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[2023] EWHC 3490 (Fam)

Case No: FD23P00144

IN THE ROYAL COURTS OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice,
Strand,
London,
WC2A 2LL

Date: 5 July 2023

Before:

MR DAVID REES KC

Between:

HH

Applicant

- and -

UH

Respondent

MS J RENTON for the Applicant
MR M GRATION KC for the Respondent

Hearing dates: 3-5 July 2023

APPROVED JUDGMENT

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MR REES KC:

1. This is an application under Section 8 of the Children Act 1989 for the summary return of four children from England and Wales, where they are currently living, to Abu Dhabi, in the United Arab Emirates.
2. The application, which was issued on 16th March 2023, is brought by the children's father, HH. It is resisted by their mother, UH, with whom the children are currently living. The four children with whom I am concerned are A, a girl aged 13; J, a girl aged 11; G, who is a boy and will be eight in a couple of weeks' time; and L, a girl, who is 18 months old.
3. The father is represented before me by Ms Jacqueline Renton; the mother by Mr Michael Gratton KC. I am grateful to both counsel for their helpful submissions, both orally and in writing.
4. Some points were made by Mr Gratton as to the father's position and whether the father was conceding that substantive welfare decisions regarding the children should be taken in England and Wales pursuant to Section 2 of the Family Law Act 1986. It is clear from Ms Renton's submissions that the letter in which that apparent concession was made was sent at a time when there was an incorrect understanding of the legal position under Abu Dhabi law. Ms Renton is clear that today she is seeking a summary return to Abu Dhabi so that substantive decisions regarding the children can be taken in that jurisdiction.
5. The parties have filed detailed evidence, supported by photographs, texts and WhatsApp messages and I have heard oral evidence from Mr Abed Awad, the single joint expert originally instructed by the parties, and from a further expert, Ms Diana Hamade, whom I gave the father permission to rely upon in the circumstances that I expand upon below. I also heard from Ms Cull-Fitzpatrick, the Cafcass officer who has met with both parents and with the children. I also permitted the parents to give oral evidence on some limited issues.

Background

6. Both parents and all four children are British citizens. The father previously had dual UK and Pakistan nationality. He renounced his Pakistani citizenship in 2016, a matter which has assumed some importance to this case, as I describe below.
7. The father was born in the United Arab Emirates and grew up there, his parents having Pakistani nationality. He moved to the United Kingdom in 2004 to come to university here.
8. The mother has Bangladeshi heritage but was born in the UK and grew up in the West Midlands.
9. There is some dispute about how and when the parents first met, which I do not need to resolve. However, at some point between April and June 2006, they underwent an Islamic Nikah, (a religious marriage under Sharia law) in the UK, although this was not registered and they initially kept this a secret from their families. No steps were taken at that stage to effect a civil wedding.

10. When the mother's parents found out about this marriage, they took the mother to Bangladesh. She returned to the United Kingdom later that year, following the intervention of the father and Foreign and Commonwealth Forced Marriage Office. On her return, the Nikah was formalised and the parties underwent a civil marriage ceremony in England and Wales in January 2007.
11. At this time, the father was working in London. There is a dispute about the extent to which the mother was living with the father at that point, or whether she was living with her parents in the West Midlands. However, it is common ground that she spent much of her time during the last few months of her first pregnancy with her parents. A was born in December 2009. The father says that thereafter he, the mother and A lived together as a family in London. The mother says that she spent most of her time with her parents. In any event, the father undertook a master's degree at the London University and the mother became pregnant again and J was born early in 2012. Again, the mother spent the later stages of her pregnancy and the first few months of J's life with her parents.
12. The father completed his master's degree in September 2012 and in December 2012, the family moved to the United Arab Emirates, staying initially with the father's parents. The father was seeking work and this took some time to obtain, a matter that caused some strain within the parties' marriage.
13. In April 2013 the mother returned to the UK with the children for a few months, until the father found a job and rented property. This he finally did and in August 2013, some four months later, the mother and the two children returned to the UAE, setting up home with the father in Abu Dhabi. At this time, the father's parents were both living in the UAE, as were a number of his siblings.
14. Throughout the time that the parents have lived in the UAE, the mother and the children have made regular trips to the UK to stay with the maternal grandparents. The dates of those trips have been:
 - (1) between June and August 2014;
 - (2) between April and August 2015, when the mother was pregnant with their third child, G, who was born in the UK in July 2015;
 - (3) between July and August 2016;
 - (4) between July and August 2017;
 - (5) between June and August 2018; and
 - (6) between July and August 2019.
15. The Covid pandemic meant that it was not possible for the family to travel in 2020. However, the mother and the children returned to the UK between July 2021 and February 2022 (a period of around seven months) when the mother was pregnant with L. L, like her siblings, was born in the UK in December 2021. Continued Covid restrictions meant that the children were able to continue to attend their

Abu Dhabi school during this period and did so remotely, although the time difference meant they had to do so in the early hours of the morning.

16. The parents maintained their connection with the UK. They were registered to vote here. The mother purchased extra years of National Insurance contributions, as she was entitled to do, and the mother says that there was always a plan for the family to return to the UK in due course, so the children would qualify for home fees for university courses. In order to do so, the children would need to be living in the UK for three years before starting university. In his written evidence, the father does not accept there was an agreement along these lines, although in a WhatsApp message that I have seen that was sent on 20th January 2023, he did appear to concede that there was an agreement to this effect. As I have mentioned, all four children and the parents all have British citizenship.
17. There have been difficulties in the parents' marriage for some time. In 2022 the father sought to persuade the mother to accept him taking a second wife under Islamic law. The mother did not agree. Her evidence is that in her community, a second wife is both unacceptable and extremely unusual. The parties, at the father's instigation, attended counselling in the UAE for a period, but this ended in November 2022 when the father told the mother he no longer desired a second wife. That statement was untrue.
18. On 6th December 2022 the father returned home from what he had told the mother was a business trip to Bulgaria. However, the mother discovered two boarding passes for a flight to the Maldives and it came out that the father had in fact secretly married a second wife, a work colleague, some three years earlier and that he had not told anyone that he had done so. The counselling work that he had therefore undergone with the mother earlier in 2022 had therefore been conducted on a false premise.
19. In his oral evidence before me, the father confirmed that he was in a sexual relationship with his second wife and had been at the same time as he conceived L with the mother. The mother, of course, was wholly unaware of this.
20. The father requested that their fourth child was called L and it has subsequently transpired that that is the name of his second wife, a matter that has caused great upset to the mother. The father claims that he did not make that connection at the time. I do not accept that evidence. That simply seems to me to be wholly unbelievable.
21. Upon discovering the father's second marriage, the mother immediately asked to go to the UK with the children. The father made it clear at the time that he did not agree to her relocating to England with the children permanently, but he agreed to book tickets for the mother and children, with a return due on 1st January 2023 and the mother and the children left the UAE on 11th December 2022. Immediately on passing through passport control in the UAE, the mother sent the father a WhatsApp message in which she said that she did not see herself coming back.
22. There then followed discussions by message, by telephone and in person after the father followed the mother and children to England on 16th December 2022. Some of these messages are heated in tone and no doubt reflected upset and frustration on both sides. The mother, with the discovery about the second wife; the father in respect of

the non-return of the children. I accept that things on both sides may have been said in the heat of the moment which neither side would now hold to, having had the benefit of time for reflection and legal advice. Thus, for example, the father has said in the messages he would strictly apply Sharia law principles. He now accepts that he will deal with matters in accordance with the civil legal system. Nonetheless, the text messages are to my mind clear, contemporaneous evidence of both parties' state of mind at the relevant point in time.

23. In her oral evidence, the mother conceded that she would in fact have been willing to return to Abu Dhabi with the children if the father divorced his second wife and that, from her perspective, a final decision to remain here was not taken until February of this year.

Events since December 2022

24. Matters have moved on since the children first arrived here. The mother and the children are still living with the maternal grandparents. The children have now been enrolled in school. The decisions about enrolment in the school appear to have been taken largely by the mother, with little attempt on her part to involve the father. The mother has other family living nearby and the children see cousins regularly.

25. Meanwhile, the father has resigned from his job in Abu Dhabi (a job that I understand was paying around £20,000 a month inclusive of benefits). His evidence was that this was a result of the stress and trauma of the removal of the children. However, I do not accept this explanation. Messages that were exchanged between the parents in January 2023 suggest that the father left his job because he felt he was not valued by his employers. Moreover, not only has he resigned from valuable employment, he has also given up the tenancy of the family's home and sold, on the Abu Dhabi equivalent of Gumtree, most of the family's possessions and has moved in with his brother. In his second witness statement the father describes the property that has now been given up as follows:

“We were living in an independent four bedroom townhouse, (2,500 square feet) with a front drive to accommodate three cars, a huge backyard garden with a garden swing, a study room and a room for a nanny. We lived in a prestigious gated community in Abu Dhabi with manned security and maintenance service 24 hours a day. UH chose this property. We decorated and furnished the entire house together with brand new house appliances, all of UH's choice, at a cost of around £12,000.”

26. Thus, this property described by the father in his evidence in those terms, which had been decorated and furnished by the parents together, was given up unilaterally by the father with no consultation with the mother and the appliances and other possessions that had been chosen by the mother were sold on Gumtree, or the Abu Dhabi equivalent thereof.
27. There are also four investment properties in the UK which have been rented out and the father's reaction after the children had been brought to this jurisdiction by the mother was to place those properties on the market. He has now agreed not to sell

three of them, following intervention by the mother's solicitors. I am now told that the father has significant debts of around £147,000 that is owed to an Abu Dhabi bank, the immediate liability for which appears to have been triggered by the father's decision to resign from his job, and a further £70,000 is owed to the father's brother. Both parties have incurred significant legal costs in these proceedings and also in preliminary steps in other family law proceedings in this jurisdiction.

28. The father has been invited to contribute to the mother's legal expenses, but has not done so, nor for the past two months has he paid the £1,500 maintenance that has been requested by the mother. A one-off payment of £32,000 was made by the father to the mother earlier in this year and was used primarily by the mother to purchase a car for herself and the children. However, there is a dispute about whether that money came from funds that originally belonged to the mother in any event.
29. Although the father is now pleading a lack of available funds as an explanation for why he has been unable to provide financial assistance to the mother, I note that he told Ms Cull-Fitzpatrick, the Cafcass officer in this case, that he was financially secure and would be able to live comfortably for three years, without the need to work, although I recognise this may have been an untruth on his part. He also told me that he would be able, in any event, to get a new job in the UAE in three to four months' time. The father has pronounced an Islamic divorce against the mother for the first time on 10th January this year. He revoked that 10 days later, on 20th January, but pronounced it for a second time on 16th February.
30. As I have mentioned, the father began these proceedings in March of this year. Since last December he has visited the UK four times and has had contact with the children, including overnight contact with the three elder children. He has not yet had overnight contact with L but, if the children are to remain here, then that is something that will need to take place in the future.
31. The mother has commenced divorce proceedings in England and Wales and is also bringing financial remedy proceedings. I understand that the father is not contesting the divorce and that a first appointment in the financial remedy proceedings has been listed for September.

The expert evidence

32. At a directions hearing which took place on 14th March 2023 I gave permission for the parties to instruct a single joint expert on aspects of Abu Dhabi family law. That report was due to be filed by 12th May 2023. The parties had not, at that stage, identified a proposed single joint expert and I understand there were delays in identifying and instructing that expert. Eventually, Mr Abed Awad of Awad & Khoury Attorneys in New York and New Jersey in the United States was instructed, and he prepared an expert report dated 1st June 2023. Mr Awad is a qualified attorney in New York and New Jersey in the USA and is an academic focusing on international legal systems and the laws of Muslim countries. He is not qualified to practice in either the UAE or Abu Dhabi, but states in his report:

“I base my conclusions below on more than two decades of expertise in studying Islamic law, Islamic family law, the laws of Muslim majority countries and the cultures of the Muslim

world, including the UAE ... I have testified as an expert witness on foreign law (including UAE family law) in various American courts more than 65 times. No court has ever rejected me as an expert on foreign law, Islamic law or Muslim culture and traditions. I have also acted as an expert in British, Canadian and Singapore courts.”

33. In summary, his opinion set out in his report was that the matter would be governed by a UAE law, Law 28 of 2005 - which he refers to as the UAE Personal Status Code - and that, effectively, Sharia law Islamic principles would apply, so that once a child attains the age of 11, their father becomes their guardian. Mr Awad also advised that UAE law does not permit a mother to relocate with the children if the father objects to that.
34. On 20th June (in advance of a PTR that had been listed in front of me on 23rd June) the father issued an application to adduce and rely on an expert report from a further expert, Ms Diana Hamade. Ms Hamade is the managing partner of Diana Hamade Attorneys in Dubai. She is a UAE qualified lawyer with rights of audience in all UAE courts, including Abu Dhabi, and is a registered practitioner of the Dubai International Family Courts. She is an expert in civil and Sharia law, specialising in family law, and has acted as an expert witness before foreign courts, including in Canada, England, France, Australia, Switzerland, the Isle of Man, New Zealand, and the US, in family law, including divorce, child custody, child relocation / abduction and financial remedies. I note Ms Hamade acted as an expert witness in the case of *Re A and B (Children: Return Order: UAE)* [2022] EWHC 2120 (Fam), a case which I will refer to later on in this judgment.
35. The father’s application to adduce Ms Hamade’s evidence was made on the basis that Mr Awad’s conclusion that the UAE Personal Status Code and Sharia principles would apply was wrong. I was told by counsel who was representing the father on that occasion, that Ms Hamade was of the view that two different and new statutes, Law 14 of 2021 (as amended) and Resolution 8 of 2022, applied on the facts of this case. The application to adduce further expert evidence was said to be made in accordance with the principles that have been set out by the Court of Appeal in *Daniels v Walker* [2000] EWCA Civ 508. However, the father had not, as *Daniels v Walker* anticipated, asked questions of Mr Awad as to whether he agreed with aspects of Ms Hamade’s report or whether he agreed that these two statutes applied. In these circumstances, I declined to permit the father to rely upon Ms Hamade’s report until this had been done and it was clear whether there was a dispute between the two experts and, if so, where that dispute lay.
36. As a result of my directions, questions were put to Mr Awad and in a further report dated 25th June, Mr Awad stated that he remained of the view that the UAE Personal Status Code continued to apply in this case because the father was a joint Pakistani and UK dual national. This was wrong. The father had renounced his Pakistani citizenship in 2016.
37. Following further clarification of this factual matter, Mr Awad then accepted that the Personal Status Code did not apply and that he agreed with Ms Hamade that the situation would indeed be governed by Law 14 of 2021 (as amended) and by

Resolution 8 of 2022. However, there remained some differences in view from Mr Awad and Ms Hamade as to the detail and application of these laws.

38. Given that Mr Awad's initial report was wrong, or at least proceeded on a fundamental misunderstanding of the factual position (and one that ought not to have arisen, given that the certificate of the father's renunciation of Pakistani citizenship had been included in the documents provided to Mr Awad) I gave permission for the father to rely on Ms Hamade's report and both experts gave oral evidence. It was not possible in the time remaining for the experts to meet. However, they were both able to comment on each other's report and, to some extent, to identify the differences between them.
39. I pause there to note the importance of parties adhering to deadlines set in court orders for the preparation and filing of expert reports. Failure to do so here meant that the deficiencies in Mr Awad's original report were only spotted relatively shortly before the final hearing and had to be dealt with under a very foreshortened timetable. That was only possible because the case had been reserved to me and I was available to deal with the developing situation and both experts were available and willing to carry out further significant work at very little notice. I emphasise that if a party is dissatisfied with a single joint expert report, the first step, as identified in *Daniels v Walker* should be to ask questions of that expert as soon as possible. The failure to do so here made the timetable even shorter than it needed to have been.
40. Although there remain some points of difference between the experts, there was a fair degree of consensus between them and I take the following points from their evidence:
 - i) In 2021 Abu Dhabi introduced a law, Law 14 of 2021, to provide for family law disputes between non-Muslim foreigners to be governed by a civil family court rather than by Sharia law.
 - ii) This law was amended in the same year. As amended, it also applies to Muslim foreigners, provided that the law of their nationality does not apply Islamic religious law.
 - iii) It therefore applies to parents in this case as they are both British citizens (the father having previously renounced his Pakistani citizenship).
 - iv) The law is supplemented by Resolution 8 of 2022, which provides further guidance as to how it is to be applied in practice.
 - v) There is a civil family court whose jurisdiction includes: "settling disputes related to custody, taking into account the best interests of the child" (8/2022 Article 3(4)).
 - vi) There is no requirement for the judges of the court to be Muslim (8/2022 Article 6), although in practice Ms Hamade's evidence was that all of the judges of the family court at the moment were indeed Muslims.
 - vii) There is a concept of "joint custody". This appears to be wider than purely physical custody as it is defined as:

“The right of parents to exercise their role in raising and caring for children after separation on an equal and joint basis, and the right of children not to be deprived of one of the parents because of divorce” (8/2022 Article 1).

- viii) Custody of children is a joint and equal right for both parents on divorce. It is the right of the children to be raised and seen by both parents, rather than one of them exclusively (Law 14/21 Article 9(1)).
- ix) There is a presumption that both parents have a right to joint custody of the child until the age of 16 (after which age a child has the right to choose his or her custodian) and “after divorce, both parents bear joint responsibility for the child’s growth, providing that the child’s best interests shall be their primary concern” (8/2022 Article 25).
- x) If the parents do not agree how to divide custody between them after divorce, it is for the court to decide how to divide joint custody in a way that takes into account the best interests of the child (8/2022 Article 28).
- xi) There is a procedure by which a parent can be removed from joint custody, either temporarily or permanently. There are ten circumstances in which this may take place, including domestic abuse, neglect and drug and alcohol abuse. Of particular relevance in this case are the final two reasons set out in 8/2022 Article 33, which are:
 - a) The other party’s remarriage; and
 - b) Any other reason that the court deems appropriate.
- xii) 8/2022 Article 34 appears to confer a wide discretion on the court when cancelling joint custody as it provides:

“In the event of cancelling joint custody, the court has the discretion to apply what it deems appropriate from the rules of justice and fairness or the best international practices of comparative legal systems with regard to custody and visitation, with the best interests of the child taking precedence.”
- xiii) 8/2022 Article 35 identifies that if the parents do not agree on any decision relating to the child after divorce has occurred, they can ask the court to determine the issue. In such circumstances, the court is directed to decide the matter expeditiously and to: “take what it deems appropriate in the best interests of the child.” See 8/2022 Article 36.
- xiv) 8/2022 Article 37 prevents a parent travelling with a child outside the UAE without the consent of the other party and 8/2022 Article 38 permits the UAE, or the Abu Dhabi court to put in place a travel ban to prevent a child from leaving the country.
- xv) More generally, 8/2022 Article 43 provides that:

“The court shall apply the principles of justice and fairness to decide on any issues presented to it during the consideration of the case in the event of ...

disputes arising from the custody of the child and the regulation of visitation, provided that the best interests of the child prevails.”

xvi) 14/2021 Article 18 provides that:

“the laws and legislation in force in the state and in the emirate should apply to matters for which no special provisions are stipulated in this law.”

xvii) Both experts are agreed that there is little likelihood of criminal consequences for abduction if the father agrees to take no action. However, they considered that the alleged abduction or wrongful retention of the children may be a factor that would be taken into account by the court when assessing best interests. Although Ms Hamade considered it was unlikely that a finding of abduction would lead to the removal of custody from the mother, she did indicate that the court could impose a fine or reduce access on the mother to the children as a result.

xviii) The experts were also agreed that a settlement agreement by the parents or an order or undertaking provided to this court could be registered with the Abu Dhabi court or reflected in a mirror order and could thus become binding in Abu Dhabi.

xix) In the course of cross-examination, Ms Renton sought to explore with Ms Hamade whether, if I directed a summary return, it would be possible for the mother to get an assurance from the Abu Dhabi court that it would accept a relocation application from her in advance of the return being affected. I was ultimately not clear from Ms Hamade’s responses whether in fact such a procedure would be possible.

41. Mr Awad and Ms Hamade were agreed that under these new laws (as I will collectively call Law 14 of 2021 and Resolution 8 of 2022) best interests is the thread that runs through the court’s decision making. They were agreed also that the court would have jurisdiction to determine a relocation application brought by the mother. However, they were unclear on precisely which article of the new law would govern a relocation application and whether, if it were Article 33 that applied (which appeared to be Mr Awad’s position) one of the ten grounds mentioned there needed to be made out as a precondition to relocation.

42. A further point upon which the experts were agreed was that there was very little certainty as to how these provisions would operate in practice. There was, however, a difference in view between them as to how the court might approach this exercise. Ms Hamade considered that relocation might be addressed under 8/2022 Articles 35 and 36, and she emphasised that provisions of the new laws were intended to cater for expatriate residents in Abu Dhabi and were therefore not intended to result in the application of Sharia law. She referred to foreign lawyers, from the United States and United Kingdom, being engaged as case managers but recognised that there were, as yet, no foreign judges, or indeed non-Islamic judges, appointed to the Abu Dhabi Family Court. Given the novelty of this jurisdiction, she was not yet aware of any relocation decisions that had been made after a contested hearing.

43. For his part, Mr Awad was more cautious in his view as to the approach the court would take. He considered that relocation was probably a facet of an application for removal of joint custody under 8/2022 Article 33 and that in the absence of any precedent, the judges of the court would determine best interests in the context of their familiar rules and cultural background and, for example, in relation to relocation, may have regard to the previous personal status law, which may mean they would be unwilling to grant any relocation in circumstances where the father did not consent.
44. If I am required to choose between two experts on this point, I am minded to follow Ms Hamade. She is the practitioner with real day to day experience of how the court is operating in practice. However, I am not sure that it is in fact necessary for me to do so. Both experts are agreed the position is uncertain. There have been no relevant published decisions under the new law as yet and it is an area of law in practice that will have to be developed by the Abu Dhabi court. At the moment, all I think that I can conclude is that a relocation jurisdiction exists, but there are also doubts as to how that jurisdiction will operate in practice.
45. In terms of timescale, Ms Hamade took the view that each stage of the court hearing could take between three to six months. There are two levels of appeal, and there is no requirement for permission to appeal, so it could take up to 18 months for a case to work its way through the various appellate stages to become a final and unimpeachable judgment.
46. The experts were agreed that in terms of hearing the voice of the child, the Abu Dhabi law only made provision for hearing from children from the age of 12 upwards, which in this case would mean A alone. Ms Hamade considered the possibility that there may be some mechanism to obtain views of younger children, but it is fair to say she was unclear how this actually could be achieved in practice.

Cafcass

47. I have also received a report from Ms Kathleen Cull-Fitzpatrick, the appointed Cafcass officer in this case. Her report dated 13th June 2023 was prepared after interviews via MS Teams with both parents and a meeting with the children, in the course of which she had an opportunity to observe a video call between the children and their father. I will describe aspects of her report in more detail in a moment. However, it is important to note that the report was prepared having had sight of Mr Awad's original report (which indicated that Sharia law would apply and that it would not be possible for the mother to obtain permission from the courts in Abu Dhabi to relocate with the children without the father's consent).
48. Ms Cull-Fitzpatrick's conclusion in her report was that another move would create further change and instability and there remained significant uncertainty about what the children's future care and living arrangements would entail if they were to return to the UAE. It is clear that Mr Awad's initial conclusions on the applicable law raised significant doubts in Ms Cull-Fitzpatrick's mind as to the children's ability to maintain a relationship with their mother and she respectfully recommended to the court that the father's application for a return should be refused.
49. Ms Cull-Fitzpatrick was subsequently provided with copies of Ms Hamade's report and Mr Awad's further reports and with the father's later witness statement, setting out his

proposed protective measures. She was also present in court on the first day of this hearing, whilst both experts were cross-examined, and I am extremely grateful to her for taking the time to be present for that. Having heard the evidence, she was left (as am I) with a sense that the principles that would be applied in Abu Dhabi on a relocation application were not wholly clear and that there was uncertainty as to how such an application would be approached by the Abu Dhabi court. Ms Cull- Fitzpatrick accepted that the point was now more finely balanced than when she prepared her report, but on balance, she held to her original recommendation that the father's application for a summary return should be refused.

50. For the father, Ms Renton, sought to criticise Ms Cull-Fitzpatrick's conclusions, arguing that the views as expressed in her oral evidence must be seen as having been infected by the initial and erroneous report of Mr Awad. I do not accept this. Ms Cull-Fitzpatrick has clearly had an opportunity to read the additional documents. She sat in court and listened very carefully to the expert evidence that was presented on Monday and I am entirely satisfied that she reconsidered matters and approached her conclusions in the light of that additional evidence. I do, however, accept the submission made by Ms Renton, that the Cafcass evidence is, of course, simply part of the evidence that I must consider and that the final decision rests with me.
51. Some key points I took from Ms Cull-Fitzpatrick's evidence were as follows:
- i) All four children are happy and healthy and have a close and loving relationship with each other and with both of their parents.
 - ii) Although the mother has raised concerns about the father's behaviour towards her, Ms Cull-Fitzpatrick has carefully considered this and did not consider that domestic abuse was a risk that existed between these parents.
 - iii) Although the father raised concerns about the children staying with their maternal grandparents because of an historic allegation of abuse by the mother against a relative (who no longer lives there), Ms Cull-Fitzpatrick noted that the father had previously permitted the children to stay with their maternal grandparents for repeated periods of up to seven months and that no safeguarding concerns had been raised by any professionals.
 - iv) The end of the parental relationship was unexpected and has led to the children experiencing (and continuing to experience) uncertainty and unsettlement. Ms Cull-Fitzpatrick recommends that the parents seek counselling for the children.
 - v) It is important that a decision is made in respect to the care and living arrangements which best meets the children's overall needs and interests, allowing the family to move forward. Ms Cull-Fitzpatrick recommends that the children need to have a home and relationships which provide security, safety and stability and that they would benefit from an ongoing role for each parent.
 - vi) The three elder children all share the view that it is important that they remained in the mother's care and A, in particular, expressed a view that she wanted to stay in the UK. Ms Cull-Fitzpatrick took the view that all the children appear to have become integrated with the local community where

they live, attending school and extracurricular activities, and noted that they all spoke fondly of the time they spent with maternal relatives and, in particular, with cousins who live locally. She was confident that their physical and emotional and educational needs are capable of being met in the UK.

- vii) Ms Cull-Fitzpatrick did, however, note that the unexpected and abrupt manner in which the children left Abu Dhabi meant that they have lost school friends and had to negotiate a change in schooling and culture.
 - viii) She also records that mother accepts that her actions have created distance between the children and the father and that she acknowledges that the children miss their father and that having virtual calls with him is not the same as having him in their everyday life.
 - ix) In terms of a potential return to Abu Dhabi, Ms Cull-Fitzpatrick recognised that that would be a return to a country where the children primarily resided during their childhood and they would be returning to the same community and school, although not into the same flat. The fact that they would be reintegrating back into a familiar community would mitigate some of the difficulties associated with a further change in circumstances.
 - x) Events have created a lack of trust between the elder children and the father, such that it is likely they would not find it easy to be in his sole care at present.
 - xi) Nonetheless, the children spoke positively about both parents and even L, who of course is only 18 months old, in video contact clearly recognised and was pleased to see her father.
52. Cross-examined on behalf of the father, Ms Cull-Fitzpatrick agreed with Ms Renton that she would feel more comfortable with a summary return if:
- i) that were predicated on the existence of a relocation jurisdiction in the UAE, and
 - ii) there were to be a settlement agreement containing protective measure by way of undertakings to this court that could be registered in Abu Dhabi

In those circumstances, Ms Cull-Fitzpatrick considered that matters would be more finely balanced. She recognised that the children may have been harmed by the manner of their leaving Abu Dhabi and the lack of opportunity they had to say goodbye to their friends.

53. Cross-examined by Mr Gration, Ms Cull-Fitzpatrick agreed that there was an unusual amount of uncertainty here as to the circumstances to which it was being proposed that the children would return. She was also surprised by the father's apparent debts, given what he had previously told her about him being comfortable to manage for three years without working. She confirmed that if the mother was distressed by a return, this would be likely to also have an impact on the children and on the mother's ability to parent them. She confirmed that the children were relatively settled in England and Wales and she had no concerns about their living with the grandparents.

There were no safeguarding concerns and she confirmed that contact with the father here had been successful.

The parents

54. I have heard limited oral evidence from both parents. Although the cross-examination perhaps did not shed very much more light on the factual disputes between the parties, it provided me with an opportunity to view both parents and to form impressions of them as witnesses.
55. So far as the father is concerned, I formed the view that he primarily blames the mother for the breakdown in the family unit. Although he made reference to his own behaviour in the taking of a second wife, I did not consider that he had any real insight into how his actions had fundamentally and irreversibly altered the family dynamic. Although he made repeated references in his evidence to wanting to have discussions and negotiations with the mother, I was left with the impression that these discussions were to be with the view to converting her to his point of view, rather than seeking to find any middle common ground. I also found his explanation as to his behaviour in relation to his job, the family home and property and finances more generally to be unconvincing and I am concerned that he may have sought to use the disparity in their respective financial positions to apply pressure to the mother. Nonetheless, I am clear that he loves his children dearly and wishes to have a close relationship with them.
56. The mother is clearly very concerned about her return to Abu Dhabi, something she describes as a “terrible predicament” in her witness statement. When asked if she would return with the children if a summary return was ordered, she accepted she would but she became emotional and I was left in no doubt that she would find such a return distressing and very difficult to manage. I do not consider that she would be able to hide her feelings on this point from the children. I note also that she was willing to give answers in cross-examination that were potentially adverse to her case and overall I formed the impression that she was a truthful witness. She accepted that the children had a positive relationship with the father and a strong bond with him.

The law

57. The parties are agreed on the applicable legal principles and, like Poole J in the case of *Re A and B (Children: Return Order: UAE)* [2022] EWHC 2120 (Fam), I can do no better than rely upon the analysis of the legal principles that were set out by Cobb J in the case of *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412 (Fam):

“34. It is clear law that the court in this jurisdiction will determine an application for a summary return of a child to a non-Hague Convention country by reference to the child’s best interests. My attention has been drawn to what Lord Wilson (in *Re NY* at [30]) and Baroness Hale (in *Re J* at [26]) both described as the “classic” observations, the “*locus classicus*”, of Buckley LJ in his judgment in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, (obviously a pre-1980 Hague

Convention decision but with evidently enduring relevance and standing). He said this:

p.264F: "To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country than that he should spend in this country the period which must necessarily elapse before all the evidence can be assembled for adjudication here. Anyone who has had experience of the exercise of this delicate jurisdiction knows what complications can result from a child developing roots in new soil, and what conflicts this can occasion in the child's own life. Such roots can grow rapidly. An order that the child should be returned forthwith to the country from which he has been removed in the expectation that any dispute about his custody will be satisfactorily resolved in the courts of that country may well be regarded as being in the best interests of the child."

p.265A-B: "... judges have more than once reprobated the acts of "kidnappers" in cases of this kind. I do not in any way dissent from those strictures, but it would, in my judgment, be wrong to suppose that in making orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account, but, whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration."

36. As Baroness Hale later observed in *Re J* see below, the same point was made by Lord Justice Ormrod in *Re R (Minors)(Wardship: Jurisdiction)* (1981) 2 FLR 416, at p 425: the 'so-called kidnapping' of the child, or the order of a foreign court, were relevant considerations,

"... but the weight to be given to either of them must be measured in terms of the interests of the child, not in terms of penalising the 'kidnapper', or of comity, or any other abstraction. 'Kidnapping', like other kinds of unilateral action in relation to children, is to be strongly discouraged, but the discouragement must take the form of *a swift, realistic and unsentimental assessment of the best interests of the child, leading, in proper cases, to the prompt return of the child to his or her own country, but not the sacrifice of the child's welfare to some other principle of law.*" (First emphasis mine)."

37. I was then taken to the current definitive statement of the law pronounced by the House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40. I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

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]

38. I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent jurisdiction in what are accepted to be very different circumstances to those obtaining here. Mr Khan argued that I should give (as the judgment suggests) "some consideration" ([55]) to the eight linked questions posed by Lord Wilson in that case:

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])."

58. To this passage, Poole J in *Re A and B* also added the remainder of paragraph [39] of the judgment of Baroness Hale in *Re J*:

“If those courts have no choice but to do as the father wishes, so that the mother cannot ask them to decide with an open mind whether the child would be better off living here or there, then our courts must ask themselves whether it would be in the interests of the child to enable that dispute to be heard. The absence of a relocation jurisdiction must do more than give the judge pause ... it may be a decisive factor. On the other hand, if it appears that the mother would not be able to make a good case for relocation, that factor might not be decisive. There are also bound to be many cases where the connection of the child and all the family with the other country is so strong that any difference between the legal systems here and there should carry little weight.”

59. Because this is a welfare decision, I am required to have regard to the welfare checklist set out in Section 1(3) of the Children Act 1989:

“(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

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

(b) his physical, emotional and educational needs;

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

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

(e) any harm which he has suffered or is at risk of suffering;

(f) 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 his needs;

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

60. I am also required by Section 1(2A) of the Children Act 1989 to presume involvement of a parent in the life of the child concerned will further child’s welfare.

Discussion

61. Taking into account all of the evidence and submissions that have been raised by either party, I turn now to draw the threads together.

62. I am in no doubt that the children were habitually resident in Abu Dhabi prior to being brought to England and Wales by the mother.

63. At the time the mother brought the children to this country, she had not formed an intention not to return. I accept that she was in two minds at that stage. Her decision

not to return was reached no later than February 2023, although a wrongful retention (to adopt a Hague Convention concept) would have occurred no later than 1st January 2023, when she was originally due to have returned.

64. I have no doubt that the breakdown in the parents' relationship was triggered by the mother's discovery of the father's second marriage and the fact that he had hidden this from her for over three years. This is a clear and important deceit on his part that I have no doubt has been aggravated in the mother's mind by the fact the father also chose his second wife's name for their youngest daughter. In my view, it provides an important context for the mother's subsequent conduct and for the criticisms that are now made of it by the father.
65. Abu Dhabi is the children's home country. They have lived there most of their lives. However, even prior to December of last year, all four children had close links to the United Kingdom. They were British citizens, they were all born here and they had all spent significant periods of time here. They speak English. The maternal relatives were well known to them and indeed, because they were previously here between July 2021 and February 2022, over the past two years, they have spent a greater part of the time living in the UK than they have in Abu Dhabi (14 months in the UK as against 10 months in Abu Dhabi).
66. Since December 2022, they have started putting down settled roots here. The three elder children have started school, where I understand they are doing well, and they have spent time with relatives, in particular, with their cousins.
67. I recognise from the case law that it may be useful to start from the proposition that it is likely to be better for a child to return to their home country for disputes to be resolved there. A return to Abu Dhabi would be a return to the children's home country in that it is the country where, until December 2022, they had spent the majority of their time and attended school. However, on the facts of this case, I do not consider it would be a return home in any meaningful sense. Certainly, it would not be a return home to what they previously knew.
68. For a start, the parents' relationship is now clearly at an end and if a return is ordered, the parents will be living separately. Importantly, they will not be returning to a familiar home or indeed even to familiar possessions. Inexplicably (and as I have already said I do not accept the father's explanation that this was because of stress or trauma) the father has given up his job, given up the family home and sold or given away the bulk of the family's possessions. He did so within a couple of months.
69. This seems to me to be inconsistent with his express wish for the family live in Abu Dhabi. I do not accept his explanation that he was required to give up the job through the stress of events. Nor do I accept the explanation that has been provided in relation to the giving up of the home or possessions. I note that on 10th February 2023, he sent a message to the mother which can only be described as a threat, in which he said:

“So you tell me today, are you coming or not, if not, I'll give notice to the landlord and I'll burn everything in that house and u will get a second divorce on 1st May.”

70. I do not understand why the family's possessions needed to be sold rather than stored if return proceedings were contemplated. At best, this behaviour on behalf of the father was a fit of impetuous pique. At worst, it was the start of a bonfire of the family's finances. When coupled with attempts to put all the UK properties on the market at once, this is a matter that causes me significant concern. Whilst I recognise that the father is now seeking to take a more constructive approach to finances, it seems to me that his actions in this regard have contributed greatly to the instability that the children would now face if I were to order a return.
71. An immediate practical effect for these children is that if I order a return to Abu Dhabi, they are now going to be living in a different property, surrounded by different possessions. There will have to be different routines. They will be returning to their former school but in many other ways their lives will have changed significantly from the life that they were living up until December last year. So far as the return to school is concerned, I note from the father's second witness statement that the UAE did not resume "in person" lessons until the second half, or indeed the third quarter, of 2022. So in fact, it appears that the children may have attended for perhaps one or two terms in person in their last three years at this school.
72. Very little information has now been provided by the father about the situation that he proposes the children should return to. At the pre-trial review on 23rd June, I gave permission for the father to put in a witness statement setting out his proposed protective measures but that provided little detail on financial matters. This was only clarified further in a statement that was put in overnight, after the first day of the final hearing, in which the father proposes to pay £1,250 per month for the mother and children to rent an apartment. However, he has not provided any particulars of available properties and I am not in a position to assess the adequacy or otherwise of the arrangement that he proposes and the sorts of properties which he proposes that the mother should move into.
73. What is clear to me, though, is that although the mother has agreed to accompany the children, she will do so at some cost to herself. When asked by Ms Renton if she intended to return with the children if I made an order for their return, she came close to tears and had to take some time to compose herself. I have not the slightest doubt that this was a wholly genuine reaction on her part and although she would accompany the children in those circumstances, she would find this an upsetting and difficult step to take. The mother has not filed psychiatric evidence of any condition and I am not asked to find that this is such an extreme case. Nonetheless, I consider I am entitled to take into account, in my overall assessment of the children's welfare, the likely effect on the children's primary carer and it seems to me self-evident from the mother's reaction that she will find a return to the UAE and to Abu Dhabi very difficult.
74. In her evidence to me, Ms Cull-Fitzpatrick confirmed to me that if the mother was distressed, then this would have an impact on the children and on the mother's parenting capacity. The mother is, and always has been, the children's primary carer and I have no doubt that if I order a return to Abu Dhabi, the mother will not only find this distressing but that distress will be picked up on by the children and it will bring further instability into their lives.

75. In England and Wales, the mother has a support network available to her through her parents and other siblings who live nearby. No such support network exists for her in the UAE. There are paternal relatives living in that jurisdiction, but no one has suggested that the mother has a wider circle of friends that she could rely on and, effectively, if I make a return order, it seems likely she will be very much alone. The father says he will undertake joint care of the children, although it is not wholly clear how that arrangement would fit with the new job for which he is seeking.
76. In contrast Ms Cull-Fitzpatrick confirmed in her report the children are relatively settled here, that they have stability, and that the two older girls, in particular, are integrating well at school.
77. I am very conscious that a refusal to order a summary return would mean that there would be a reduction in the ability of the father to have contact with the children and I fully recognise the importance of the father maintaining a close and loving relationship with all four children. Nonetheless, I note that it has been possible for the father to maintain contact with the children here, both through regular video contact and indeed through trips as well and if the father gets a job soon (as he suggests that he will), then he will be likely to have access to funds to continue to visit the children in this country; although I accept that would not be of the frequency of every six weeks suggested at one point by Mr Gratton in cross-examination.
78. In her submissions, Ms Renton made repeated references to the mother's conduct in abducting the children and went so far as to refer to public policy reasons for ordering the return. I am clear that this is not a Hague case and I should not seek to import Hague concepts into my assessment of the welfare of these children. I have firmly in mind, though, the comments of Lord Justice Buckley referred to above in *Re L (Minors)* that:
- “It would in my judgment be wrong to suppose that the making of orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account but whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration.”
79. Also the comments of Baroness Hale in *Re J* that:
- “Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country.”
80. I have already mentioned that I have found when the mother took the children to the UK she did not have, at that point in time, a permanent intention to relocate. Indeed, she has accepted she would have returned to Abu Dhabi if the father gave up his second wife. It only crystallised into a firm intention on her part in February of this year.

81. In my view, any assessment of the mother's conduct cannot be divorced from the context. That is to say, the betrayal, as she saw it, by the father in taking a second wife, having sexual relationships with her for three years and lying to the mother about this. I take the view, therefore, that there are elements of each parent's conduct that could be criticised and that here, in balancing where the children's welfare lies, I give considerably greater weight to the situation on the ground than to any conduct of either party.
82. I am conscious also that in reaching a decision in this case, I am not making final orders as to where the children should live. Rather, my task is to determine where it is in the best interests of children for further disputes about where they should live to be determined. Ms Renton, in her submissions, suggests that my decision will be effectively determinative of the matter. However, I note that as Baroness Hale observed at paragraph [41] in *Re J* that:
- “But [considerations] 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.”
83. I accept in the light of the evidence of Mr Awad and Ms Hamade that there is, in theory, a relocation jurisdiction available under Abu Dhabi law. Nonetheless, the evidence from both experts is that this is untested and there is some uncertainty as to how it will operate in practice, in particular where relocation is opposed by one parent. To the extent I need to do so, I prefer Ms Hamade's evidence as to how the Abu Dhabi court would be likely to fill in the blanks, as it were, as to how its best interests jurisdiction should operate. I prefer her approach as she is a practitioner with day to day experience of the Abu Dhabi courts while Mr Awad is primarily a US academic.
84. Mr Gration argues that it is not in the best interests of these children to become a test case, to be returned to Abu Dhabi to find out what principles will apply to such a relocation application and that is an argument I have some sympathy with. Nonetheless, I recognise that the summary return jurisdiction does require the court to have a proper respect for other countries' legal systems and I recognise the approach of the English courts is not the only way of doing things.
85. Thus, although I am concerned that there is less clarity than I would like as to how an Abu Dhabi court would address the making of a relocation decision, I must recognise that there is evidence before me that there is a relocation jurisdiction and that decisions in that jurisdiction are to be taken on a best interests basis. Although there is a lingering uncertainty over the manner in which this jurisdiction will impact the exercise, if that were my only concern in this case, I would have been minded to order a summary return. However, it is not.
86. As I have already explained, a summary return, far from returning the children to a familiar environment, will instead introduce yet more instability into their lives and significantly affect the ability of the primary care to provide them with emotional support and stability. The protective measures that the father proposes, in my view, do not and cannot address this key point. Although there is an offer to provide a property, that offer was made at the last minute. Such a proposal should have been

made clearly and expressly in an earlier statement and greater detail should have been provided. I am left with no real understanding as to the sort of property that can be procured for the sum that is being offered.

87. Another point taken by the father in his proposed protective measures is that he has offered not to take any point in civil proceedings regarding the abduction, and possibly other allegations about the mother. In practice, I am unclear how this proposal would work. The fact that the mother has retained the children in England and Wales, contrary to the father's wishes, seems to me a relevant factor in a best interests decision, which could be considered by the court of its own motion in Abu Dhabi, irrespective of whether or not the father sought to rely on it.
88. I understand why the father has offered this protective measure, because the expert evidence, as I have already recounted, is that it is a factor which may lie heavy in the Abu Dhabi court's best interests balance. However, if the Abu Dhabi court is effectively going to be prevented from dealing with, or reviewing all of the circumstances when assessing best interests, it does raise the question as to whether the children's best interests are served by a hearing before an English court which can look at all of the evidence.
89. I accept that many of the other undertakings that have been provided by the father would provide some protection and that they could be enforced by way of a settlement agreement or a mirror order in Abu Dhabi and I note also that the father has assets in England and Wales, to which this court could have recourse in the event he were to breach his undertakings.
90. Ultimately, though, the focus of my decision is a welfare one and as Baroness said in *Re J*, needs to be looked at in the circumstances of the individual child in the particular circumstances of the case. Taking all of the factors into account, and in particular the fact the children have spent the greater part of the last two years in the UK; the fact that the father's precipitative actions mean the children cannot now be returned to familiar surroundings and if they do now return, it would be an unfamiliar home; and the likely impact of a return on the mother (and given her status as the children's primary carer, upon the children as well), I am clear that the welfare of the children requires that I should refuse this application for summary return. Further decisions regarding the children's welfare should now be matters for the courts in England and Wales.

(This Judgment has been approved by Mr Rees KC.)