstances of this case, I have determined that the mother should be permitted to relocate to Australia with the children.

94. My conclusion differs from Mr Walker's recommendation. With respect to his professional opinion, I have departed from Mr Walker's recommendation for the following reasons.

- (i) Mr Walker did conduct a thorough investigation, and had the advantage of meeting with the children. However, I had the benefit of hearing each of the parent's evidence, to see their evidence to be thoroughly tested by the process of cross-examination, and put in the context of the whole canvass of the evidence;
- (ii) Mr Walker placed significant weight on a general proposition that, *'as long as a parent can present as safe, reliable, consistent, and attuned to their child's needs, it wouldn't be in any child's best interests for a decision to be made to reduce or restrict that child from having a relationship with their parent, as this can have lifelong consequences.'*
- (iii) I disagree with this statement to the extent that it cannot be the case that where a parent is found to be safe, reliable, consistent, and attuned to their child's needs, it can never be in a child's best interests to move to live in another country from them. The Court has to weigh a number of competing factors. International relocation cases are particularly hard because sometimes, having had all regard to the circumstances, the Court will give permission for relocation abroad even where the child has a very good and long-established relationship with the parent they are to leave behind. The court must weigh all relevant factors in the balance. I find that Mr Walker has placed too much weight on this proposition;
- (iv) Further, while I acknowledge the love the father has for his children, and the strengths that exist in their relationship, it cannot be ignored that he has not always been a consistent and reliable parent to his children. They have not always felt safe, and they have often felt that his needs have come before theirs;
- (v) In the particular circumstances of this case, the fact of the children remaining in the same country as their father is no guarantee that their relationship will progress positively from its current fragile state, and the father's lack of insight into this is an indication that repair of the relationship cannot be guaranteed;
- (vi) I am not persuaded that the children will be at risk of suffering the dire consequences to their health, education and long-term emotional welfare that Mr Walker envisages if they were to emigrate to Australia, as a consequence of being separated from their father. In my judgement, Mr

Walker has not placed sufficient weight on the ability of the mother and [the step-father] to meet the children's physical, educational and emotional needs if they are living in Australia, to include supporting them in maintaining their relationship with their father.

95. I have considered and weighed in the balance the impact on the children, but also upon the mother, father, and on [the step-father] if permission were given, or if it were refused.
96. There is no question that if the children move to Australia the father will be devastated. The loss will be intensely felt, deeply painful, and very hard to recover from. He will miss them, and they will miss him. They will grow up as part of an extended family unit that he does not know, and they will miss out on the existing relationships they have with relatives on both paternal and maternal sides of the family in England. The father will need a great deal of support from family, friends and professionals to help him come to terms with this huge loss, and to help him maintain his relationship with them when they are so far away.
97. On the other hand, I must also consider the impact upon the mother and [the step-father] of refusal. In the long term they will not be separated from one another or from the children, but they will nonetheless feel a sense of devastation that the life they planned for themselves and for the children cannot now materialise. They will feel that the pain, confusion, and loss caused by [the step-father] living in Australia since March of this year will have been for nothing, and it will take them time to adjust and refocus. The mother's mental health has suffered significantly in the past year, being required to stay in the UK is likely to take a further toll upon her.
98. I find that Mr Walker placed too much weight on matters from the father's perspective should permission be granted, and not enough on the impact upon the mother, her husband and the children if permission were not granted.
99. The decision has been a finely balanced one, and I do not make it lightly. I am sensible of the pain and distress that this decision will cause to the father, and to members of his extended family. I also bear in mind the potential for harm to the children through the impact it is likely to have on their relationship with him. Nobody would wish to take steps that would diminish or restrict the children's relationships with their father or with their grandparents. However, I must also assess the situation based on the evidence that I have. Regrettably, the children's relationship with their father and with their paternal grandparents is not as secure and stable as it could be. In the short term, the children will not experience a great feeling of loss, because they have not been used to the father or his parents as a consistent presence in their lives.

100. In the short term the children will be excited to be reunited with their stepfather, who has represented that for them, and to build relationships with his extended family in Australia. They will feel pleased and relieved that their voices have been heard and their wishes acceded to.
101. I recognise that in the mid to longer term, they will have been deprived of the opportunity of easily being able to build on the steps that have been taken in the past few months to re-establish their relationship, which is much more easily done if they live as now just forty-five minutes away from one another. Further, I am sensible of Mr Walker's caution about the emotional difficulties the children may experience in the longer term as a result of being separated from their father, and wider paternal family, and that adjusting to Australia may not be quite as easy as they think it will be right now.
102. However, I have weighed all this carefully in the balance. I find that the mother and [the step-father] will be able to meet all of the children's physical, emotional and educational needs, to support the children through the transition to life in a new country, and to maintain and support their relationships with their father and paternal family. I find there is a reasonable prospect of the damage to the children's relationship with their father being mitigated through regular indirect contact, holidays, and visits with their mother back to the UK, or the father travelling to Australia or other destinations to spend time with them.
103. I do not regard it as by any means guaranteed that the children's relationship with their father would be easily repaired were they to stay in the UK.
104. For all these reasons, I have determined that permission should be granted to the mother to relocate to Australia with the children in January 2025, in time for them to start the new school year in February.
105. I appreciate that this judgment will have been very difficult for the father to read, and he will feel devastated by the decision. In setting out in detail the facts and reasons for my conclusion it is not my intention to cause pain. I hope he will be able to find a way to support the children as they make this huge move, to show them that he does not hold them or their mother responsible for his feelings, and to reassure them that wherever they are living in the world, he will love them, he will be there for them, and he will always be in their lives.
106. These proceedings have been difficult for all involved. It is of note that before this issue of the move to Australia arose, the parents had generally had a good relationship, albeit marked by some frustrations and challenges along the way. The father retains a great deal of respect for the mother as a friend, and as



the mother of his children, and had established a good relationship with [the step-father]. The parents' shared love, joy and pride in their children shone through. I sincerely hope that the children can spend a lot of time with their father and extended paternal family before they leave for Australia, that he will be able to spend precious time with them over the coming years, and that the parents will be able to build on the positive experiences of the past, and find a new way to share in the responsibilities and rewards of raising their two kind, bright, fun, active and loving children.

107. I wish all involved the best for the future.

HHJ Joanna Vincent  
Family Court, Reading  
*Draft judgment sent: 2 December 2024*  
*Approved judgment handed down: 20 December 2024*