



Neutral Citation Number: [2023] EWHC 597 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th May 2023

Before :

Deirdre Fottrell KC
Sitting as a Deputy High Court Judge

Between :

S	<u>Applicant</u>
- and -	
F	<u>Respondent</u>
And	
E (a child by their Guardian)	<u>2nd Respondent</u>

Ms S Najma under the direct access scheme for the Applicant
Father appeared in Person
Mr E Johnson (instructed by Howells LLP) for the **Guardian**

Hearing dates: 21st, 22nd, 24th February 2023 and 10th March 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 9th May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

DEIRDRE FOTTRELL KC

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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Introduction

1. This is an application by a father to spend time with his son made under s.8 Children Act 1989. The child E was born in August 2017 in Pakistan. The child's parents are Mrs A and Mr F and I shall refer to them as the mother and the father.
2. The mother, a Pakistani national now lives in this jurisdiction with E and they have each acquired been granted asylum for five years. She is represented at this hearing by Ms Najma. The father, who has lived in this jurisdiction in the past has now returned to in Pakistan and he acts in person. The child is represented by his Guardian Ms Mitchell and counsel Mr Johnson.
3. On 20th January 2020 the father issued applications for live with and spend time with orders. The mother issued cross applications. There have been significant delays to the resolution of these applications arising from the mother's application for asylum which was the subject of appeals. Within these proceedings the father sought disclosure of documents from the asylum process which necessitated the applications being allocated to the High Court. By the time of this hearing those complex legal issues had fallen away and the issues for determination before me had narrowed. The central issue now is child spends with the father going forward and in particular whether it should be supervised. The father also seeks the permission of the Court to take the child on holidays to Pakistan, where he is currently living. In the alternative the father has a loose plan to relocate in the near future to the Netherlands and he seeks permission to travel to that jurisdiction with his son.
4. I have heard this case over 4 days. I have read all the evidence in the bundle and I have heard the evidence of the father, the mother, Dr Anderson and the Guardian. I have been greatly assisted by detailed written and oral submissions from each party and I am grateful to counsel and to the father for the way in which the hearing has been conducted.

Relevant Background

5. The parents met in 2012 and they married in 2016. Both are both intelligent and educated and they have each enjoyed successful careers. The mother in IT and the Father in finance. E was born in Pakistan and when he was one year old the family

moved to the UK for the for the father's work. At the time both parents had Tier 1 Visas which entitled them to live in the UK.

6. In September 2019 the mother left the family home and moved to a refuge with E. It was clear by then that there were significant difficulties in the marriage and it had begun to unravel. Six days later she returned home to live with the father again. The Mother then returned to Pakistan in early October 2019 but stayed for only two weeks and she returned to the UK and claimed asylum for her and for E. Shortly thereafter the parents formally separated.
7. The father remained in the UK until the midway through 2020. In December 2019 the mother reported the father to the police for using threatening language to her over the phone. In early January 2020 he made applications to the Court for child arrangements orders. Shortly thereafter the mother applied for non-molestation orders. In May 2020 the father applied for permission to permanently relocate E to Pakistan with him. Within her applications the mother made allegations of domestic abuse against the father within the Children Act proceedings and the matter was listed for a fact finding hearing.
8. In August 2020 District Judge Heppell delivered a judgment on the mother's allegations. Having heard the evidence he made a broad range of findings which he set out in a succinct judgment. He found that the father had been physically and emotionally abusive toward the mother during the marriage. The findings were of a serious nature and they demonstrated a pattern of physical and verbal abuse and included the following:
 - i. Physical attacks between 2016-2019 during which the father slapped and punched the mother and pulled her hair.
 - ii. An occasion when he punched her face causing bruising to her face and her lip.
 - iii. An occasion when he pushed and slapped her during a holiday.
 - iv. Regular physical violence and verbal abuse of her during the marriage.
 - v. An occasion on which he threatened to beat her with sticks and possibly to kill her.

9. It had been part of the father's case that the mother had manufactured her allegations of domestic abuse to support her asylum claim but the District Judge found that not to be so.
10. In November 2020 the father instructed Dawson Cornwell solicitors and relying on the then recent Court of Appeal in G v G [2020] EWCA Civ 1195 he sought orders against the Home Office and the mother for disclosure into these proceedings of her application and E's application for asylum. The applications were then allocated to the High Court.
11. In March 2021 HHJ Carr QC made detailed orders for E to begin to have supervised contact with his father at a contact centre. This took place when F was visiting the UK and the contact progressed well and was of good quality. In April 2021 the father applied to reopen the findings of DJ Heppell. That application came before Mrs Justice Arbuthnot on 21st July 2021 and it was refused. In a detailed Judgment she concluded that the father had failed to demonstrate that there were 'solid grounds' for believing that the previous findings required reconsideration. She noted that the judgment of DJ Heppell was succinct but concluded that he had heard all the evidence and provided clear reasons for his findings.
12. Mrs Justice Arbuthnot also refused an application by the father to reopen the fact finding on the basis of new evidence as to the mother's credibility. She permitted disclosure of her judgment to the First Tier Tribunal to assist it to determine, in line with the Court of Appeal guidance in G v G, whether it should proceed to adjudicate on the mother's asylum claim before the Family Court determined the applications for live with and spend time with orders. The First Tier tribunal did so and on 18th January 2022 the mother and E were granted asylum.
13. At a case management hearing in January 2022 Mrs Justice Knowles listed the Children Act applications for final hearing in May 2022. She gave leave for the instruction of Dr Anderson, a psychologist to undertake a risk assessment of the father.
14. On 1st April 2022 a further case management hearing took place before Knowles J. The recital to the order records the following:

“upon the father maintaining that, whilst he does not accept that the mother requires asylum or protection in the UK or that E’s should have been granted asylum as her dependant and does not consider it in E’s best interests to live as a refugee in the UK, he agrees to refocus his application toward the issue of contact. He accepts that E will remain living with his mother in the UK and seeks extensive unsupervised contact with E within this jurisdiction. The father also expressed future hopes of implementation of contact in Europe with relevant protective measures in place as he will strive to move to Europe to be closer to E”.

15. This marked an acceptance by the father that he no longer sought the return of E to his care or to Pakistan. The final hearing was therefore listed to determine the father’s application for contact in May 2022 but the hearing was ineffective because the guardian had to withdraw from the case for personal reasons. A new guardian Ms Mitchell was appointed, and the case was relisted to November 2022. That hearing was also not effective, and the case was relisted for three days on 22nd February 2023. Ms Justice Knowles made provision for the father, who acts in person to provide his proposed questions for the cross examination of the mother in writing before this hearing and for the Court to ask those questions of the mother.

The Asylum Claim

16. The judgment of Tribunal Judge Pickering was disclosed into these proceedings by order of Mrs Justice Knowles. It is not necessary to record in detail the substance of that judgment but there are aspects of the mother’s case which were accepted by Judge Pickering which have some relevance to the issues which I have to decide. In particular the mother asserted that during the course of the marriage the father had told her that he worked for or with an individual known as AG. The father also told her that AG was a violent and dangerous person and that he exerted a degree of control over the father and sought to involve him in his criminal activities. This was a deception by the father because apparently AG did not exist. But it was an elaborate contrivance which extended over a number of years during the course of which the father embellished and exaggerated the risk pose to him and by extension to the mother and E from this individual. It had a significant impact on the mother because she came to live in fear for her own safety and for that of her family, by which I mean the father and E.

Moreover when the mother discovered the deception it completely eroded her trust in the father and she simply could not understand why he had engaged in it. It was wanton and done with real disregard for the effect it could have on her. When viewed in the context of his violent and abusive behaviour during the marriage it is not difficult to understand why it had such a profound impact on the mother.

17. It was further a part of the mother's case before Judge Pickering, which he accepted, that the paternal grandfather, her father-in-law who was a former army officer, had connections to various powerful individuals in the army and one in particular who the judge found could pose risk to the mother. Judge Pickering was also satisfied the mother had been a victim of domestic abuse at the hands of the father and he reached the conclusions that were the mother to return to Pakistan she faced a real risk of abuse and maltreatment from the father with possibly some encouragement from his family. He granted her application on 'refugee grounds'.

18. Within these proceedings the degree to which the father accepts the decision of Judge Pickering has continued to be an issue. His position is as recorded by Mrs Justice Knowles in February 2022, namely that he does not accept that either the mother or E had a valid claim for asylum but that he does not seek to set aside that decision or to contest the factual basis upon which it was made. While it is correct to note that the father has taken a pragmatic view of his case by not pursuing his applications to contest the evidence on which the asylum was granted, or to seek the return of his son, it is an uncomfortable compromise. The father continues to hold a strong view that the mother lied to the English Court and further he is convinced that the English immigration and family courts have operated unfairly so as to deny him the life he seeks with his son. I will return to this issue when I come to consider the father's evidence below.

The Evidence

19. The final hearing in this matter was conducted remotely and the father attended from Pakistan.

20. The mother gave her evidence in a clear and measured way. She has recently returned to work and has obtained a high level position in IT which has allowed her to begin to

rebuild her life. She has felt trapped and controlled by the father for many years. Through the process of applying for asylum she had to tolerate a high degree of uncertainty and she lived in circumstances which were very different to her ordinary life as an educated woman with a career. She has also had to adapt to her isolation from her own family and culture. It was not her plan to settle permanently in this jurisdiction on her own. She has been forced to do so directly as a consequence of the father's treatment of her and his behaviour toward her in the marriage. It is clear the past few years have taken a considerable toll on her. She is now a single parent living away from her family and she is very much focused on her son's future.

21. She was keen to convey to me that she supported E's relationship with his father but that she continued to have genuine concerns about the risk that he posed to him. She described how she had for some time provided the father with information about E's educational progress and development. Further she facilitated FaceTime contact between E and the father on a weekly basis and she told me that for the most part this has gone well. She expressed a commitment to ensuring that the latter continued and I accept that that is the case.
22. The mother told me that she was exhausted by the proceedings which had been going on for many years. She found it difficult to cope with the uncertainty and she felt that both she and E needed to be able to settle in their lives and to move on from the past. She could not see a point when the risk from the father would reduce so that he could have unsupervised contact with E and she thought that it should always be supervised. Her real fear she told me is that the father would remove E to Pakistan if his contact was not supervised and she was fearful that this would happen. She did not feel he accepted the findings against him in either the family court or the immigration tribunal.
23. When she was asked to consider whether there was any reassurance or surety that the father could provide which would assuage her concerns, she was very clear that there was not. She felt that he was saying things to persuade the Court but her long experience of his lying made her think that he would not abide by any orders. She was not reassured by the suggestion that his passport would be held by solicitors because she told me that she had recently travelled out of the jurisdiction with her son and no one had checked their passports on the way out of the UK. This caused her

alarm and it made her fearful that the father could take E away despite leaving his passport with solicitors during contact.

24. She was keen to convey to me that she believed the father was capable of manufacturing false documents or obtaining fake travel documents. She described to me an occasion in about 2019 when she had looked in the father's bag and had seen a fake divorce certificate. This persuaded her that the father had the ways and means to obtain false documents. I was taken by her counsel to a document in the bundle which was said to demonstrate some kind of forged signature but it was not in any sort of intelligible form and I cannot make a finding that the father was the author of it.
25. The mother told me that she had been receiving professional support around her own anxiety which she told me was always present. She explained how she had found it difficult to relax and to feel safe because of the abuse and violence that she had experienced from the father. She thought a lot about what might happen to her son in contact with his father and that she usually sat outside the contact centre when it was happening because she was not comfortable leaving him there and she needed to be close by.
26. The mother was clear that the father was dishonest and untrustworthy because of his lies and deception of her in the marriage. She could not understand what had motivated him to lie to her in the way that he did and she was clear with me that she did not believe what he said now and continued to be suspicious of him and to doubt he would adhere to any agreement or court order.
27. While she presented as anxious the mother was also able to accept that the father had shown commitment to E and although she was suspicious of his motivation she saw that it benefitted E to continue to see his father. Although she found it difficult in her evidence to consider how the father's contact might progress she did accept that it could be for longer periods and that it could for the most part take place in the community. At the conclusion of her oral evidence I asked the mother's counsel Ms Najma to give some thought to how the father's contact with E might progress in a supervised setting and counsel helpfully did so in closing submissions.

28. I found the mother to be a clear and compelling witness who has evidently been affected by her experiences in the marriage. While she has been resilient and has managed to move forward I do not doubt that she has been greatly affected emotionally and psychologically by the abusive marriage and by her long struggle to obtain asylum so that she and her son could have live in a safer environment away from the threats posed by the father and his family. To her credit she recognised and valued the father's role in E's life for what it was, notwithstanding the abuse that she herself had suffered during the marriage. She could see that E enjoyed time with his father and that he was willing to engage with him on FaceTime. I did not form the impression that the mother was seeking to cut the father out of E's life and in fact it seemed to me that she did what she could to facilitate the contact despite the obvious strain that it placed on her.
29. While I am unable to make any findings as to her allegation that the father has the capacity to manufacture fake travel documents or to obtain those for himself and for E, I do accept that she is genuinely fearful that he could do so. The mother's fear is understandable. During the currency of the marriage the father led her to believe that he was connected to criminal associates who had the capacity to cause harm to her and to E. But she also lived in fear that the father was being dragged into quasi criminal activity by AG. I shall return below to the father's acceptance and explanation for the lies that he told the mother and the contrivance of this individual. But it is hardly surprising that the mother has been left in a state of confusion and anxiety as to whether the father does in fact have connections to criminal associates and there is a deeply embedded distrust on her part as to anything the father tells her. She simply does not and cannot accept that the father is to be trusted. Against the backdrop of the history in this case the mother's position on this is not unreasonable and the father cannot blame the mother if she has reached that view of him. He cultivated it through his lies to her and his behaviour toward her.

The Father

30. The father was acting in person which obviously caused considerable strain for him. I commend him for the composure that he showed over the three days of the hearing and his focus on presenting his case. He gave his evidence at length and he struggled at times to answer questions preferring instead to make lengthy submissions and to argue his case about which he felt more comfortable. While I understand that to a litigant in

person the distinction between evidence and submissions may not always be clear I formed the view that at times in his oral evidence the father was avoidant and this was particularly so when he was pressed about his past abusive conduct.

31. He told me very clearly of his love and commitment to E. He has been a regular and reliable attendee at FaceTime contact and even though he found it hard to engage and connect with his son on those calls I was impressed with his consistency around that contact. It had been interrupted at the end of 2022 when his mother became ill and the father was overwhelmed with emotion during his evidence describing to me his fear that his son might not see his paternal grandparents in the future. The father provided me with a wealth of material in his written evidence and his closing submissions which included photographs of E with a cricket bat he brought him from Pakistan. This material and the contact notes which I have read demonstrate that the father does have a warm and loving relationship with his son. I accept that he is keen for the contact to progress.
32. The father's evidence about his future plans was not entirely clear. He told me that he did not want to move closer to his son taking up a position in the Netherlands unless he knew that he would be able to see him without supervision and that he would be permitted to bring him to the Netherlands. However on further exploration of this issue the father explained that the company for which he worked had an office in the Netherlands and that he could take up employment there with relative ease, in other words he had an offer of a job. He became emotional as he explained to me that he would have to leave his mother, who is unwell, behind in Pakistan and that he found that difficult in circumstances where he did not know how much time he would be able to spend with his son. It remains unclear whether he will relocate. If he does it would allow him to see his son more often but I accept that it may be a difficult move to make.
33. He was challenged in cross examination about the degree to which he accepted the findings of District Judge Heppell and Judge Pickering. He said that he did accept the findings but he then went on to say that on an occasion when he put his hands around the mother's throat it had not been his intention to kill her. This was an unattractive qualification to offer by way of explanation of appalling and abusive behaviour on his part. It leaned toward minimising and it undermined his assertion as to his insight and

acceptance of responsibility. He said that he had come to realise in therapy that he had a tendency during the marriage to see the mother as nagging him and that this led him at times to lash out at her. Ms Najma characterised this as minimising and I agree. He did express some remorse for what the mother had endured but he also maintained that the mother had not been honest particularly in the asylum application and he consistently paired those two things.

34. In answering questions put by the guardian the father gave some puzzling evidence about his discussions with her in August 2022. He told the guardian that he felt let down by the court system in England and he was clear about the injustice that he felt that the mother was granted asylum for herself and for E. This did not sit comfortably with his claim that he accepted his wrongdoing. The mother was granted asylum because of the risk he posed to her and to E. It led the guardian to conclude that he had not reached a position of acceptance and empathy.

35. He explained that he had used the contrivance of AG to avoid scrutiny by the mother of how he spent his time and he did not want her to be asking him where he was or what he was doing. He found it easier to make up a sinister and dangerous associate than to be honest with the mother but it became clear to me that even now he lacks any real appreciation of how such an elaborate lie caused the mother great anxiety. Similarly he had shown false documents to the mother in order to deceive both her and a woman with whom he was having an affair. He was an accomplished and at times careless liar and his tendency to downplay the seriousness of his own actions during the marriage was a troubling feature of his evidence. I formed the view that he lacked empathy for what the mother had experienced and he was keen to explain how his own actions seemed justified to him at the time rather than to reflect on the consequences of that behaviour for the mother and for his son. He struggled also to connect how his own poor behaviour led the mother to apply for and obtain asylum which in turn had an impact on his relationship with his son. He preferred instead to see that his current circumstances arose as a consequence of what he views as the mother's exaggerations and dishonesty asylum application.

36. The father had begun a therapeutic journey after the fact finding hearing. He has as I understand it completed a course of counselling in Pakistan which was arranged for

him through his employers with Dr Gurwitz. Then in October 2022 he embarked on a course of counselling with a Mr Cummings and he has completed 13 sessions. Mr Cummings provided a summary of the substance of that work which included the following:

“R’s lack of healthy communication in his marriage was mainly triggered by a repetitive thought of not having to answer to his wife. Because of that repetitive thought along with other thoughts such as; his wife should stop nagging him, R would ignore his wife for long periods which contributed to the escalation of events’.

37. Mr Cummings set out how a key element of his work with the father has been on recognition of triggers and also on acquiring empathy. The father acknowledged to him that empathy was not something he had considered during his marriage but that he realised it was an important tool for the formation of healthy relationships. Mr Cummings in his letter provided further detail about a range of strategies which he had provided to the father and on which they had worked together to ensure that the father had better management of his anger and understanding of his own emotional reactions. It was the conclusion of Mr Cummings that the father had to a large extent taken on board many of the skills and techniques. The father continues to engage in the therapy with Mr Cummings and the focus of that therapy is to understand what led him to behave in the way that he did during his marriage.

38. The father was keen to convey to me that he has done all that could be reasonably expected of him to reassure the mother and the court of his good faith commitment to his child. It was not easy to reconcile this with his evidence that it was he who was a victim of the justice system. While I do accept that he engaged in therapy and counselling and that his motivation for doing so is to try to understand his own abusive behaviour towards his wife it was clear to me that he continues to blame the mother for the fact that he is not seeing his son in the way that he would wish to and, this is overlaid with his sense that the mother had somehow hoodwinked the system in her favour.

39. The father offered a number of assurances to the mother if the contact was to be unsupervised and these are set out in his statement and include the following:

- i. That E cannot travel to Pakistan given his refugee status
- ii. That the father's passport and that of E can be held by solicitors
- iii. That he will provide an undertaking not to apply for any travel documents for E

Expert Evidence

40. Dr Ian Anderson is a consultant psychologist who undertook a risk assessment of the father and he filed a report in these proceedings dated March 2022. It was short and somewhat light on detail. In oral evidence he told me that he has particular expertise as a forensic psychologist and that has for many years risk assessed convicted criminals prior to their release. He was instructed to complete a psychological assessment of the father and to comment and advise on the risk which he posed to the mother and to E. He met with the father for an hour during which he interviewed him about his attitude to the domestic abuse which he had perpetrated on the mother. Dr Anderson assessed the risk as follows: *'I discussed with Mr F his history of domestic violence. I believe that Mr F showed a good deal of insight into his previous behaviour and that he has benefited significantly from therapeutic interventions'*. He continued *'I am of the opinion that if Mr F could find a domestic violence treatment course he may well benefit from it, but I do not regard that his level of risk of future offending is such that attending such a course should become a precondition of his having access to his son.'*

41. He went on to recommend that the father should research and read widely around the subject of domestic violence in order to understand his own behaviour and the consequences of domestic violence in general. He reached the view that the father had demonstrated what he called 'excellent insight' and that this mitigated the risk of future offending significantly to the extent that he did not believe that the father currently presented any significant form of risk either to the mother or child or indeed any other person in an intimate relationship with him.

42. The report contained little or any analysis of the reasoning that underpinned these conclusions. There was no information of what the father had told him or how he had challenged the father in discussions. It was difficult to see how this 'excellent insight' was demonstrated in his short interview with Dr Anderson and the latter did not

provide sufficient analysis of the evidence to reach the definitive view that the father presented no risk to the mother or to E.

43. In oral evidence Dr Anderson was asked to explain his conclusions and in particular to identify what it was that the father had said in the interview which led him to his stark conclusions. He did not appear to have considered the father's written evidence or the report of the guardian before giving oral evidence and I paused the hearing to allow him to review the latter. The guardian recorded the father as minimising the nature of the domestic violence and the impact of it on the mother but Dr Anderson was clear that evidence did not impact on his view. He explained to me that in reaching his conclusions he had compared the father to other violent individuals whom he had assessed and it was his recollection of the interview that the father did not appear to blame others for his own actions unlike others he had assessed and he considered this to be significant in his evaluation of risk.
44. Dr Anderson was asked to provide his written notes of the interview but he was unable to do so. He explained that he kept limited notes and that his habit was to destroy them once he had written up the report. This was unfortunate because it left the court with very little understanding of how he had arrived at his conclusion both as to the nature of the risk and the extent to which it could be managed.
45. Both the guardian and the mother were critical of the report of Dr Anderson and they each invite the court to depart from his recommendation. The guardian expressed disquiet as to how he undertook his assessment, namely by way of a short interview for which there are no notes but also about the absence of detail in the report itself and the absence of clear analysis in the recommendation.
46. I accept those submissions from the Guardian. I was troubled by the limited interview undertaken by Dr Anderson which seemed to be brief and the substance of it is not apparent from the report and it remains opaque in the absence of notes. The report itself simply does not explain on what basis Dr Anderson was satisfied that the father had acquired insight that would eliminate the risk. This is particularly so when insight was so lacking in his interview with the Guardian and in his written and oral evidence to the Court. The father is an articulate and intelligent man who presents as sincere

and committed and I do not doubt that he impressed Dr Anderson at his interview as he impressed the Court at times in his evidence. But I cannot accept Dr Anderson's conclusion that he presents no risk. The report lacks the analysis to justify that view and the conclusion flies in the face of the evidence including that was obtained by a highly experienced child protection professional, the Guardian who appeared to challenge the father more robustly in her discussions with him. Dr Anderson seemed not to properly consider the detail of the Guardian's report when it was provided to him and while I accept these are two professionals from different disciplines it troubled me that he appeared unwilling to take on board a contrary view as to the assessment of risk.

47. Ms Najma reminds me that the Court can depart from the recommendation of an expert witness and I do so for the reasons that I have set out above. In support of that submission she cites the well-known authority of **Re M-W (Care Proceedings: Expert Evidence) [2010] EWCA Civ 12** where Wall LJ (as he then was) emphasised the importance of providing reasons and noted that:

"[39] I regard the following as trite propositions of law:

(1) Experts do not decide cases. Judges do. The expert's function is to advise the judge;

(2) The judge is fully entitled to accept or reject expert opinion;

(3) If the judge decides to reject an expert's advice, he or she:

a. Must have a sound basis upon which to do so; and

b. Must explain why the advice is being rejected;

(4) Similar considerations arise when a judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B"

48. This was reaffirmed in the Court of Appeal case **D (A Child) [2017] EWCA Civ 196**

“55. Whilst that is not to say that a court cannot reject expert medical evidence, a court in doing so should have well in mind the case of Re M-W (Care Proceedings: Expert Evidence) [2010] EWCA CIV 12; [2010] 2 FLR 46.

49. I am not satisfied that the Dr Anderson undertook a thorough and full assessment of risk. If he did so it is not apparent from his written report or from his explanation of his analysis in oral evidence. The guardian has undertaken a more robust and in depth assessment of the risk posed by the father. Having heard the father give evidence it accords with my own view that the father has made some progress through his therapy but that he continues to pose a risk which needs careful management in order to safeguard E’s and to protect him from harm.

The Guardian

50. Miss Mitchell is an experienced practise supervisor who was appointed guardian in this case in March 2022. She is the third guardian to represent E. Her report is dated 25th of October 2022. She met with both parents in August 2022 and she observed E with his father at contact. She impressed me in her oral evidence as having considered all of the history of this case and she was uniquely placed to provide the court with a more detailed picture of E and his own particularly vulnerabilities.

51. The mother conveyed to her a deep concern that the father would remove E from England and Wales to Pakistan. This was the focus of her discussions and the Guardian told me it was her view that the mother’s fears were genuinely held. The mother was particularly concerned that Pakistan was not a party to the Hague Convention signatory and thus it would be very difficult for her to secure the child’s return. The mother also spoke about her view that the father continued to deny that he had been violent towards her and this troubled her greatly and caused her considerable anxiety.

52. In his interview with the Guardian the father focused on his sense of injustice that he felt from the English court system. He referred to the mother’s asylum claim as ‘a hoax’. She noted that the father was uncomfortable with the idea that his son was a refugee because he felt that this ignored the fact that he came from an ‘upper middle

class family'. He told her that he felt a social worker needed to be involved with his son to check on his education and the mother's parenting ability. The guardian was troubled by this assertion because it seemed to her to be about undermining the mother and she thought it was further evidence that the father had a tendency to blame the mother and to be critical of her in a way that could be harmful to his son. I understood this to mean that the father had a habit of petty criticisms of the mother's care but on macro level he was also externalising blame and he held fast to the view that the real reason why his relationship with his son was restricted was because of the mother's lies within the asylum application rather than arising from his abuse of her over a number of years which had required her to take the extraordinary step of seeking asylum.

53. The guardian received an e-mail from the father in which he told her that he was aware that the mother and his son had been in the Netherlands. It was not clear to the guardian how the father had obtained this information but it troubled her that he seemed to continue to try to find out the movements of the mother and E. She noted also that he questioned the mother's parenting of E despite his apparent acceptance that he would continue to live with her.
54. The guardian spoke with the school who conveyed that E had made very good progress. He was described as a confident easy going child and he was settled well at school. However the guardian described him as a child who was easily led and who was trusting. She observed a contact session with the father. She noted that the relationship between them was a positive and trusting one and she described the father being creative and engaged during the contact.
55. In her assessment of risk the guardian took a different view to Dr Anderson. From her interview with the father and her view of his evidence she identified a clear thread of denial of responsibility for his own actions. She found him to minimise the seriousness of the abuse and she was disturbed by the prominence given by him to what he described as the asylum 'hoax'. This view she noted was strongly held and was expressed to her with some force.

56. She noted that he was a practiced liar who had misled the mother over a long period of time about AG and that he has a sustained dishonesty over several years. It was her professional view that when taken together with his criticisms of the mother's parenting he presented a high risk to E. She explained to me in her oral evidence that managing the risk was not straightforward because E was a trusting child and she had observed him to be very compliant when in the presence of his father. This led her to the view that E would do what his father told him even if that meant getting on a plane, travelling somewhere or concealing information from his mother. She was concerned that as a young child he was not able to protect himself and because he was malleable she characterised him as a very vulnerable child in this context.
57. The guardian's interview with the father took place after he had completed his therapy with Dr Gurwitz in Pakistan and she considered it was reasonable to expect that he would have developed sufficient insight by that point to be more reflective as to his own role in the breakdown of his marriage and perhaps to display the empathy that he claimed to have acquired. I recognise that he had not begun his work with Dr Cummings. But much of what the father said to the guardian was minimizing his own past behaviour and downplaying the impact of it on the mother and this echoed through his oral evidence to me.
58. The Father is highly critical of the guardian's report and in particular he struggled to understand how it was that this guardian had reached a different view to her predecessor who seemed to accept the recommendation of Dr Anderson. He sought to persuade me that I should prefer the view of the previous guardian. But as Ms Mitchell explained the assessment process is dynamic and her colleague did not have the benefit of interviewing the parents at the same stage of the process. Ms Mitchell was also clear that hearing the father in oral evidence confirmed her view as to the level of risk which he continues to pose to his son.
59. In her report and her oral evidence Ms Mitchell also expressed a concern that the father presented a clear risk of abduction. This arose from the fact that the father viewed himself as a victim both of the justice system and of the mother and he was embittered that she and E obtained asylum in this jurisdiction. On some level he felt humiliated

by it and he maintained his view that E should return to Pakistan and he pressed for permission to take him there on holiday.

60. Despite being invited to do so by the father the guardian choose not to speak to Mr Cummings. Her assessment may have benefited from a greater understanding of the nature of the therapy which the father has undertaken. But I accept that she explored his insight and challenged him robustly in his interview with her and she was not satisfied that it had progressed sufficiently to allow her to support the lifting of supervision. She was clear that to do so would place E at risk of harm which for a child of his age was simply not manageable.
61. She accepted in evidence that it was positive that the father had engaged in therapy and that he was to be credited for doing so. However insofar as she was able to comment on it she expressed the view that the father had not yet reached the end of the therapeutic process so as to reduce the risk that he posed to his son. She supported the continuation of the therapy by the father and expressed the hope that he could engage and focus on recognition of the harm that he has caused. Ultimately she concluded that the risk to E from his father was sufficiently high that at present it could only be managed by supervision of the contact.
62. I invited the guardian to give some consideration to how the contact might progress and in particular whether she envisaged lifting of the supervision at some point in the future. She expressed the view that the parents should take a common sense approach to increasing the frequency of the contact and its duration but she was very clear that supervision was likely to be necessary for at least another two to three years. She suggested that the mother engage with a specific service which she recommended Children and Young People Project at the end of a two year period with a view to assessing whether E had acquired the tools needed to protect himself and to be aware of and understand the risk. Until that happened she did not see how the supervision could be lifted. This position was revised somewhat in her closing submissions in that she suggested that the supervision could be reviewed in 12 months. It is my understanding of her evidence that it could take up to 2 years to move to unsupervised but if it progressed well and the father demonstrated consistency and commitment and there were no incidents, then it was possible that E could begin the work she

recommended earlier. She was clear however that it could not move to unsupervised until that work was completed.

63. The guardian was clear however that contact could take place as often as monthly if the father was living in the Netherlands and that it could be for longer duration which would allow their father to plan activities in the community.

64. I found the guardian's evidence to be thoughtful, measured and thorough and I accept her assessment of risk. She had detailed interviews with both parents and she had the benefit of speaking to teachers and observing the father's contact with E. That gave her the advantage over Dr Anderson and she also reviewed all the evidence in the case so that she had, as it were, the whole picture. The assessment of risk in this case is not simply informed by the father's assertions that he has regrets but also by the impact of the abuse on the mother, her ability to cope psychologically and emotionally with the regular contact, the impact of that on her parenting of E and the vulnerability of E himself. Her investigations impressed me as more thorough and wide ranging than those of Dr Anderson and she provided a more analytical consideration of the issue of risk both as to the nature of it and the ways in which it could be managed. Perhaps most importantly the guardian was able to factor into her analysis the particular characteristics of this very young child whom she found to be vulnerable and malleable which increased the risk of abduction in her view.

65. I accept the guardian's evidence and I prefer her assessment of risk to that of Dr Anderson whose report was deficient for the reasons set out above.

The Law

66. Ms Najma in her closing submissions reminds me that section 1(1) Children Act 1989 mandates that E's welfare is the Court's paramount consideration. 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)). Section 1(3) Children Act 1989 and in this case of particular importance it seems to me are:

Section 1 (3)(b)his physical, emotional and educational needs; and (c)the likely effect on him of any change in his circumstances; and (e)any harm which he has suffered or is at risk of suffering;

67. It is not in dispute in this case that E requires a relationship with his father and that it should continue to involve direct and indirect contact.

68. I am required by FPR Practice Direction 12J at paragraph 35 and 37 to give consideration to the following:

“35. “When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

36. In the light of any findings of fact the court should apply the individual matters in the welfare checklist with reference to those findings; in particular, where relevant findings of domestic violence or abuse have been made, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that violence or abuse, and any harm which the child and the parent with whom the child is living, is at risk of suffering if a child arrangements order is made. The court should only make an order for contact if it can be satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further controlling or coercive behaviour by the other parent.

37. In every case where a finding of domestic violence or abuse is made, the court should consider the conduct of both parents towards each other and towards the child; in particular, the court should consider

- (a) the effect of the domestic violence or abuse on the child and on the arrangements for where the child is living;*
- (b) the effect of the domestic violence or abuse on the child and its effect on the child's relationship with the parents;*
- (c) whether the applicant parent is motivated by a desire to promote the best interests of the child or is using the process to continue a process of violence, abuse, intimidation or harassment or controlling or coercive behaviour against the other parent;*
- (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and*
- (e) the capacity of the parents to appreciate the effect of past violence or abuse and the potential for future violence or abuse.”*

Discussion

69. The central issue in this case as rehearsed by the Guardian in her report is the nature and level of the risk posed by the father to E, how it can be ameliorated and managed and in due course how contact may progress.
70. In her written and oral evidence the mother gave compelling evidence as to the cost to her of the abuse that she has suffered. Her anxiety for the safety of her son is palpable and it is reasonably held. It is clear that the mother still bears the weight of her experience and the direct contact is clearly a challenge for her given her evidence to me that she needs to sit outside the centre. Managing regular contact which begins to progress to the community and increases in duration will take a toll on the mother psychologically and while she does support it I accept that she is in constant fear during the contact that something might happen to E. I must have due regard to the findings also as to the abuse that she has suffered over many years and the consequence of it as to her isolation now in this jurisdiction. E lives with his mother and she is responsible for his day-to-day care. The impact of contact on her is considerable and I accept her evidence that it is difficult to manage, even in circumstances where it is supervised. Any increase in her stress and anxiety poses a risk to E, if she is not emotionally available to him and that is a factor which the Court must weigh in the balance.

71. I recognise also that the trust issue for the mother has led her to have a reasonable expectation that the father may breach orders and renege on agreements or undertakings to the Court. The father's deception of her affected her deeply. It was longstanding and her fear of abduction is genuinely held. I accept the evidence that she would struggle to contain her anxiety and that in turn is likely to impact on E to his detriment.
72. The father has a history of abuse and deception. I recognise and commend the father for the steps that he has taken to engage in therapy and I accept his evidence that this was a challenge given his own background and culture in which it was not easy to engage in the type of self-reflection which is involved in the therapeutic process. I was struck by his commitment to that process and he impressed me with the initiative he had shown in identifying a suitable therapist in Mr Cummings in particular. I have no doubt that he loves his son and longs to be able to parent him in a more hands on and involved way.
73. However he seemed to me to be at the beginning rather than the end of a process. His anger and resentment toward the mother were evident in the trial. He externalised blame to her for the situation in which he now finds himself. His evidence as to his perception of the mother having hoaxed the asylum process was troubling. I accept the Guardian's evidence that this leads him to lean into a sense of victimhood which prevents him from accepting responsibility for E living here in the UK far from his paternal and maternal families. The father's deep resistance to acknowledging this and his blaming of the mother creates a high risk that he would abduct E or otherwise seek to remove him from the mother's care. That is also a factor which I must weigh in the balance. In evaluating risk I also bear in mind that the harm to E were he removed from his mother and/or abducted would be one of emotional and psychological harm of a serious nature.
74. E is a young child who is malleable and very trusting. He enjoys time with his father and the guardian's view is that he simply has no awareness of risk. That is also a factor which I cannot ignore. E will need professional input to understand and acquire this and he is too young to undertake such work.

75. I accept that the contact is of good quality and I have no doubt that E would wish to see and spend time with his father in a more ‘normal’ setting and to spend time with his paternal family. But that is only in his welfare best interests if it is safe for him to do so. The level and nature of the harm in this case is clear and at present it is multifaceted. It can only be managed by professional supervision at this juncture and I find that the supervision must continue. I approve the mother’s proposal as to the organisation and I note and accept her suggestion that she will fund half of the costs of the supervision in the terms she has set out.

76. I have also reached the view that the PSO should continue. It is necessary for two reasons. Firstly because it mandates clearly that the father is not permitted to remove the child from the jurisdiction or from the mother. But of equal importance is that it provides clear reassurance to the mother. It will allow her to support the contact secure in the knowledge that there is a clear protective legal framework around it.

Order

77. Given the quality of the contact it is imperative that it progress. The mother provided me with a proposal for the progression of contact and its move to the Community. It appears that she is proposing the following on the basis that the father is in Pakistan.

- i. Half term – 3 sessions of 2 hours
- ii. Easter – 5 sessions of 2 hours
- iii. Summertime – 5 sessions of 2 hours
- iv. Christmas – 5 sessions of 2 hours

78. If the contact is to remain supervised it may be able progress at a faster rate than the mother proposes. I will hear submission from the parties as to pace of progression but I would expect that E can spend 4- 6 hours with his father at contact sessions, if the parties can afford to fund the supervision to allow them to undertake an activity and enjoy time together.

79. If the father is living in the Netherlands the Guardian considered that the contact could be monthly and I agree. There should therefore be provision for longer periods of consecutive days.

80. I accept the guardian's recommendation as to the way in which contact can progress to unsupervised contact in the future but that cannot safely happen until E and his mother have had the opportunity to complete the work recommended by the Guardian. The order is to provide that the supervision will continue for up to 2 years but I recognise that it may happen sooner depending on its progress and when the work with E can be completed. I accept that work however cannot begin immediately and that it will take time for E to acquire an understanding of risk. It is vital that the father does not have a rigid expectation as to when the supervision can be lifted. It is my view that it should continue for up to two years but in line with the Guardian's recommendation it may be possible that it can be relaxed sooner.

DFKC

10th March 2023