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Case No: FD22P00629

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/08/2024

Before:

MR JUSTICE MACDONALD

Between:

HK
- and -
NK

Applicant

Respondent

Mr Michael Gration KC (instructed by **Brabners**) for the **Applicant**
Mr James Turner KC and Ms Maria Scotland (instructed by **HAB Law**) for the
Respondent

Hearing dates: 3, 4, 5 and 12 July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 2 August 2024 by circulation to the parties or their representatives by e-mail.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this finely balanced matter remitted by the Court of Appeal for re-hearing (see *R and Y (Children)* [2024] EWCA Civ 131), I am concerned with the welfare of R, born in 2013 and now 11 years old, and Y, born in 2015 and now 9 years old. The applicant is the father of the children, HK, represented by Mr Michael Gration of King's Counsel. The respondent mother is NK, represented by Mr James Turner of King's Counsel and Ms Maria Scotland of counsel.
2. The application before the court is the father's application for orders under the inherent jurisdiction of the High Court. For reasons I shall come to, the question now before the court concerns the appropriate arrangements for the children's future care and, in particular, whether it is in the children's best interests now to move from the care of their mother in the jurisdiction of England and Wales to the care of their father in the jurisdiction of the UAE, where the children were born and grew up.
3. In determining that issue, I have had the benefit of reading the trial bundle, which includes the statements of evidence relied on by the father and by the mother, and the original and updated Cafcass reports. The court has also had the considerable assistance of comprehensive written and oral submissions from leading and junior counsel.
4. As Mr Turner and Ms Scotland point out in their Position Statement prepared for this hearing, the fact that this matter requires a re-hearing following the decision of the Court of Appeal has created a number of difficulties. In particular, the court that is determining this welfare application is not the court that conducted the finding of fact hearing in this matter, the Cafcass Family Court Adviser (FCA) giving evidence at this final hearing is not the FCA who prepared the original reports in this matter and the author of the original FCA reports is not available for cross-examination. I have been careful to take account of these difficulties, which can arise where delay results from a case having gone through the appellate process, when reaching my decision.

BACKGROUND AND EVIDENCE

5. The mother is from an Eastern European country and is now aged 48. During her oral evidence the mother described a difficult childhood. The mother was living in the UAE when she met the father, having moved to that jurisdiction with a former partner when she was 25. Although the mother's first language is not English, and she had the benefit at the hearing of an interpreter, she was able to give evidence largely in English, seeking the assistance of the interpreter only in respect of complex or technical language.
6. In his finding of fact judgment, Mr Paul Hopkins KC sitting as a Deputy High Court Judge (hereafter 'the judge'), considered the mother to be more measured and more in control of herself in the course of her evidence than the father and presenting as a bright, articulate and contemporary mature woman. Against this, the judge considered the mother could also behave very differently, in part under the disinhibiting influence of alcohol. He assessed her to be a poor witness in relation to a number of aspects of her account, observing her to be highly defensive and

minimising in relation to parts of her cross-examination concerning whether she was fearful of the father and in respect to her alcohol consumption in early 2023. The judge also considered that there were inconsistencies with respect to her allegations on and after 24 August 2022 and that she had considered adding to her narrative with respect of her rape allegation before backtracking. The judge was also satisfied with respect to the mother that “there was an ‘agenda’ at play at times when some of the evidence before the court was created or recorded, including engaging in leading questions when video recording the children.”

7. The mother presented at this hearing as flat and somewhat sad in her countenance. I am satisfied that the mother was not completely frank with the court on some matters and, at times, lacked insight on a number of issues affecting the children’s welfare and into their emotional needs. Mr Turner and Ms Scotland were right to caution the court, however, that the mother has been proven to be a victim of serious and substantial domestic abuse, is currently prescribed anti-depressants and is under considerable pressure parenting the children as a single parent in this jurisdiction. I have borne these matters very carefully in mind when assessing the mother’s evidence.
8. The father is British and is now aged 43. He moved to the UAE in 2009. He currently resides in the family home in the UAE and owns and runs a business in that jurisdiction. During the course of the fact finding hearing the judge found the father to be old fashioned in his attitude towards women (the judge had to warn the father repeatedly not to refer to the mother’s female counsel as “dear”, for which the father apologised). The judge was also satisfied that the father regarded the parties’ assets and income as, fundamentally, his and to be approached on his terms. Against this, the judge considered that the father did appear insightful in parts of his written and oral evidence, the father accepting that he should have behaved differently, but that some concessions were then followed by qualification or deflection.
9. Before this court the father’s answers were, on occasion, evasive and he took opportunities to divert the question to the mother’s perceived deficits. Like the judge before me I found the father at times volatile, although whilst clearly frustrated he did not lose his temper at any point. I have also taken account of the fact that the father had had a four-hour operation the day before the hearing and gave evidence only hours after being discharged on the morning of hearing. In listening to his evidence, like the judge and despite his at times combative approach, I too considered that the father demonstrated insight and the ability to acknowledge that he had found aspects of parenting challenging, had behaved badly, is “old fashioned” in his approach and had used parenting techniques that were not “the right thing”. He was also largely candid in giving his evidence, accepting for example that when speaking to the children he did want to remind them of the good things in the UAE and to promote what he considered to be the better lifestyle in that jurisdiction. Whilst he did not consider the mother to be a “hands on parent”, he willingly acknowledged that the mother is a “loving parent”.
10. The parents met in Dubai in 2010. In 2012 the parents married in England and thereafter returned to the UAE, living first in Dubai before moving to a different Emirate. Mr Turner and Ms Scotland submit that it is important that the court bears in mind that the family home in the UAE is not in Dubai, but in a different Emirate, where the culture is they contend, to use the formulation adopted by Mr Turner and

Ms Scotland, “more traditional”. This would, submit Mr Turner and Ms Scotland, leave the father in “the driving seat” in relation to contact arrangements if the children moved to live with him in UAE.

11. R was born in March 2013 in the UAE. In 2014 the father started a business in the UAE. Y was born in June 2015 in the UAE. Between 2016 and 2019 the parties had a live-in maid in the UAE. In 2016 the parents purchased a property in England which they utilised as a holiday home. In 2022 they purchased a very well-appointed property in the Emirate in which they live. In June 2022, the parties hired a new live-in maid. Within this context, the lifestyle of the family was relatively affluent. Both parties accept that the weather is considerably better, and the opportunities for outdoor activities in the UAE are considerably more extensive than in this jurisdiction.
12. The parties agree that their marriage began to encounter difficulties in 2016 or 2017. As I will come to when recounting the outcome of the finding of fact hearing held in this case, from 2017 the mother contended that during the course of the marriage the father perpetrated sexual violence, threats to kill, physical and psychological domestic abuse against her and engaged in coercive and controlling behaviour in respect of matters of finance. The father also made allegations of inappropriate behaviour against the mother. Alcohol was a factor at this time in the behaviour of both parents. For example, when police attended an incident at the family’s property in England on 14 July 2018, following the mother alleging that the father had threatened to murder her, both parties were found to be intoxicated. As I have noted, these matters were the subject of a finding of fact hearing before the judge previously allocated to this matter. I set out below the circumstances of that hearing and the findings made.
13. On 13 July 2022, the mother and the children came to England for the purposes of a holiday, the father having booked return flights to the United Kingdom on 11 July 2022. Between 26 July 2022 and 10 August 2022, the mother and the children spent time with the mother’s family in Europe. On or around 17 August 2022, the father alleged that the mother screamed expletives at R and grabbed Y by the hood of her onesie. From 20 August 2022, the children spent time on holiday with the paternal grandparents in this jurisdiction. On 21 August 2022, the parents attended a wedding. It is alleged that the father told friends at that wedding that he would be relocating to England in 2023. On 23 August 2022 the mother sought some initial advice with respect to her immigration status in this jurisdiction.
14. On 24 August 2022, the father sent a WhatsApp message to the mother informing her that the marriage was over. On the same day the mother called the police and alleged coercive and controlling behaviour, including financial abuse, violence, sexual assault and rape by the father. The father was arrested on 25 August 2022 and interviewed. The father denied each of the allegations made by the mother and alleged that the mother had demonstrated concerning behaviour and abused alcohol. He conceded that he had smacked the children’s bottoms. The father was released on police bail and subsequently the police took no further action in relation to the complaints made by the mother. On the father returning to the parties’ English property the mother and children had left, having gone to stay with friends. At this time, the mother also made arrangements for some of her possessions to be removed from the family home in the UAE.

15. The family were due to return to the UAE with the children on 26 August 2022 but did not do so. On 31 August 2022, the father reported concerns regarding the mother's care to Children's Services. Children's Services completed a Children and Families Assessment. At this hearing, Mr Turner and Ms Scotland have relied on the social worker's observation in the Child and Family Assessment that the "[the father's] behaviour has been worrying and [he] withheld information from me to 'distort' the wider context. I have felt [father] at times has done this to control the wider circumstances...". In his judgment following the finding of fact hearing, the judge found that the father had pursued an agenda in respect of the Children and Families Assessment to unsettle the mother by his actions. On 1 November 2022, the children were made the subject of a Child in Need Plan pursuant to s.17 of the Children Act 1989.
16. On 2 September 2022, the mother informed the children's school in the Emirate in which they live that the children would not be returning and enrolled the children in school in this jurisdiction on 8 September. The mother and the children have remained in this jurisdiction since August 2022.
17. On 3 October 2022, the father lodged an application for a return order under the inherent jurisdiction of the High Court, seeking the summary return of the children to the UAE. As I will come to, the issue for the court to determine under the umbrella of that application is now no longer one of summary return. At a first hearing of the father's application under the inherent jurisdiction, on 14 October 2022, the passports of the mother and the children were retained by the Tipstaff pursuant to a passport order made on that date.
18. There has been an issue during these proceedings concerning the immigration status of the mother in this jurisdiction and her ability to re-enter the UAE were the court to determine that the children should move to live with their father in that jurisdiction. As I will come to, the judge made certain findings in respect of that issue in his final judgment that were not disturbed by the Court of Appeal. Mr Turner and Ms Scotland submit that the mother has not worked in the UAE for very many years and that her immigration status in that jurisdiction is uncertain and, in any event, would be susceptible to change. They further contend that the mother has not had independent advice about her position in the UAE and that it is not agreed that the expert who has provided a report to the court "has been acting in a wholly independent role". On 18 October 2022, the mother applied for leave to remain in the United Kingdom, having first contacted immigration advisers on 6 October 2022. In her application for leave to remain, the mother reiterated allegations of domestic abuse by the father and asserted that she was the primary carer of the children. Mr Turner and Ms Scotland submit that a decision that the children should move to live with their father in the UAE could place the mother's immigration status in this jurisdiction in jeopardy.
19. The father's application came before Lieven J on 9 November 2022 for further case management directions. On that date, Lieven J considered the schedule of allegations relied on by the mother and determined that the sum of the allegations relied on was disproportionate and directed that the schedule be reviewed. The father returned to the UAE alone in January 2023 and the mother moved into the family's English property. On 26 January 2023 the mother made an application for a non-molestation order. That application was dealt with by the parties giving cross-undertakings.

20. The original Cafcass Family Court Adviser (FCA) filed a preliminary report dated 12 January 2023. The report noted that at that stage the children were expressing wishes and feelings that were unequivocally in favour of returning to the UAE. That report further noted the following matters:
- i) R wanted the help of the Family Court to return to his home in the UAE. R disliked the weather in England and the fact his parents were living in separate houses. He stated he had lots of friends in the UAE, played outside a lot, his school was much better and his house “very luxurious”. He considered that he generally missed everything about his life in the UAE. He described the house in the UAE as his “proper home”.
 - ii) R appeared not to have digested his parents’ separation and anticipated that a return to the UAE would see his family returning to live together.
 - iii) One of the matters that upset R was “Arguing. Dad arguing about mum drinking too much beer”. R described his mother as drinking “all the time”. He said he had seen some fights between his parents where they had said bad words to each other, which made him sad. He stated that the only words he knew were swear words in his mother’s first language as that is what he had learnt from his mother. His father had told him about an alleged incident wherein his mother had bitten his father. R’s distress at the acrimony between his parents was apparent.
 - iv) Y stated that her home was in the UAE and that in the UAE they used to do lots of fun things with the father but did not do fun things in England. She too wanted the family court’s help to return to the UAE because she had lots of friends there and missed it a lot. She wanted to live with her mother and visit her father “a lot” but also stated that she would like her father to look after her more than her mother, and wanted to live with him. If her mother did not return to the UAE, Y stated she could visit her in the holidays.
 - v) Y asked “If I go back to UAE is dad going to hurt me again” and explained that “dad was hurting me and mum, one time mum had bruises on her hand from where dad hurt her.” When the Cafcass Officer asked what Y meant by her father hurting her, Y stated that her father used to smack her if she was naughty and it hurt her. Y was not able to provide any further context about being smacked, when that occurred or what it had felt like. When she was asked if she was frightened of her father looking after her, she “...nodded, although didn’t seem convinced”.
 - vi) Y stated that her mother was “someone who drinks beer and does a lot of cleaning and spends too much time on her phone”. She considered her mother drank too much beer and that she saw her mother drinking about once a week. She stated that her mother had gone to sleep in the dog bed because she had drunk too much beer. She stated that her father did not like it when her mother drank. Y said that her parents were always shouting at each other. She stated she had never witnessed her parents hurting each other, but her mother did not want to see the father anymore as she does not like him and she hurt him.

21. With respect to the children's references to the mother drinking, at the direction of the judge both parties were the subject of hair strand testing for alcohol. On 8 February 2023, the mother stated to the sample taker that she drank fifteen cans of beer a week. Within this context, the judge noted that at the fact finding hearing the mother stated she had been drinking every day, had stopped prior to the testing and had later resumed drinking. The judge was satisfied that this "suggests a degree of dependency". The judge also noted that, whilst he did not consider the mother had deliberately sought to invalidate the testing, her use of dye and bleach left a question mark over her results.
22. More widely, the judge was satisfied that the evidence demonstrated "alcohol playing a significant and unwelcome impact on the parties' marriage". Whilst the judge considered the father to be less minimising about his alcohol consumption, there were also concerns about drinking before driving in the UAE (in the context of the father's previous conviction for drink driving) and "his fundamental attitudinal thinking towards alcohol use". The judge was satisfied that the father was capable of "appalling behaviour" whilst under the influence of alcohol, citing the example of the father urinating in the kitchen sink and making a finding that the father would, on occasion, urinate in the bed.
23. The original FCA concluded that the children held a genuine desire, based on their own wishes and feelings, to return to the UAE, which they viewed as their home. The FCA considered that it was understandable that the children would wish to return to a place where they had lived for their whole lives, and where their friends, schools and hobbies were based. She concluded that both children had a strong sense of belonging to the UAE and that, by comparison, England felt unfamiliar and unstable to them.
24. The FCA was further concerned, however, as to the functioning of the children's relationships with each of their parents and what exposure to potentially harmful behaviours they may have experienced. The FCA considered that the children had been drawn into and made aware of adult disputes from which they should have been protected and that, beyond their clearly genuine and understandable wishes to return to the UAE, the children's wishes and feelings are in many ways unreliable and could not be used as an indicator of which parent's account of the adult relationship was more accurate from their perspective. In the circumstances, the FCA was concerned that the children (a) displayed clear indicators of having sustained some emotional harm as a result of exposure to harmful adult behaviour, (b) felt hopelessly caught in the middle of the highly acrimonious and volatile separation of their parents at the same time as being uprooted from their home, school and friends, (c) had both experienced a difficult adjustment and (d) were likely to have been emotionally harmed through this.
25. In these circumstances, the FCA recommended that there be a finding of fact hearing before recommendations were made with respect to the long term welfare arrangements for the children. The matter again came before the judge on 14 February 2023 and he agreed that a finding of fact hearing was required.
26. The judge handed down judgment on 22 May 2023 following a finding of fact hearing that took place from 9 to 12 May 2023. Both parents were legally represented at the fact finding hearing. Whilst, in respect of the findings sought by the mother, the

father made what were described by the judge as “some general concessions as to poor behaviour on his part, which he says he now regrets”, the father denied the vast majority of the specific allegations made by the mother and rejected the overarching allegation of domestic abuse and controlling and coercive behaviour.

27. There is no schedule of findings appended to the judgment of 22 May 2023. However, from the body of the judgment the following findings can be extracted, which were not disturbed by the Court of Appeal:
- i) The father has an issue in managing his temper and anger in a domestic setting and was capable of initiating aggression and violence. With respect to this behaviour, the judge rejected the mother’s contention that the father had become violent and angry towards her and the children whenever he became upset or suffered a minor inconvenience. The judge considered that contention exaggerated and found that the parties’ deteriorating marriage was a significant source of stress and frustration that the father found challenging to manage, especially in the context of excessive alcohol use by him and that, in a general sense, the father found aspects of caring for the children at times challenging.
 - ii) In 2020, the father had told the mother to “fuck off back to [her home country]”.
 - iii) In March 2017, the father assaulted the mother in the presence of R, then aged 4, by placing her in a headlock while twisting her left arm and choking her with his right arm. The mother took several weeks to recover from the consequent unpleasant injury.
 - iv) In May 2017, the father threw the mother against the walls and the furniture. As a result she had locked herself in the bedroom. The mother sustained relatively extensive bruising to her torso and limbs. The following morning the father had evicted the mother and Y, then aged two, from the property in their pyjamas, causing them to wait in a neighbour's house until the police arrived.
 - v) The father was capable of verbally abusing the mother in a shameful way. Whilst this behaviour was regular, the mother’s contention that it was daily was found by the judge to be an exaggeration.
 - vi) In the summer of 2018, whilst the children were in the house and whilst he was drunk, the father had threatened to smash the mother’s head against a wall and bury her in the driveway, although he had done so with no intention of carrying out those threats and, whilst this was undoubtedly an unpleasant and abusive incident and the mother had by then been exposed to a sustained abusive relationship with the father, the judge was not satisfied that the mother was fearful as a result of the threats made on this occasion.
 - vii) Whilst it may well have been the case that the mother had financial expectations that exceeded the parties’ capacity and that she sought for them to live beyond their means, the father exercised a degree of unhealthy control over the mother in relation to finances and held the “whip hand” in respect of the finances, which the father would use in the course of arguments with the

mother. This had a disempowering effect on the mother and was, to a degree, abusive. The impact of this control fell to be seen in the context of the cumulative impact on the mother of the other findings of abuse made by the judge. The finding made against the father in terms of financial control was located towards the less serious end of the spectrum.

- viii) The father was impatient with the children and often smacked them so that red handprint marks could be seen on their bodies and smacking the children would have been obviously painful to them.
 - ix) In 2017 the father had hit Y, then aged two, on the head with a phone because she had made it dirty.
 - x) In 2022 the father had threatened R with a fork before pressing it into his hand causing him to cry out but not causing an injury.
 - xi) The findings in relation to the children did not amount to evidence of propensity on the part of the father to behave in a deliberately spiteful and abusive way towards the children.
28. The judge also concluded that the mother had been capable of aggressive behaviour on some occasions, noting in particular:
- i) The mother conceded that she bit the father leaving bite marks, contemporaneous evidence in the form of photographs of the bite marks dating those injuries to 22 October 2014. Whilst the mother was candid about this, the underlying acknowledged behaviour was nevertheless extreme.
 - ii) The mother had the capacity to be and was, at times, verbally abusive towards the father. On one occasion, in the family home in the UAE and in the children's presence, the mother had described the maternal grandmother as a "cunt".
29. The judge rejected a number of the mother's allegations, including the allegations of rape, abusive sexual behaviour and inappropriate sexual behaviour. The judge also rejected certain of the allegations made by the mother with respect to the father's conduct towards the children. In particular, the judge rejected the allegations that in 2017 the father had kicked R in the stomach, that in 2021 he had burned Y with a cigarette lighter, and that he had deliberately tripped Y up and that he had bitten her finger.
30. Following the finding of fact hearing, the original Cafcass FCA provided an addendum report dated 17 July 2023. It is important to recall that the Court of Appeal levelled significant criticisms at the FCA report of 17 July 2023. In particular, the Court of Appeal subsequently noted that the FCA made no explicit reference to the findings made by the judge that the father had physically abused the mother and the children, with the focus of the FCA being on the finding of financial control rather than the judge's findings about the father's abusive conduct. In these circumstances, Baker LJ concluded that the summary of the findings in the report "was not an accurate summary of the totality of the serious findings made by the judge". These criticisms must be born in mind when considering the contents of the report and I

limit my observations in respect of the FCA report of 17 July 2023, and the evidence of the FCA at the final hearing, to the factual matters identified by the FCA and her assessment of the children.

31. With that caveat, in her addendum report, the original FCA noted the following matters:
- i) The children had settled well in their school and made friends with relative ease and presented as happy with no outward signs of emotional distress. There were no significant concerns with respect to punctuality. R was noted to be academically able, he is achieving in line with expected levels for his age group. Y had been assessed as of low ability and the question of developmental delay was being assessed.
 - ii) The school noted that Y would speak about how much she misses life in the UAE, and appeared confused about why she came over to England in the first place. Sometimes Y appeared concerned that it may be something she did that had caused the move.
 - iii) Y told the FCA that she is enjoying her school, she had now made lots of friends here, and was attending dance classes at the weekends. She however maintained a clear wish to return to the UAE. When the FCA asked Y how she might feel about having to leave behind her mother, Y concluded that she would be sad and probably miss her mother, but that she could see her during holidays. Whilst the FCA considered that Y had become embroiled in the highly conflicted relationship of her parents, the FCA considered that it was clear that her wish remained to return to UAE, and that she still considered the UAE as her true home.
 - iv) R presented as a child who had matured significantly but whom the FCA considered to “carry the weight of the world on his shoulders”. The FCA considered that R seemed to choose his words very carefully throughout the discussion and that R had become very concerned with feeling responsible for keeping everybody in the family happy, instead of being able to focus upon what it is that he would like to happen. In particular, the FCA was concerned that R appeared deeply invested in the family finances and was concerned about his mother’s financial situation to an inappropriate degree.
 - v) R stated that he missed his house, pool, dog, friends and hobbies in the UAE. Against this he stated that he was able to play football in England, which was his favourite hobby. He told the FCA that he had made some friends and it had begun to feel like England could “equally be his home”.
 - vi) R informed the FCA that he had found life difficult and felt caught in the middle of his parents’ views about what they think the future should look like for him. R informed the FCA that sometimes he felt as though his father was attempting to bribe him to return to the UAE by promising all of the things he can have if he goes back there and said he did not like it, contrasting his view that his mother had not tried to bribe him to stay in England.

- vii) R stated to the FCA that although his ideal wish is for all the family to return to the UAE together, he understood that his mother had said she will not/cannot return. Within that context, R told the FCA that he didn't mind either way what happened and would like the Court to make a decision on his behalf. R stated to the FCA that that if he were to return to the UAE without his mother he would be okay with this. Similarly, he would be okay with remaining in England.
32. The FCA concluded that neither R nor Y appeared to hold a stable, secure primary attachment to either parent. Within that context, she considered that the reasons the children gave for wishing to live with their father were not a testament to any comparable strength or affection within their relationship, and instead appeared to be motivated by a desire to enjoy the material privileges that his financial stability afforded them. The FCA considered that the children had been actively drawn into their parents' disputes.
33. As noted at the outset of this judgment, one of the difficulties in this case is that the FCA who authored the report of 7 July 2023 was not available to give evidence at this hearing. However, from the welfare judgment of the judge handed down on 4 September 2023, it is clear that the FCA made the following points during her oral evidence regarding her assessment of the children, which again fall to be considered mindful of the criticisms levelled at the FCA report by the Court of Appeal:
- i) The FCA emphasised that R had been "overburdened" by exposure to adult issues and that he no longer wished to express a view either way about his future in a way he was willing to do earlier. The FCA further emphasised if R returned to the care of his father he would wish to see his mother a great deal and, conversely, if he stays in England with his mother, he would also wish to see the father and experience the UAE a great deal.
 - ii) In this context, the FCA did not accept that R was 'bribed' by his father and that if that had been the father's intention, then it had singularly failed.
 - iii) The FCA did not accept that a return to the UAE would be an "upheaval" for the children in that such an outcome would be a return to a country that they knew so well.
 - iv) Both children could settle in England if that were to be the decision for them. If the court decided that the children should stay in England, then they should have as much time in the UAE on holidays as possible as this would be very important to them.
 - v) The FCA stated that both parents are "vital" to the children and that her recommendation, that the children's welfare would best be met in the UAE either with a shared care arrangement or with the children living with their father in the UAE and having contact with their mother, had "not been easy" to reach.
34. On 4 September 2023, the judge made a return order under the inherent jurisdiction of the High Court. In the course of his judgment, Mr Hopkins KC made the following additional findings, which again were not disturbed by the Court of Appeal:

- i) The father was involved in a very meaningful sense in the children's care on a day to day basis when the family lived together in the UAE.
 - ii) The father would need the assistance of supplementary care by a nanny or live-in maid in the light of his business commitments in the UAE were the children to return to his care. This is an arrangement that is very familiar to the children from their past experience of being parented in the UAE.
 - iii) The father did not know that Y had been referred by the school for a paediatric assessment in February 2023. The referral for a SALT assessment was not shared with the father before the appointment on 10 August 2023.
 - iv) The father was alive to the potential special needs for Y and had made suitable enquiries to source an additional tutor who would appropriately fulfil a supporting role if Y needs mainstream extra assistance. The father had appropriate private medical insurance for the children that should cover any specific medical assessment needs for Y. In the event that Y required more bespoke and specific additional assistance, the father would make the right child-focused decision, which may involve her return to England.
 - v) Some of the indirect contact that should have taken place between the father and the children had been shortened or otherwise frustrated by the mother.
 - vi) The mother had not willingly and positively promoted contact between the children and the paternal grandparents until it suited her own purposes.
 - vii) The mother would not face arrest in the UAE in relation to the children remaining in England at her direction in August 2022.
 - viii) Whilst neither party could be asked to give a binding guarantee that no complaint would ever be made against the other at any time in the future, having regard to the father's more child-focused approach, despite his established faults he would not make a false allegation against the mother for her to be arrested for gratuitous reasons.
 - ix) The mother could return to the UAE under one of a number of possible visa arrangements. The mother could return under a visitor's visa and could then apply locally for a longer term visa arrangement based on an employment sponsor or through starting a business. The mother could return to the UAE for shorter periods via either a 30 day or 90 day visitor visa.
35. The views of the children upon being informed of the final decision of the judge are set out in the FCA report prepared for this hearing. When he was informed of the judge's decision that he and Y should return to live with their father in the UAE, R said in a bright and positive manner that he felt "good" about the judge's decision. R stated that he "felt bad for mum" but he thought the decision was a good one. Like her brother, Y told the FCA that she thought the previous decision was "good" and she had been excited about returning to the UAE.
36. Following the judgment, the parties entered into negotiations with respect to a Settlement Agreement to mirror the provisions of the order of the English court. The

comprehensive settlement agreement provided for the shared custody of the children and shared guardianship and parental responsibility. The settlement agreement further provided for the children to reside with the father and for contact between the children and the mother. The sealed (but undated and unsigned) version of the settlement agreement in the bundle contained no provisions by which the father would assess the mother's fitness to engage in contact with the children before such contact took place (which provision had appeared in an earlier draft).

37. The mother lodged a Notice of Appeal against the return order on 22 September 2023 and on 25 October 2023 Moylan LJ stayed the order. Moylan LJ granted the mother permission to appeal on 16 November 2023. The appeal hearing took place before Baker, Asplin and Andrews LJJ on 19 December 2023. Judgment was handed down on 28 February 2024 (reported as *R & Y (Children)* [2024] EWCA Civ 131), allowing the mother's appeal, setting aside the return order and remitting the matter for re-hearing.
38. On 12 March 2024, I timetabled the matter towards a final hearing with a time estimate of 3 days and directed a further Cafcass FCA report. As noted, the original FCA was no longer available and the report was completed by FCA Mr L. In his report, Mr L recorded that the Court of Appeal had noted that a risk assessment had not been sought or obtained following the findings of made against the father. Within this context, and in circumstances where the original FCA was not available, Mr L completed a full report pursuant to s.7 of the Children Act 1989 rather than an addendum.
39. Mr L met with R. R struck Mr L as giving quick and definite answers in "a rather adult-like manner", which also indicated some discomfort. The following relevant matters arise from Mr L's report:
 - i) When Mr L asked about his memories of his parents' relationship before separation, R stated that "they were arguing... both as much [as each other]". R did not recall his parents being scared of each other and considers "they just didn't get on". R stated that he is not scared of his parents.
 - ii) Mr L was concerned that R feels responsible for the family's safety and welfare, with a negative impact on his emotional development. Mr L noted that R contrasted himself to his sister, telling Mr L "it's difficult but I get on with it...I'm affected by it but I keep it in...I'm strong...I keep strong...its fair...my sister is more affected, she gets angry, she asks mum why can't you come [to the UAE]". R told Mr L that he sometimes has to comfort Y when she is missing their father.
 - iii) When Mr L asked R about feeling responsible for the family he said "I get more responsibility...I like being the most reliable one...more reliable than mum or Y". R stated that he would like to help his mother out financially.
 - iv) Upon being asked about his mother, Mr L noted that R immediately referred to her health difficulties and described two incidents. First, that his mother had got stuck in the toilet in the early hours of the morning and had been "crying and banging". R stated that he "was calm and dialled 999". Second, that his mother had taken a sleeping pill whilst cooking and had fallen asleep as "she

forgot she was making food”. R stated that the pan burned so he contacted a family friend who arrived and took him and Y to her house.

- v) Within this context, Mr L further noted that when he asked R if he gets upset about anything, R stated he has “anger issues”, especially if he loses a game, describing smashing his desk or screaming. He did not know why he got angry. Whilst the mother stated she had informed the school of these difficulties, the school stated to Mr L that they were not aware of them.
 - vi) Mr L stated that R struggled to tell him what the family do together. Whilst on the one hand stating that his mother supported contact arrangements with his father, and that he enjoys seeing his paternal grandparents, he was also worried about the possibility of being “blocked” from seeing his father, although he was unable to elaborate.
 - vii) Mr L noted continuing evidence of R being involved in adult issues. When Mr L asked R about what was worrying him most, R said “...everything, I’m worried about mum getting into trouble...dad has been telling lies”. When Mr L queried this, R said “I don’t know but it’s what she said”. R stated to Mr L that the mother had told him both parents had got each other into trouble. R concluded that his biggest worry is not seeing the parent he does not live with, forever.
 - viii) Mr L noted that when discussing the UAE R’s demeanour was bright and positive and he spoke with enthusiasm. By contrast, in describing his day to day life in England R stated it was “mostly video games” and seemed despondent. He described gaming as a big change from all the pastimes he undertook in the UAE.
 - ix) R persisted in his view that someone should make the decision whether to return to the UAE for him. If one of his parents could not live in the same country in which he is living, R considered that “they should come and visit, or I should...visit them”. Mr L considered that R is aware that both parents want him to live with them.
40. Mr L also met with Y. Y struck Mr L as smiley with good eye contact. He noted that Y spoke with a “soft American accent”, which both parents considered that Y adopted on occasion. The following relevant matters arise from Mr L’s report:
- i) When Mr L asked Y about her memories of her parents’ relationship, Y stated her parents separated and she thinks this is something to do with her father smacking her (Y). Y stated that her father usually just took her to her room by the hand if she had been naughty. She said the slapping was “sometimes” upsetting but added “he isn’t mean”. She stated that she is not scared of her father. Y considered that her mother might have been scared when her father “scolded her”. When Mr L asked if anyone else hurts her, Y said her mother hits her on the back, explaining that it is not that often and it is not hard but it makes Y feel angry and sad.
 - ii) Y was clear from the outset of her discussions with Mr L that she wished to return to the UAE as she misses her father and all aspects of her life in that

jurisdiction. Y ‘Googles’ her old school, where there is a photograph of her and her friends. Mr L noted that Y seemed uninterested in telling him about her current interests and activities but excitedly and frequently returned to telling him about life in the UAE. In the context of evidence I shall come to regarding how the mother continues to view the UAE, I note that Y told Mr L that she is confused about what her mum wants to do, saying, “she wants to go back to [UAE], she also wants to live here”.

- iii) Y stated that life in England was “pretty good” and she had got “a little bit used to living” in her current home. Whilst she has some new friends, she misses her old ones, she also told Mr L that “here does not feel like home”.
- iv) Y said of her mother that “she shouts a lot and she is bossy, she is horrid. I keep telling her, stop being bossy boots”. Y told Mr L about an incident when the mother fell asleep while cooking. Y stated that she feels sad and confused because her mum doesn’t play with her because “she is on her laptop”. Y contrasted the activities she did with her father in the UAE with always being in the house in England.
- v) Y too was worried about her mother’s finances and about her mother being sad if the court decided the children should live with their father, as the mother’s own mother had died.
- vi) When asked what worried her most, Y evidenced concerns about the safety of her home and someone breaking into the house. She thought that her mum is “not that strong” and she felt safer in the UAE. She also identified that she does not sleep well and she wants to sleep in her old room with a beautiful view.
- vii) As with R, Mr L noted continuing evidence of Y being involved in adult issues. In particular, Mr L noted that Y stated that “Now mum says dad doesn’t like her because he didn’t pay the Netflix bill”. At that point, Y said to Mr L “mum said don’t tell all these stories about her”.

41. Mr L had two telephone meetings with the mother held over the course of two days. The following points are of note.

- i) The mother informed Mr L that she had recently experienced kidney stones which began over the Easter weekend 2024. The mother had accessed appropriate medical support and is feeling better and was awaiting test results. She described her mental health as stable and was being prescribed anti-depressants and additional tablets in the event of feeling anxious. The mother told Mr L she had been diagnosed with PTSD. She stated that she sleeps on the sofa out of preference.
- ii) The mother told Mr L that she does not drink alcohol and has never had a difficulty. The mother stated that she has a non-alcoholic beer, she shows the “zero zero” label to Y, in case Y tells her father that the mother is drinking.

- iii) Mr L considered that his meetings with the mother raised considerable concerns with respect to her insight into the children's needs and her ability to meet them. In particular:
- a) The mother informed Mr L that Y too has significant mood swings and defiance and that the children argue and fight with each other to the point that the mother is scared and stressed. This resulted in the mother being unable to support the children with their reading or homework because it led to arguments. The mother was simultaneously critical of the father for not managing to support the children with their homework online.
 - b) Mr L considered that the mother did not recognise that R had assumed a protective role for the family.
 - c) The mother informed Mr L that the children had not been frightened by the incident in which she had taken a sleeping tablet whilst cooking, having initially denied that incident took place.
 - d) Mr L was concerned that the mother had stated that Y was unable to retain information, read, write or recall her own age or her home address but thereafter, having checked with Y, had noted a considerable improvement.
 - e) The mother informed Mr L that Y recently had an imaginary friend who said the mother was 'going to die' by poisoning. The mother told Mr L that she was concerned for her own safety and immediately started recording Y to use as evidence to demonstrate that the father was influencing Y to cause the mother harm. Mr L was concerned that the matter of Y's welfare appeared not to be a consideration and the priority was in capturing evidence.
 - f) Mr L was concerned that the children were unnecessarily exposed to the parents' financial arrangements, with R believing his father had the ability to prevent his mother working.
 - g) As a result of an unpaid legal bill of the mother in the sum of £26,852 a charging order has been placed on the property. The mother acknowledged that the father had offered to help her in disputing this. Mr L was concerned that the mother told him that she believes the family will be evicted but that she will *allow* this to happen (Mr L reconfirmed this account when cross-examined).
 - h) Mr L was concerned that the mother acknowledged that she does not provide the father with updates on the children's welfare and development. He noted that the mother was adamant that she will not provide the father with updates on the children's welfare and development and that he must obtain information directly from the school and the GP.

- i) The mother acknowledged that she had suspended arrangements for the children to spend time with their father, referring to her belief that the children's passports were not secured with solicitors or that orders of the court were no longer valid after the appeal was granted by the Court of Appeal.
 - j) In the event that the court determined that the children should remain in her care, the mother stated that she would not permit the children to visit their father in the UAE until they were 14 years old, as they would be less vulnerable to abduction, which the mother viewed as an inevitability. The mother did not accept the Settlement Agreement provided satisfactory mirroring of the court's order.
- iv) During her meetings with Mr L, the mother was highly critical of the father. As dealt with below, the mother alleged that the father continues to financially control her by ensuring that she and the children live in poverty. Mr L considered that his attempts to discuss the children's needs and the mother's parenting of the children repeatedly led back to criticisms of the father. The mother considered that R's anger was likely to be symptomatic of his exposure to abuse perpetrated by the father.
- v) Mr L states that the mother told him she does not accept the findings of the judge and considers that she was subject to significant coercive control. The mother did not accept there was dysfunction within the relationship or that she contributed to this in any way.
42. Mr L also met with the father, again by way of a telephone meeting, and the following matters set out in Mr L's report are pertinent to the issues now before the court:
- i) The father presented as a child-focussed and concerned parent who described the children with knowledge and warmth. He gave a detailed account of the children's characters and preferences, including the subjects enjoyed, and disliked, by the children in school.
 - ii) The father stated that he encourages the children to be respectful to their mother and spoke affectionately about the mother, stating that he had hoped for some time to reconcile their relationship until he realised that this was not possible. The father became emotional at one point while reflecting on the difficulties experienced in the relationship and the impact upon the family.
 - iii) Beyond explaining the difficulties as he perceived them to be, the father was not overly critical of the mother. He considered that the key issues were his not receiving information about the children and the mother not supporting his relationship with the children.
 - iv) The father "accepts many of the findings of the court but expressed a greater emphasis on the parents' dysfunctional relationship that had developed as a result of their contrasting parenting styles." The father expressed remorse for the abuse perpetrated by him, although he tended to caveat this based on the broader circumstances. Mr L considered that the father had reflected on his behaviours. He accepted that his physical abuse in the form of chastisement of

the children was wrong and he was able to describe alternate strategies to manage the children's behaviours.

- v) Mr L considered that the father recognised that the children's need for stability is now heightened in view of their difficult experiences and that he genuinely hoped to develop a positive co-parenting relationship for the children's futures.
43. As I have noted, in his report Mr L records that the Court of Appeal pointed up the absence of a risk assessment following the findings of fact made against the father.
44. Mr L's report specifies the findings made by the judge. Once again, in the absence of a Schedule of Findings, Mr L extracted those findings from the judgment. He notes that the judge found that the father had an issue in managing his temper and anger in a domestic setting, was capable of initiating aggression and violence and that, in a general sense, the father found aspects of caring for the children at times challenging. He goes on to particularise the verbal and physical abuse found by the judge to have been perpetrated by the father, the incidents of the physical chastisement of the children found by the judge to have been perpetrated by the father and the judge's finding of an unhealthy level of control over the family finances, caveated as being on the "less serious end of the spectrum of controlling abuse. Mr L further noted that the court had not made the findings of significant coercive and controlling abuse and of sexual abuse sought by the mother.
45. Within this context, Mr L evaluated the impact of the abuse upon the family perpetrated by the father using the DASH Severity of Abuse Grid, the practice aids contained in the Child Impact Assessment Framework (CAIF) derived from the research of Sturge and Glaser in 2000 (including the 'Motivation and indicators regarding victim empathy', in order to assess the father's accountability for the domestic abuse he had perpetrated) and the Safe Contact Indicator.
46. Whilst acknowledging the difficulties of using language that ascribes a level of severity to conduct that is *always* unacceptable and to be deprecated, Mr L considered the DASH analysis to indicate that the findings of the court amounted to domestic abuse at a low to moderate level. Having regard to the contextual factors of a dysfunctional parental relationship, alcohol misuse by both parents, and mutual verbal abuse, the two findings of physical abuse in 2017, five years before separation occurred, and the absence of coercive control, Mr L assessed the typology of abuse as consistent with Situational Couple Violence. Mr L considered that, whilst the impact of the abuse should not be minimised, the father presented as insightful, with remorse for the harm caused and empathy for the victim. Mr L noted that the mother stated that she felt physically safe from the father with undertakings in place and did not identify a significant impact on her parenting. Mr L considered that the mother showed more hostility than fear in respect of the father and that the children demonstrated no fear of their father.
47. With respect to the 'Motivation and indicators regarding victim empathy', Mr L assessed the father's accountability for the domestic abuse he had perpetrated as demonstrating some but not full acknowledgement of the abuse and the catalysts for it. The father's acceptance of being the sole instigator of the abuse was limited, but he had a good acceptance of the inappropriateness of the abuse and understood that it was a failure of parenting. Mr L considered that the father demonstrated remorse, a

genuine interest in the children's welfare and a willingness to make amends. Mr L further considered the father's empathy for the family's current situation to be good.

48. Utilising the Safe Contact Indicator, Mr L considered that the children want direct contact with, and have positive memories of, their father. As I have noted, Mr L considered that the children are not afraid of the father and that the father acknowledges prior harm to the children and expresses regret for his actions. Mr L considered that contact between the children and the father has a clear and beneficial purpose and is not being used to perpetuate abuse. Mr L was satisfied that it is safe for the children to spend time with or to live with their father. He did not consider that the father needed to complete a Domestic Abuse Perpetrator Programme, which in any event would not be appropriate in a case of situational couple violence. Mr L did, however, recommend that both the father and the mother complete a parenting programme.
49. Within the foregoing context, Mr L concludes in his report that it is in R and Y's best interests to live with their father in the UAE under a shared care agreement between both of their parents. In the event that the mother will not return to the UAE, Mr L considers it to be in the children's best interests to spend all school holidays with their mother. In making this recommendation, Mr L highlighted the following factors:
- i) The children have provided their views about where and with whom they wish to live and both children were happy with the previous decision prior to it being overturned by the Court of Appeal, both pronouncing the decision of the judge to be a good one.
 - ii) Y is nearly 9 years old and has consistently stated that she wants to return to the UAE to live with her father. At the age of almost 9 and as a sign of age-appropriate maturity, Y has developed a more critical view of both her parents. Her desire to live with her father in the UAE is her independent wish, the significance of which is increased by the fact that she has been living in the primary care of her mother in England for nearly two years. Y's preference is not primarily related to the material privileges that she enjoys in the UAE. The UAE is the place where she was born and grew up for most of her life and where she developed and has maintained friendships. The UAE is the place she feels she belongs and considers it to be her home.
 - iii) R is 11 years old. His neutral views about where he lives should be considered in the context of him being increasingly burdened by the needs of the family and his worry about his mother's welfare.
 - iv) Both children understand it is far from certain that their mother will return to the UAE.
 - v) The mother demonstrates limited understanding of the children's learning needs and a lack of parenting insight in general terms. As the children get older they will become more challenging and demanding. Given his increased aggression, the transition from the nurturing support in primary school to secondary school is likely to be a difficult one for R. It is unclear what additional needs the mother herself may have.

- vi) There is a transfer of negative information from the mother to the children and the mother made no attempt to disguise her hostility to the father. Children internalise the contempt of one parent towards the other as though the criticism is of themselves, which is harmful to their emotional welfare. The mother finds it difficult to support the children's contact with their father, which they experience as confusion and loss.
 - vii) The father demonstrates a good level of parenting knowledge and skill and will provide support for their learning. The father demonstrates commitment to ensuring the children have a positive relationship with their mother and is able to promote her role in the children's lives and to facilitate arrangements across international borders.
 - viii) The children would be subject to significant change in their current circumstances in the event that they moved to live with their father in the UAE but the UAE is the country of their birth and where they grew up until August 2022. The children have maintained links with their friends and both speak positively about the UAE.
50. It was apparent during the hearing that there is still a high degree of mistrust and acrimony between the parents. As I have noted, during the course of the hearing the court heard evidence from both parents.
51. The evidence of the mother concentrated on what she contends is a situation in which the father has continued to financially control her in this jurisdiction, thereby demonstrating both an effort to undermine her care of the children in this jurisdiction by creating in the children's minds an unfavourable contrast with life in the UAE and demonstrating also that any suggestion that the father has addressed his abusive behaviour is, as Mr Turner and Ms Scotland put it, simply the father "talking the talk". The father's evidence concentrated on concerns about the standard of care being provided to the children in this jurisdiction, having regard to the number of concerning incidents, and the extent to which the mother is able to meet the children's needs, in particular R's emotional needs, Y's educational needs and the need of both children to have an ongoing relationship with their father. I will deal with the parents' evidence, where it is relevant, when setting out below the reasons for reaching the decision I have.
52. The father contends that it is in the children's best interests for permission to be given to him to permanently remove the children from the jurisdiction of England and Wales to the jurisdiction of the UAE and thereafter for the children to reside with him in the UAE and have contact with the mother, ideally with her living in the UAE but, if not, by travelling to England for contact during the holidays. The mother contends that it is in the children's best interests to remain living with her in England and for them to have contact with their father when he visits this jurisdiction, the mother contending that the children should not travel to the UAE until they are 14 years old due to the risk they will be retained in that jurisdiction.

RELEVANT LAW

53. The originating application issued by the father on 3 October 2022 sought an order under the inherent jurisdiction. As noted by Lord Wilson in *Re NY (A Child)* [2019]

UKSC 49 at [49], in passing the Children Act 1989 Parliament nowhere sought to preclude exercise of the inherent jurisdiction so as to make orders equivalent to those for which ss. 8 and 10 of the 1989 Act provide.

54. Given the manner in which the proceedings have developed to date, the task of this court in dealing with the application under the inherent jurisdiction is to determine the appropriate arrangements for the children's future care and, in particular, whether it is in the children's best interests now to move from the care of their mother in the jurisdiction of England and Wales to the care of their father in the jurisdiction of the UAE. In this case, and as noted by the Court of Appeal, in determining that question the court is required to undertake a full welfare enquiry.
55. Lord Wilson made clear in *Re NY (A Child)* at [47] that where an application for the same order can be made in two different proceedings and falls to be determined by reference to the same overarching principle of the child's welfare, it would be wrong for the substantive inquiry to be conducted in a significantly different way in each of the proceedings. In that context, in *Re NY (A Child)* at [49], Lord Wilson held as follows with respect to the determination of applications under the inherent jurisdiction of the High Court seeking welfare orders where the court has determined that a welfare enquiry should be conducted:

“The mother refers to the list of seven specific aspects of a child's welfare, known as the welfare check-list, to which a court is required by section 1(3) of the 1989 Act to have particular regard. She points out, however, that, by subsections (3) and (4), the check-list expressly applies only to the making of certain orders under the 1989 Act, including a specific issue order, as is confirmed by the seventh specific aspect, namely the range of powers under that Act. The first six specified aspects of a child's welfare are therefore not expressly applicable to the making of an order under the inherent jurisdiction. But their utility in any analysis of a child's welfare has been recognised for nearly 30 years. In its determination of an application under the inherent jurisdiction governed by consideration of a child's welfare, the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3) (see *In re S (A Child) (Abduction: Hearing the Child)* [2014] EWCA Civ 1557, [2015] Fam 263, at para 22(iv), Ryder LJ)...”

56. Finally, in *Re NY (A Child)*, Lord Wilson made clear that in cases involving allegations of, or findings of, domestic abuse, PD12J applies notwithstanding that proceedings are brought under the inherent jurisdiction of the High Court:

“The mother also refers to Practice Direction 12J, which supplements Part 12 of the 2010 Rules and which is entitled “Child Arrangements and Contact Orders: Domestic Abuse and Harm”. By para 4, the Practice Direction explains that harm is suffered not only by children who are the direct victims of domestic abuse but also by children who live in a home in which it is perpetrated. When disputed allegations of domestic abuse are made, the Practice Direction makes detailed requirements of the court, in particular to consider whether to conduct a fact-finding hearing in relation to them (para 16), whether to direct the preparation of a report by a CAFCASS officer (para 21) and whether to order a child to be made a party

and be separately represented (para 24). The mother points out, however, that, by para 1, the Practice Direction applies only to proceedings under the relevant parts of the 1989 Act (which would include an application for a specific issue order) or of the Adoption and Children Act 2002. Therefore it does not expressly apply to the determination of any application under the inherent jurisdiction, including of an application governed by consideration of a child's welfare in which disputed allegations of domestic abuse are made. Nevertheless, as in relation to the welfare check-list, a court which determines such an application is likely to find it helpful to consider the requirements of the Practice Direction; and if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should, in the light of the Practice Direction, conduct an inquiry into the allegations and, if so, how extensive that inquiry should be."

57. The terms of PD12J include the following matters set out between paragraphs 35 and 37 of that Practice Direction:

"Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred

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.

(1) In the light of-

- (a) any findings of fact,
- (b) admissions; or
- (c) domestic abuse having otherwise been established,

the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained.

(2) In particular, the court should in every case consider any harm-

(a) which the child as a victim of domestic abuse, and the parent with whom the child is living, has suffered as a consequence of that domestic abuse; and

(b) which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made.

(3) The court should make an order for contact only if it is satisfied-

(a) 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

(b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –

(a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

(b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;

(c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse 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 domestic abuse and the potential for future domestic abuse.”

58. In *Re H-N and others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448 at [4] the President firstly restated the following principle, which passage articulates the task of this court:

“...where domestic abuse is found to have taken place, the court must consider the impact that abuse has had on both the child and parent and thereafter determine what orders are to be made for the future protection and welfare of parent and child in light of those findings”.

DISCUSSION

59. Having considered carefully the written and oral evidence and the helpful submissions of leading and junior counsel, I am satisfied on balance that it is in the children's best interests to move to live with their father in the UAE and to have contact with their mother, either in the UAE if she returns to live in that jurisdiction, or in England during the children's school holidays if she decides to remain in this jurisdiction or another jurisdiction. My reasons for so deciding are as follows.

60. Whilst this is not an application under s.8 of the Children Act 1989, and as noted by Lord Wilson in *Re NY (A Child)*, the first six items of the checklist in s.1(3) of the 1989 Act provide the appropriate framework within which to conduct the detailed welfare analysis that the court is required to carry out in this case, along with other established principles. In this case, the other established principles are contained, *inter alia*, in FPR 2010 PD12J.

61. The ordering of paragraphs 35 to 37 of PD 12J leaves something to be desired. However, read as a whole, paragraphs 35 to 37 make clear that the court is required to 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 (paragraph 35). To ensure this outcome in a case of established domestic abuse, the court must evaluate the nature and extent of the harm arising from domestic abuse and the likelihood of such abuse occurring in the future (paragraphs 36(2) and 37(a) to (e)); apply the individual matters in the welfare checklist with reference to the domestic abuse that has occurred and any risk assessment obtained (paragraph 36(1)); and make an order for contact only if satisfied that 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 domestic abuse by the other parent (paragraph 36(3)). Whilst paragraphs 35 and 36(3) refer to orders for contact, it is plain from *Re NY (A Child)* [2019] UKSC 49 that the discipline set out in PD12J should be followed when considering whether it is in the children's best interests to move to live with their father.
62. The authorities make clear that the items set out in s.1(3) of the Children Act 1989 do not form a hierarchy and are non-exhaustive. In light of the requirements in PD12J, and in particular the requirement in paragraph 36(1) to apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained, I am satisfied that in this case it is convenient to begin by considering the harm the children have suffered or are at risk of suffering pursuant to s.1(3)(e) of the 1989 Act. Having regard to the terms of PD12J, in a case in which findings of domestic abuse have been made, the analysis of harm and risk of harm must self-evidently extend to the domestic abuse the children and the parent with whom the children was living have suffered and may suffer if an order were made.

Any harm the children have suffered or are at risk of suffering

63. With respect to the nature and extent of the harm arising from the findings of domestic abuse made by the judge, which are set out in full at paragraph [24] above, it is clear in this case that the mother suffered substantial and serious physical domestic abuse from the father. This resulted in significant physical injuries. In addition, there was a degree of psychological abuse coupled with what the judge was satisfied was unhealthy control over the mother in relation to finances that was to a degree abusive and which took place in the context of the physical and psychological abuse. Further, and importantly, inappropriate physical abuse extended to the children in the form of physical chastisement. As expressly recognised by Mr L, the general context of these findings included difficulty in the father managing his temper in a domestic setting and the father finding aspects of care of children challenging.
64. It is plain from the accounts of the children that they witnessed some of the abusive behaviour in the household. R recalls seeing some fights between his parents where they had said bad words to each other, which made him sad. He has stated that the only words he knew in his mother's first language were swear words as that is what he had learnt from his mother. He was upset by his parents "Arguing. Dad arguing about mum drinking too much beer". R did not recall his parents being scared of each other and considered "they just didn't get on". Both the original FCA and Mr L considered that R's distress at the acrimony between his parents was apparent. Y

recalled that her parents were always shouting at each other. With respect to the findings regarding the use of physical chastisement, R did not mention this. However, Y asked Ms Ashton “If I go back to UAE is dad going to hurt me again” and explained that “dad was hurting me and mum, one time mum had bruises on her hand from where dad hurt her.” When speaking to Mr L, Y stated that her father usually just took her to her room by the hand if she had been naughty. She said the slapping was “sometimes” upsetting but added “he isn’t mean” and stated that she is not scared of her father. During the course of her evidence at this hearing, the mother conceded that she also used physical chastisement on the children.

65. Within this context, no party sought to dispute the conclusions of the original FCA that both children (a) display clear indicators of having sustained some emotional harm as a result of exposure to harmful adult behaviour, (b) have felt hopelessly caught in the middle of the highly acrimonious and volatile separation of their parents at the same time as being uprooted from their home, school and friends, (c) have both experienced a difficult adjustment and (d) are likely to have been emotionally harmed.
66. The findings of domestic abuse must give rise to a concern regarding the safety of the children in the care of their father, particularly in circumstances where the context of those findings included the father finding aspects of care of children challenging and found difficulty in managing his temper in a domestic setting. The court must consider carefully the risk of such domestic abuse, and the harm consequent upon it, occurring in the future. Relevant to this question will be the factors set out in paragraph 37 of PD 12J. In particular, whether the father is motivated by a desire to promote the best interests of Y and R or is using the court process to continue a form of domestic abuse against the mother, the likely behaviour of the father and its effect on the children and the capacity of the father and mother to appreciate the effect of past domestic abuse and the potential for future domestic abuse.
67. In circumstances where the assessment of Mr L is central to the court’s consideration of those matters, Mr Turner and Ms Scotland level significant criticism at the assessment undertaken by Mr L. They contend that the methodology of interviewing the mother by telephone was flawed, that Mr L erred in failing to see the children with each parent, that his assessment of risk amounted to “simply conducting a DASH analysis” and that “there is a concern on the mother’s part as to whether Mr L may in fact have been susceptible, subconsciously, to confirmation bias in supporting the previous recommendation of his colleague”. I am not persuaded, however, that Mr L’s assessment methodology and approach was such as to prevent the court placing weight on his conclusions.
68. Within the resource constraints under which Cafcass operates, Mr L undertook an interview with the mother across two days, adopting the same format and method for both parents and comparing the answers given to the other available evidence, including that obtained from his meeting the children. It is the case that Mr L did not see the children with each parent, but I am not satisfied that undermines his report having regard to the issues in this case. As I have noted above, in undertaking his risk assessment, Mr L utilised the DASH Severity of Abuse Grid, the practice aids contained in the Child Impact Assessment Framework (CAIF), derived from the research of Sturge and Glaser in 2000 and which seek to ensure that assessments concerning domestic abuse focus on the impact on the child and are based on a combination of static and dynamic risk factors, and the Safe Contact Indicator.

69. Within this context, and expressly noting the findings of domestic abuse were substantial and serious, Mr L evaluated the information he gathered in the context of the research based framework for assessing risk provided by the aforementioned tools to reach his conclusion that there had been low to moderate domestic abuse with a typology of situational couple violence. Having regard to the Cafcass Situational Couple Violence Guidance paper included in the CAIF this is plainly a sustainable conclusion on the facts of this case, Mr L stating in cross-examination:

“I did consider the matter within the risk assessment. In my assessment, the level of abuse is considered low to moderate, I do not mean to minimise and any abuse is serious, I have assessed the risk at a certain level, and I have considered the other factors that were addressed in the fact finding, the use of alcohol, the dysfunctional relationship and viewing them as a whole.”

70. Mr L refuted the assertion of confirmation bias arising out his having read the conclusions of the original FCA. He was balanced in his response in this regard, telling the court “I don’t think I have been influenced by that, although I cannot unlearn what I have read.” Reading Mr L’s report as a whole, I am also not satisfied that, as Mr Turner and Ms Scotland further allege, Mr L approached his analysis solely from the perspective of needing to remedy the deficiency identified in the original FCA report by the Court of Appeal or that he failed to consider the potential relevance of each finding or failed to factor-in domestic abuse when considering mother’s outlook on contact.

71. Finally, I am not able to accept the submission of Mr Turner and Ms Scotland that Mr L approached his assessment of the risk presented by the father “simply on the basis of the verbal reassurances given by the father during the telephone interviews” and, as such, that Mr L failed to pick up that the father was merely “talking the talk”. Mr L acknowledged the observation in the Child and Family Assessment conducted by the local authority that the father sought, at that time, to control the wider circumstances. Mr L further acknowledged the view of the original FCA and the judge that the father had a tendency to caveat or qualify his acceptance of matters. Mr L, however, stood by his view that the father had demonstrated sufficient insight, maintaining under cross-examination that:

“The behaviours are concerning but the question is what is the best way forward now but as I have said, he has been able to reflect on them. He does not accept some matters and tends to contextualise, but when it comes to his own behaviour he identified that it is abusive and he has reflected on it. He has the ability to offer the children stability and a positive relationship with their mother.”

72. Having regard to the foregoing matters I am satisfied that in assessing the risk of domestic abuse occurring in the future, I am able to place weight on the assessment of Mr L. In this regard, and as I have noted, Mr L assessed that the findings of the court amounted to domestic abuse at a low to moderate level and, having regard to the contextual factors of a dysfunctional parental relationship, alcohol misuse by both parents, and mutual verbal abuse, the two findings of physical abuse five years before separation occurred in 2017 and the absence of coercive control, the typology of abuse as consistent with situational couple violence.

73. Mr L acknowledged that the impact of the domestic abuse should not be minimised and further acknowledged in cross-examination that “It is also true to say there is never a guarantee that a parent will implement the way they say they will or will behave or parent the way they say they will”. Mr L, however, maintained his view that the father presented as insightful and demonstrated the ability to reflect and had reflected on his abusive conduct, with remorse for the harm caused and empathy for the victim. Mr L further noted that the mother stated that she felt physically safe from the father with undertakings in place and did not identify a significant impact on her parenting. He considered that the mother showed more hostility than fear in respect of the father and that the children demonstrated no fear of their father.
74. In assessing the risk of domestic abuse and the harm consequent upon it occurring in the future, and acknowledging again the substantial and serious nature of the findings of domestic abuse the father perpetrated, I am further satisfied that a number of additional factors act to mitigate that risk moving forward.
75. Whilst the parties’ deteriorating marriage was a significant source of stress and frustration that the father found challenging to manage, the parents are no longer in a relationship. It is the case that, as the Judge found, the general context of the findings of domestic abuse included the father finding aspects of care of children challenging and difficulty in managing his temper. Against this, the judge rejected the mother’s allegations that in 2017 the father had kicked R in the stomach, that in 2021 he had burned Y with a cigarette lighter, and that he had deliberately tripped Y up and that he had bitten her finger. Mr L considered that the father spoke openly about his behaviour, accepted that he was “old fashioned” in his outlook, had engaged positively in developing as a parent and had shown a willingness to develop and improve, completing the Triple P parenting course. Mr L considered the father able to discuss practical parenting solutions and implementing alternative parenting strategies. As I have noted, the children demonstrated no fear of their father. In these circumstances, I am further satisfied that the contended for differences between the legal systems and culture in England and the UAE in so far as the treatment of domestic abuse is concerned assume less relevance than Mr Turner and Ms Scotland seek to place on them.
76. In the foregoing circumstances, I am satisfied that the risk of the father repeating the substantial and serious domestic violence against the mother or the children is low and that he has developed a greater understanding of the effect of his domestic abuse of the mother and the children and the areas of difficulty that may drive the potential for future domestic abuse. Having regard to the further matters set out below with respect to the submission that the father has continued to exert financial control over the mother, I am further satisfied that in seeking the care of the children the father is motivated by a desire to promote the best interests of the children and is not using the court process to continue a form of domestic abuse against the mother.
77. Finally, in considering for the purposes of s.1(3)(e) of the 1989 Act any harm which the children have suffered or at risk of suffering, it is important to note that the findings of domestic abuse are not the only matters in this case relevant to that question. In addition, there are further matters that I am satisfied have caused, or presented a risk of, emotional harm to the children.

78. Whilst the mother told Mr L that she has never had a difficulty with alcohol, on 8 February 2023 the mother stated to the sample taker that she drank fifteen cans of beer a week. The judge noted that at the fact finding hearing the mother stated she had been drinking every day, had stopped prior to the testing and had later resumed drinking. The judge was satisfied that this suggested “a degree of dependency”. It is clear that both children were aware and concerned about the mother’s consumption of alcohol, albeit that both parents appeared to have drunk excessively. R described his mother as drinking “all the time”. Y stated that her mother was “someone who drinks beer”. She considered her mother drank too much and that she saw her mother drinking about once a week. Y recalled her mother having gone to sleep in the dog bed because she had drunk too much beer. Within this context, the mother appears to continue to involve Y in this issue, stating that she shows the non-alcoholic label to Y in case Y tells her father that the mother is drinking.
79. Y told Mr L that her mother hits her on the back, explaining that it is not that often and it is not hard, but it makes her feel angry and sad. In cross-examination, the mother conceded that she has smacked the children in the past. She stated she could not recall the most recent occasion on which she had smacked Y. During cross-examination, the mother further conceded that she recorded Y after Y had stated that she had an imaginary friend who had stated that the mother was going to die by poisoning. The mother told Mr L that she was concerned for her own safety and immediately started recording Y to be used as evidence to demonstrate that the father was influencing Y to cause her harm. Mr L was concerned that the mother’s focus was not on Y’s welfare in these circumstances but on gathering evidence.
80. I am further satisfied that R has had to raise the alarm on two occasions whilst in the care of his mother. First when the mother took a sleeping pill after being awake for 36 hours whilst having a pan on the stove. I am satisfied that the mother originally denied to Mr L that this incident had taken place, before conceding it had. Whether or not the mother had called a friend to come over before taking the sleeping pill, the situation left R feeling *he* must take responsibility for his and his sister’s safety by contacting a family friend to address what was plainly a potentially dangerous situation. During cross-examination, the mother denied that this incident was a welfare issue and considered that the children were not worried or frightened by the incident because neither had said they had been frightened. R was again required to take responsibility when woken during the night to his mother having become locked in the toilet and crying and banging, resulting in R having to call the police.

The ascertainable wishes and feelings of the children considered in the light of their age and understanding

81. The ascertainable wishes and feelings of the children must be approached with a degree of caution in this case given the children’s exposure to the harmful behaviours identified above. Further, Mr Turner and Ms Scotland submit that each of the children has been influenced by the father with respect to their wishes and feelings by the father seeking to emphasise the benefits of the UAE over the children’s life in England which, through continuing to exert inappropriate control over the mother’s financial position in this jurisdiction, the father has sought to make artificially unattractive.

82. It is the case that, on occasion, the father has provided the children with accounts and pictures from the UAE. For example, the father sent R a picture of his motorbike, stating that “Your bike will be waiting for you”. The father conceded in cross-examination that he wanted to remind the children of “the good things, because they want to come back” and that he did “promote a better safer lifestyle in Dubai. It is a lot nicer and safer place to live.”
83. Mr L did not consider the photograph of the motorbike to illustrate a pattern of the father attempting to persuade or influence R. More fundamentally, having regard to the ambivalent nature of R’s wishes and feelings with respect to where he should live, Mr L considered that there were no indicators that R had been influenced by his father to prefer the UAE, with R on the whole coming across as quite critical of his father. With respect to Y receiving photographs from her father of the UAE, in answer to a question from the court the mother confirmed that Y asked for those photographs. The mother was very clear that Y would keep “asking and asking” until the father sent them. I am not able on the evidence to accept Mr Turner and Ms Scotland’s submission that Y is “clearly vulnerable and susceptible to the manipulation of the father”. Mr L did not consider that Y’s wishes and feelings had been influenced by her father and was “satisfied that Y’s views were her own.” Mr L considered it can be very difficult for parents to remain connected to children without telling them about the parent’s own lives. He further noted that, with respect to the relative merits of the UAE and England, the better weather, lifestyle and plethora of outdoor activities was the children’s lived experience, both having been born in and grown up in the UAE.
84. Having regard to the available evidence, I am not satisfied that the father has sought unduly to influence the children’s wishes and feelings in this case. It is important to note when considering the wishes and feelings of the children that there is some evidence that the mother has sought to affect what the children say, being satisfied as I am that the mother told Y not to say certain things when speaking to Mr L.
85. I am also satisfied that it is not possible to conclude on the evidence before the court that the father has, through continuing to exert inappropriate control over the mother’s financial position, been seeking to promote a contrast in the children’s minds between the comfortable life in the UAE and, as Mr Turner and Ms Scotland would have it, “the hand-to-mouth existence in [England]”.
86. In his final judgment, the judge noted that the father’s legal costs amounted to more than £200K and that the father had also, at points, made a significant contribution to the legal costs of the mother. The judge further noted that the father’s business was the source of all the income needs of the family and that the father was required to maintain the homes in both the UAE and England out of that income. In addition, and in that context, the mother conceded that the father pays maintenance of £1,100 per month (the precise amount paid depending on the exchange rate) for the mother, along with the direct payment by the father of other expenses in England. Whilst there is a dispute as to how a pre-payment meter came to be fitted in the property in England, I am not satisfied that a determination of that issue would change the conclusion of the court that, in the circumstances set out above and absent comprehensive information on the family’s overall financial circumstances, the evidence does not permit a finding that the father has “kept the mother artificially starved of funds in order to set the mother up to fail and so that the children would compare life in the UAE more

favourably than the UK than they otherwise might have done”. I am likewise satisfied it would not in these circumstances be appropriate to make a finding that the father has continued to exercise “inappropriate and manipulative” financial control over the mother.

87. Mr Turner and Ms Scotland further submit that the children’s wishes and feelings must be considered in the context of it being “doubtful whether either of them truly understand that the mother will not return to the UAE or what their lives would be like without her continuing presence”. However, in relation to Y the evidence does not bear out that submission. Mr L was clear having spoken to Y that “I would say she wants her mother to go but knows she will likely live with her father and mother will not go.” I acknowledge that, whilst it might be argued that the fact that R worries about his mother and wishes for someone else to make the decision is indicative of him knowing that his mother would not return to the UAE, the position in respect to R is less clear.
88. The wishes and feelings of the children are not determinative, but are a factor that falls to be weighed in the welfare balance. In the circumstances I have set out above, I am satisfied that I can place weight on the children’s expressed wishes and feelings, albeit more so in respect of Y than R.
89. Y is 9 years old. Notwithstanding her apparent learning issues, Mr L considered that Y’s maturity is commensurate with her age, Mr L stating that “I don’t think she is much less mature than her peer group. She has difficulties with learning but on an emotional level did not present as lagging behind age expected levels.” Y’s views must be considered in the context of the findings made by the court. However, as noted above, Y has expressed consistent affection for her father and is not afraid of him. Y is very clear that she wants to return home to the UAE and live there with her father and has been unwavering in that regard during the course of these proceedings. She has maintained this view even though, I am satisfied, she knows that her mother will be unlikely to join her in the UAE. The mother concedes in this context that Y “wants to go to UAE, she always says she wants to go”. In these circumstances, I am satisfied that it would place a considerable emotional burden on Y if she was not permitted to move to the care of her father, particularly in context of the mother not being willing to permit Y to travel to UAE for a further five years.
90. R is 11 years old. There is no suggestion that his maturity is not commensurate with his age. It is the case that R’s wishes and feelings are more ambivalent. This is understandable having regard to Mr L’s conclusion that R now feels responsible for the family’s safety, with a focus on his mother’s health. In these circumstances, it is not surprising in my judgement that R maintains the view that someone should take the decision whether to move to the UAE for him, thereby relieving him from the obligation of having to choose whether or not to abandon his perceived responsibilities. Mr L continues to be of the view that, on balance, R is likely to want to return to the UAE. Mr L notes that R originally had a strong wish to return to the UAE and sought the assistance of the court in that regard, that R stated to Mr L that he felt the decision of the judge was a good decision, that R was markedly brighter when looking back to that decision than when considering the current position and was bright and positive when discussing the UAE. Within this context, whilst R’s ambivalence means that his wishes and feelings must be approached with some caution, I am satisfied on the evidence that were the court to determine that it is in his

best interests to move to live with his father in the UAE, R would once again consider that to be a good decision.

The age, sex, background and any characteristics of the children that the court considers relevant

91. It is important in this case to maintain focus on the fact that the background of both children involves being exposed to domestic abuse of their mother and themselves and to evaluate their welfare within that context. I have done so throughout the course of the welfare evaluation.
92. It is further important when considering the background of the children to recall that, prior to their retention in this jurisdiction in August 2022, the children had each been born in and lived their whole lives in the UAE. Within this context, the mother conceded that both children see the UAE as their home, as indeed does the mother. The mother stated in cross-examination that “It is their home, it is their home, it is my home as well.” and “They do refer to it as their home and they feel UAE is their home.”

The physical, educational and emotional needs of the children

93. Once again, in light of the findings made by the court, the children’s physical, educational and emotional needs must be considered with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In the context of the findings made by the judge, both R and Y have a physical and emotional need to live in a home environment that is free from domestic abuse.
94. Both R and Y have a clear need to maintain regular, fulfilling contact with the parent with whom they are not living, in order to maintain and develop their relationship with that parent. Given the matters set out above, it will have a particularly detrimental effect on his emotional development if R were not able to see his mother. Likewise, it would be particularly detrimental to Y were she prevented from seeing her father. I am satisfied that both children need to have access to the country that they consider firmly to be their home, notwithstanding nearly two years in this jurisdiction. Both children also have a clear need to maintain their sibling relationship, as well as a full and fulfilling relationship with each of their parents, as they grow and develop.
95. The evidence before the court makes plain that Y may have developmental and / or educational needs that require to be met to enable her to develop to her full potential. During the course of his evidence, Mr L made clear that “Y’s [educational] issues are a fundamental element of her welfare going forward.”
96. It is equally plain from the evidence that R has significant emotional needs, centring on the need to address his issues with anger and the need to ensure that he is not taking inappropriate responsibility for adult issues. Mr L was very clear in his oral evidence that “In the trajectory of [R’s] welfare, not only was he feeling burdened but is now actively feeling responsible for his mother and his sister”. In this regard, Mr L was clear during cross-examination that:

“Being denied that responsibility is a good thing, but it needs to be managed well, acknowledged that is how he is feeling, he will need reassurance so does not feel guilty and will need reassurance that his mother is well, and not in a state of deterioration.”

And

“Absolutely it is in his best interests for him to be relieved of the responsibility. It is a burden and is confirming for his emotional development, his sense of family and responsibility is likely to impact the relationships he develops with adults and with his peers and later in life.”

How capable is each of the parents of meeting the children's needs?

97. As evidenced by the involvement of the local authority and the children being made the subject of a Child in Need plan pursuant to s.17 of the Children Act 1989, both parents in this case have at times demonstrated themselves to be less than capable parents to their children. Both parents have deficits in their parenting and have at times failed to prioritise the needs of R and Y.

(i) The Father

98. The question of how capable the father is of meeting the needs of the children must be considered in the context of the findings of domestic abuse made against him. As noted in this judgment, the father has been found to be capable of initiating aggression and physical violence in a domestic setting in respect of both the mother and the children. Part of the context for those findings is that the father has, in the past, found aspects of parenting the children challenging. This must give the court pause when considering the extent to which the father is now capable of meeting the children's needs as identified above, particularly having regard to the impact on the children of the domestic abuse the court has found to have occurred.

99. Against this, for the reasons set out above, this court has assessed the risk of the father repeating the domestic abuse to be low and that he has developed a greater understanding of the effect of his domestic abuse of the mother and the children and the areas of difficulty that risk future domestic abuse. During the course of his evidence, Mr L emphasised that the father had demonstrated that he had spoken openly to others about his behaviour, demonstrated a willingness to develop and improve as a parent and that:

“We also discussed practical parenting, how he would go about managing difficult behaviour and he has been implementing alternative parenting practices. He was able to describe a range of approaches to meet the children's needs.”

100. Mr Turner and Ms Scotland submit that the father's work commitments in running his business in the UAE will significantly impact on the father's ability to care for the children, as will what they contend is the father's historic lack of involvement in the day to day care of the children. However, in his final judgment the judge found both that the father was involved in a very meaningful sense in the children's care on a day to day basis when the family lived together in the UAE and that, whilst the father

would need the assistance by way of supplementary care by a nanny or live-in maid in the light of his business commitments in the UAE were the children to return to his care, this is an arrangement that is very familiar to the children from their past experience of being parented in the UAE. Those findings were not disturbed by the Court of Appeal and I am satisfied that there is no basis on the evidence before the court to depart from those original findings.

101. I am further satisfied that, notwithstanding the findings of domestic abuse made in this case, the father is capable of meeting Y's educational needs and R's emotional needs. At the previous final hearing, the judge found that the father was alive to the potential special needs of Y, had made suitable enquiries to source an additional tutor who would appropriately fulfil a supporting role if Y needs mainstream extra assistance, had appropriate private medical insurance for the children that should cover any specific medical assessment needs for Y and, in the event that Y required more bespoke and specific additional assistance, the father would make the right child focused decision, which may involve her return to England. Again, those findings were not disturbed by the Court of Appeal and I am satisfied that there is no basis on the evidence before the court to depart from those original findings.
102. Mr L was also clear that he was satisfied that the father would make provision for accommodation, financial support, healthcare and education and had considered the resources that would need to be put in place to meet R's emotional needs and Y's education needs. Mr L was challenged by Mr Turner on whether the father was, once again, "talking the talk" with respect to Y's education. However, whilst Mr L was candid in stating that "I was quite surprised by the father's knowledge of what the children were doing at school and what they liked and did not like", he was equally clear that the father spoke enthusiastically about the issue, that the father would access support for Y from an educational psychologist and that:

"It was a significant area of strength in the father's area of parenting, that he values the children's learning development. I say learning development rather than education, he understands they need to enjoy it and it needs to be achievable."
103. Overall, Mr L assessed the father as having good insight into the children's needs. Mr L was satisfied that the father would support the children and their general development and would support them in separation from their mother. Mr L considered that the father is better able than the mother to meet the children's needs and is more likely to bring stability for the children.
104. Finally, I am further satisfied on the evidence before the court that the father is capable of meeting the children's needs for contact with the mother and, for reasons I shall come to, is more likely to promote the children's relationship with the parent they are not living with than is the mother.
105. Mr Turner and Ms Scotland challenged the proposition that the father is able to and will promote the children's contact with their mother on the basis that it is easy for a parent to learn to say the right thing to an FCA, particularly for an intelligent and articulate parent who has been considered by professionals to manipulate situations. However, Mr L was clear in answering that challenge, noting that the father stands by

the settlement agreement reached after the last hearing and stating in cross-examination that:

“This is the bit I am clear on. The father is able to say, in my view genuinely, that the children love their mother very much, and they will need to be supported in the event of a return to the UAE... the father also talks affectionately of the mother, he understands the importance to the children of emotional development of maintaining a relationship.”

(ii) The Mother

106. In evaluating the evidence with respect to the mother’s ability to meet the children’s needs, it is very important that the court bears in mind the context in which the mother has been parenting the children since she retained them in this jurisdiction in August 2022. In addition to the mother coming from a relationship in which she had endured serious and substantial domestic abuse, the mother was caring for the children in difficult circumstances in a country she had not lived in previously (although she had visited) and in which she spoke English as a second language (which I have also accounted for when evaluating her evidence). The task of caring for the children was undoubtedly made more challenging by reason of the emotional impact on the children of their previous, dysfunctional family life, their separation from the father and the pressures placed on the mother by the ongoing litigation, of which the present proceedings were but one element. However, accounting for these matters, I am satisfied on the evidence before the court that there remain significant difficulties with the mother’s ability to meet the children’s needs.
107. It is clear from the accounts of the children that the mother has struggled at times to parent them. As noted above, there have been a number of incidents where the children have been left in difficult or unsafe situations. R has had to raise the alarm on two occasions when the mother took a sleeping pill after being awake for 36 hours and whilst having a pan on the stove, and again when woken during the night to his mother having become locked in the toilet and crying and banging, requiring R to call the police. As I have noted, Y asserts that her mother hits her on the back, making her feel angry and sad. Y told Mr L that her mother “shouts a lot and she is bossy, she is horrid. I keep telling her, stop being bossy boots” and that she feels sad and confused because her mum doesn’t play with her because “she is on her laptop”. Mr L assessed Y as finding her mother “somewhat unavailable.” The mother has conceded that she videoed Y in circumstances where she feared that Y might harm her at the behest of the father. Mr L was concerned that the mother was not able to help the children with their homework as “their fighting between them makes her fearful”. In the circumstances, Mr L concluded that “A significant factor in [the children] not feeling settled here after nearly two years, is mother’s own descriptions of her difficulties in parenting the children.”
108. I am further concerned that the mother at times demonstrated somewhat limited insight into the children’s emotional needs. The mother lacked insight into the emotional consequences of having retained the children in this jurisdiction in August 2022. During her oral evidence, the mother did not understand the ways in which this would have had a significantly disrupting impact on the lives of the children, even though it is apparent that the children have been significantly impacted by being kept away from the place they consider home. When Mr Gratton asked the mother to

describe the ways in which the children would have been affected by this move, the mother had to resort to asking “Can you please, can you give me more details of how it would have affected them” before concluding, “I do not really know what the impact would be on them.” The mother had not provided the children with a clear explanation of why they could not return to their home beyond “mummy cannot go back to UAE anymore”.

109. In respect of R’s anger, Mr L concluded that this had not been addressed and the school were not aware of the issue. Mr L was clear in his assessment that R’s emotional needs are not currently being met in circumstances where he spends a significant amount of time gaming, has significant anger issues, feels responsible for his mother and, on R’s account, is left substantially to his own devices to make arrangements to see friends and family. The mother did not appear to appreciate that R had taken on an inappropriate level of responsibility for her and the family. As I have noted, the mother informed Mr L that the children had not been frightened by the incident in which she had taken a sleeping tablet whilst cooking requiring R to summon help, having initially denied that incident took place.
110. The mother’s lack of insight into the children’s emotional needs also, in my assessment, informs her view of the children’s wishes and feelings. The mother considered that R simply wishes to remain in England and attend school here. She did not appear to understand R’s position is, as the evidence demonstrates, ambivalent and could not conceive of the possibility that this is a function of the pressure and worries placed on him. The mother firmly located Y’s wishes and feelings in the context of paternal influence, rather than considering that they may represent a genuinely held position on Y’s part. In this context, I share Mr L’s concern regarding the ability of the mother to support R and Y were the court not to accede to the children moving to the care of their father. This concern is heightened by Mr L’s assessment that mother is “very clear that she would not communicate with the father on the children’s welfare and development, including education and health” and that he is “concerned that the subliminal message to the children is even if not explicit, is a negative one about their father.”
111. The evidence concerning the ability of the mother to meet Y’s educational needs is, ultimately, somewhat confused. In the addendum report of the original FCA the mother was assessed as “an engaged parent and eager to accept additional help where offered”. Mr L made clear in his report that “The school did tell me that the mother communicates well with the school through the SENCO largely.” Against this, Mr L considered that the mother “demonstrated limited understanding of the children’s learning needs” in circumstances where she appeared largely unaware of Y’s educational progress and that the school were unaware of R’s issues with anger.
112. Having regard to the fact that the mother speaks English as a second language, there is some difficulty in evaluating the assertion that the mother informed Mr L that Y could not read or write or remember her age or address. Mr L was clear that this is the account the mother gave, and that the mother had stated the following day that she had checked with Y and was pleasantly surprised at development that she had not noticed before. Based on this, Mr L concluded that the mother’s understanding of Y’s educational abilities was limited and that the mother was providing limited support for Y’s educational needs. In oral evidence, however, the mother repeated her assertion with respect to Y that “She is unable to read and unable to write and very basic and

she is behind and she has difficulty writing and until recently she could not say her age or remember her address. She cannot until now read and write.” In circumstances where this was *after* the mother had addressed this issue in her statement, denying she was unaware of Y’s educational progress, I was left with the impression that the issue may be the mother’s language rather than a deficit in the mother’s understanding of Y’s progress, particularly having regard to other aspects of the mother’s evidence concerning Y’s level of functioning. It was also unclear on the evidence the extent to which the mother has properly engaged with the efforts to address Y’s possible learning issues via a SALT assessment and the provision of an EHCP. What was clear, however, from both the evidence of the mother and of Mr L, is that the mother struggles to support the children’s learning in circumstances where arguments between the children in the context of homework cause her to be fearful.

113. I am further satisfied on the evidence that the mother will struggle to promote contact between the children and the father beyond supervised contact in this jurisdiction, and is unwilling to permit the children to travel to the UAE before they are 14 years of age.
114. Mr Turner and Ms Scotland point out that the mother has promoted contact between the father and the children whenever he is in England and facilitates unrestricted communication by telephone and WhatsApp. R confirms that the mother is supportive of these contact arrangements and other communication with the father and that the children see their paternal grandparents. It is the case that contact is happening more regularly than in the past and with the children having more autonomy than was the case at the outset of these proceedings. However, in my judgment significant concerns remain regarding the mother’s ability to meet the children’s need for contact between themselves and their father in the future were they not to reside with him.
115. Whilst the situation has improved, the mother was unwilling to promote contact between the children and their father for a significant period following the retention of the children in this jurisdiction. The mother accepted in cross-examination that she did not facilitate contact for a number of months. Whilst it was the mother who retained the children in this jurisdiction, the mother stated that her justification for not promoting contact was that she “was not allowing him to see them for the safety reason for abduction.” At the previous final hearing the judge made findings, not disturbed by the Court of Appeal, that the mother had shortened or otherwise frustrated some of the indirect contact that should have taken place between the father and the children and had not willingly and positively promoted contact between the children and the paternal grandparents until it suited her own purposes. Whilst contact has been unsupervised since November 2022, before this court the mother retained her view that “In an ideal world I would say that the visits should be supervised”. The mother advanced no clear proposals for the progression of contact from current face to face contact in England and indirect contact.
116. The mother was further clear in her evidence that contact should remain geographically confined to this jurisdiction until the children are 14 years of age, which for Y is another five years and R another three years. Mr L stated that the mother had made clear to him that “Under absolutely no circumstances would the children travel to the UAE” and that the mother “believes that the children would be

abducted. She said that is an inevitability.” This would mean, in Mr L’s words, that the children would not have any opportunity to “get the benefit of the life they want.”

117. I consider that the evidence grounding the court’s concerns regarding the ability of the mother to promote contact between the children and their father in the future also suggested a wider difficulty in the mother promoting the children’s relationship with their father. Mr L assessed the mother’s level of hostility to the father as being “extremely high” and her level of insight into the children’s needs as “very low”, with the mother not able to accept that the father wants the best for the children. In this context, which he characterised as “significantly problematic”, Mr L clarified that “my concern may better have been expressed as my concern about her ability to support their relationship with their father, not limited to spending time but more broadly than that.”
118. In the foregoing circumstances, and in the context of the children’s strong attachment to their home country and their desire to reap the benefits of being there, I am satisfied that the mother’s inability to promote anything other than contact in this jurisdiction, which she maintains should ideally be supervised, risks increasingly interfering with the maintenance of children’s relationship with their father and ability of children to maintain links with, as the mother acknowledges, the place they continue to consider home.
119. Once again, in light of the findings of serious and substantial domestic abuse made by the court, the court’s concern that the mother will not communicate with the father regarding the children’s needs, will not be able properly to promote contact and the relationship between the children and their father and will not permit the children to have contact in the country they consider to be their home, *must* be evaluated by reference to that domestic abuse. As noted by the Court of Appeal at [72], “Any assessment of the mother’s aversion to returning to the UAE and her capacity to promote contact with the father and his family had to be carried out in the context of the history of domestic abuse she had experienced.”
120. It is eminently understandable that a parent who has been subjected to significant domestic abuse may be fearful of promoting contact with the abusive parent, particularly in circumstances where the context for that abuse is that the abusive parent has, in the past, found aspects of parenting the children challenging. It is likewise understandable that a female victim of domestic abuse may be fearful of returning to a jurisdiction in which she perceives the patriarchal nature of that jurisdiction’s legal and cultural traditions as not providing adequate protection against further abuse and, more generally, as prejudicing her in any dispute that might arise in respect of the children. This understanding may, depending on the facts of the case, operate to reduce the weight the court ascribes in the welfare balance to the inability on the part of a parent to embrace and promote contact and the children’s relationship with the abusive parent. Against this, in disputing the contention of Mr Turner in cross-examination that he had failed to factor these matters into his assessment, Mr L drew a distinction between fear and hostility:

“I absolutely considered the matter in considering the mother’s capacity to support contact. In my assessment, a victim’s fear of their abuser is the mark this is really important. The hostility towards an abuser is a separate

matter. Sometimes it will be justified and sometimes it will not, and [here] the level of hostility is not consistent with the circumstances.”

121. As to those circumstances, whilst the context for the findings of domestic abuse in this case is the father having found aspects of parenting the children challenging, for the reasons set out above, the risk of future domestic abuse, including against the children, is low. Mr Turner and Ms Scotland submit that the mother’s opposition to any contact that is not confined to this jurisdiction is also a rational position given the findings made by the court and in circumstances where the UAE is a non-Hague country in which her ability to seek legal redress should the children be retained by the father is limited by what they submit is the patriarchal legal and cultural tradition in that jurisdiction. With respect to the extent the mother is justified in considering that the patriarchal nature of the UAE’s legal and cultural traditions prejudice her in any dispute that might arise in respect of the children, I consider this below when considering the extent to which a change in the children’s circumstances to live with their father may prejudice the mother’s ability to have contact with them. Further, in this case it was the mother who retained the children in August 2022. As Mr L pointed out in cross-examination, there is no evidence in this case that the father presents a risk of abduction, with no history of the father retaining the children from the mother, of crossing borders without the mother’s consent or of the father removing the children from the care of the mother, notwithstanding what Mr L described as the “tremendous difficulties” the family had whilst living in the UAE. Whilst, as Mr Turner and Ms Scotland further point out, the court could order the mother to permit the children to travel to the UAE for contact, I have significant reservations regarding whether the mother would comply with such an order. In any event, I am satisfied that the mother would find it very difficult to support the children emotionally in that context.
122. Having regard to the matters set out above, I am satisfied that the evidence before the court demonstrates that the father is better placed to meet the children’s identified needs on a day to day basis than is the mother.

The likely effect on the children of any change of circumstances

123. A move from the care of the mother in England to the care of the father in the UAE will, self-evidently, constitute a change of circumstances that will require sensitive handling. However, the children were born in the UAE and had lived there all their lives until August 2022. Whilst a move to the care of their father will amount to a change to their current environment, that change will be back to an environment both children still consider firmly to be their home. As Mr L noted during his oral evidence, “It is not a return to the unknown, but back to way they have lived their lives, and where they have maintained friendships to this day.” In these circumstances, I am not able to accept the submission of Mr Turner and Ms Scotland that the change of circumstances consequent upon the children moving to the care of their father in the UAE is either fundamental or a change to the *status quo*.
124. The children’s ability to cope with such a change will, I am satisfied, be enhanced by the change being consistent with Y’s expressed wish to return to the UAE and, as I have found, the fact that R likely wishes to do so. Whilst I accept that R will be disappointed not to attend his secondary school, he thought the original decision that he should move back home to the care of his father in the UAE to be a good one.

125. I am likewise not able to accept the submission of Mr Turner and Ms Scotland that that change of circumstances involves a high degree of speculation. Mr L conceded in his evidence that a change of circumstances always involves a degree of speculation, but considered that in this case, any speculation is well informed. I accept that evidence. Moving the children from the care of their mother to the care of their father will mean that the children are required to change schools, will mean that the need to address Y's learning issues and the need to address R's issues with anger will have to be met in the UAE and, as I will come to, will change the amount of time the children spend in the care of their mother. However, I am not able to accept the contention that the move would be to a parent whose care is "untried and untested".
126. Up until August 2022, the children lived with and were cared for by both parents. As I have noted, at the previous final hearing the judge found that the father was involved in a very meaningful sense in the children's care on a day to day basis when the family lived together in the UAE and that the assistance of supplementary care by a nanny or live-in maid is an arrangement that is very familiar to the children from their past experience of being parented in the UAE. These findings were left undisturbed by the Court of Appeal and no new cogent information has been placed before the court to gainsay those findings.
127. The one area in which a move to the care of their father in the UAE *will* constitute a very significant change is the time the children spend with their mother. Such a move would mean that, if the mother elects not to return to the UAE, the children's time with their mother will be confined to the school holidays. I am satisfied, that both children are aware of this consequence. It is significant in my judgment that both children saw the solution in these circumstances to be that they will spend time in the holidays with the parent with whom they are not living. For the reasons I have given, I am satisfied that the father will promote contact between the children and their mother during each of the school holidays if the mother decides not to return to the UAE.
128. Mr Turner and Ms Scotland submit that if the children remain in England, the courts in this country will be able to enforce and/or vary contact arrangements in the event of any difficulties in that regard. They seek to contrast this with what they contend is the far less clear or satisfactory position as to enforcement and/or variation if the children's circumstances change to them living in the UAE with their father with the mother having contact subject to a settlement agreement. However, in the event that the mother seeks to return to the UAE following the children moving to live with their father, either for contact or permanently, or to safeguard in that jurisdiction her contact with the children, I am satisfied on the evidence before the court that there is no substantial impediment to her doing so.
129. Following the decision of the judge, the parties reached settlement agreement that reflected the position ordered by the English court. Whilst such agreements can be the subject of an application to vary, that is the position in this jurisdiction in respect to any child arrangements order. The judge found at the previous final hearing that, having regard to the father's more child focused approach, he would not make a false allegation against the mother for her to be arrested for gratuitous reasons and that the mother could return to the UAE under one of a number of possible visa arrangements. Once again, those findings were not disturbed on appeal and the court has been provided with no new immigration information to gainsay those findings. The further

matters noted by the judge with respect to the law of the UAE relevant to the mother's ability to pursue her rights in respect of the children in the UAE, based on the unchallenged report of the jointly instructed expert in the law of the UAE and the decision of Poole J in *Re A and B (Children: Return Order: UAE)* [2022] EWHC 2120 (Fam), were not the subject of substantial dispute at this hearing. Namely:

- i) Parents are immediately awarded joint custody of their children by default and have equal rights over the care of the children. In the application of the provisions of the law governing this position, equality of men and women in rights and obligations is observed. This equality specifically applies to a number of matters including: (a) equality in testimony in court; (b) equality between a man and woman in estate distribution; (c) both husband and wife have the right to seek a divorce; (d) parents have an equal joint right of custody of the children until 18 years of age, whereupon the child has the freedom of choice unless the court decides otherwise;
- ii) If there is an issue between parents in relation to any joint custody matters, either parent may apply to the court. The court has the discretionary power to determine whatever it deems in the interests of the child in custody, at the request of either parent. Both parents would be regarded by the court as “legal custodians” of the children with equal rights and responsibilities for the care of the children. The fact that R is 11 years old does not in any way impact custody under Federal Law No.41 of 2022 on Civil Personal Status.
- iii) Settlement agreements can be entered into at any time and are encouraged. The settlement agreement consists of the terms the parties wish to include. They can incorporate a term that prevents the parties from raising a travel ban on their children, custody, child maintenance payments and any other terms that do not contradict UAE law or public policy. A settlement agreement signed by the parties, entered into and passed as judgment in the UAE that incorporated a term preventing the father from seeking any form of prosecution of the mother for her travel with the children in 2022, or for any action prior to the date of the settlement agreement, would be enforced and implemented in the UAE and would prevent the criminal prosecution of the mother. A settlement agreement that was signed by the parties, entered into and passed as judgment in the UAE that incorporated a term allowing the mother to travel in and out of the UAE as she wished would allow her to do so. There should also be a term in the agreement to prevent a travel ban from being placed on the children if the mother wishes to travel with the children. A settlement agreement would allow the mother to travel in and out of the UAE either to visit the children, or to take them abroad to spend time with her abroad without it constituting an offence if such a term were incorporated into the agreement.
- iv) The mother will not be arrested upon her entry of the UAE for taking the children outside the UAE, nor will she be liable for charges of “kidnapping”. This is because the mother is a legal custodian of the children and cannot be considered a “kidnapper” of her own children as their custodian. Criminal matters, including child kidnapping, are now legislated for under a new penal code. The position of the law on child kidnapping is that a child can only be kidnapped if it is by a parent that does not have any legal custodial or

guardianship rights over the child and would need to be returned to the “rightful guardian or custodian”. The mother is a “legal custodian” of the children as established under the relevant Articles. Therefore, the mother’s action in travelling with her children abroad will not be constituted by the law as a criminal act of kidnapping.

- v) Travel bans in the UAE can only be imposed on the children of the parties in personal status cases. They are always placed on a child and cannot be placed on a partner or ex-partner unless the grounds for the request of a travel ban on a partner or ex-partner are for those of a criminal case. As no criminal charges for child kidnapping will be faced by the mother as a custodian of the children and as the father has not filed for any criminal charges against her, there will not be criminal grounds for him to raise a travel ban. Again, the mother will be able to enter and leave the UAE without facing arrest.

130. In assessing impact on the children of a change of circumstances, I have again borne in mind that it is understandable in the context of the findings made by this court that the mother has an aversion to returning to the UAE for the reasons set out above. However, having regard to each of the welfare factors that fall to be placed in the balance in this case, I am not satisfied that the fact that it is understandable in the context of the court’s findings that the mother does not wish to return to the UAE leads to the conclusion that it is in the children’s best interests to remain in her care in this jurisdiction.

131. Finally, in circumstances where it would appear that her immigration clearance in this jurisdiction is based on her status as the carer for the children, it is also the case that a decision to move the children to the care of their father in the UAE may adversely affect the mother’s ability to remain in this jurisdiction. I am not, however, satisfied that that operates to change the court’s conclusions. When considering the effect of a change of circumstances, s.1(3)(c) of the Children Act 1989 makes clear that it is the effect on the subject *child* of a change of circumstances that the court is required to consider. Whilst s.1(3) is not exhaustive, and where the children could have contact with their mother in her home country if the mother was required to leave this jurisdiction, in such circumstances I am satisfied that the impact on the mother’s immigration status in this jurisdiction were the children to move from her care cannot be a weighty matter in the welfare balance.

CONCLUSION

132. Weighing up each of the welfare factors in this case as analysed in detail in the foregoing paragraphs by reference to the matters set out in s.1(3) of the Children Act 1989, holding each child’s best interests as my paramount consideration and stepping back to examine the position of each child as a whole in the context of the requirements of FPR 2010 PD12J, I am satisfied on balance that it is in each of the children’s best interests to make an order providing that the children shall live with their father in the UAE and spend time with their mother for the duration of each of the school holidays. Accordingly, I further consider it to be in each child’s best interests to permit the father to remove the children permanently from the jurisdiction of England and Wales to the jurisdiction of the UAE.

133. I am satisfied that these orders, which I also consider to be consistent with the wishes and feelings of each of the children, will result in the children being cared for by the parent best able to meet their needs consistently whilst ensuring that the children maintain and develop a relationship with the parent with whom they are not living. Whilst the orders represent a change to the children's current circumstances, I am satisfied that each of the children is able to cope with that change in circumstances where the orders provide for the children to return to the country and to the environment they consider to be home. In reaching this decision, and as set out in detail above, I have given anxious consideration to the serious and substantial findings of domestic abuse made against the father. For the reasons I have given, I am however satisfied that the orders I am making will not expose the children or their mother to an unmanageable risk of harm.
134. As the Court of Appeal acknowledged when remitting this matter for hearing before a Judge of the Family Division, this has been a difficult and finely-balanced welfare decision. In particular, I acknowledge that the order I intend to make in this case will result in the children being placed in the care of a parent who has been found to have perpetrated serious and substantial domestic abuse.
135. One of the most challenging tasks falling to the Family Court is to determine the welfare consequences of domestic abuse when deciding applications in respect of children. Deplorable though all forms of domestic abuse are, the task of the court is not to render a bare moral judgment on the parent who is found to have perpetrated such abuse. Rather, within the framework of s.1 of the Children Act 1989 and PD12J, the court is required to evaluate the domestic abuse as an important factor in a multifactorial, holistic welfare analysis based on the totality of the evidence and in which the children's best interests are paramount. This calls for a comprehensive and nuanced analysis. One that recognises both the complexity of the situations in which domestic abuse occurs and that s.1 of the Children Act 1989 requires other welfare factors to be placed into the balance along with the findings of domestic abuse analysed by reference to PD12J in order to reach a reasoned welfare decision.
136. Whilst the domestic violence perpetrated against the mother by the father in this case was serious and substantial, evaluating the harm and risk attendant on that conduct in the context of the totality of the evidence now available to the court and with the other welfare factors the court is required to consider, I am satisfied that an order which provides for permission for the children to be removed permanently to the jurisdiction of the UAE and provides for them to live in the care of their father and to have contact with their mother for the duration of each school holiday is the order that is in the best interests of R and Y, taking those best interests as my paramount consideration. I will invite leading and junior counsel to draw an order accordingly.