Neutral Citation Number: [2025] EWHC 364 (Fam)

Case No. FD24P00683

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 February 2025

Before :

MS H MARKHAM KC

- -

Between :

A Father

AND

A Mother

- -
- -

Ms Amiraftabi instructed direct access for the **Applicant**
Mr K of Burnham Law for the Respondent

Hearing date 7 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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

Before H Markham KC sitting as a Deputy High Court Judge

Introduction:

1. On 4 December 2024 the father's application for a summary return came before me for a pre-hearing review, the final hearing being allocated before me over three days on 16, 17 and 18 December 2024. At that hearing the father was represented as he has been throughout by direct access Counsel Ms Amiraftabi and the mother by Messrs Burnham Law and at that hearing Ms H of Counsel.

2. The substantive application is the father's application for an order that the two subject child D and A are returned to Nigeria from where he asserts they were unlawfully removed on or about 24 June 2024.

3. At the hearing on 4 December 2024 the mother made an application to adjourn the hearing listed on 16 December, primarily because there has been no progress in the instruction of an expert in Nigerian law, as had been previously directed as being necessary.

4. I pause here to note that the hearing on 16-17 and 18 December 2024 was listed to determine contested factual matters relevant to the summary return determination being:

    a. the children's habitual residence;

    b. whether the children were wrongfully removed from Nigeria by the respondent on or about 24 June 2024;

    c. the applicant's allegations about the respondent's capacity to care for the children;

    d. to the extent that the court determines it is necessary, the allegations of domestic abuse made by the respondent against the applicant and members of the paternal family.

5. The father's case is that at the time the children were removed from Nigeria to this jurisdiction they were habitually resident in Nigeria. The mother submits that they were only temporarily in Nigeria and that the children had been and remained at all

relevant times habitually resident in this jurisdiction. In this short judgment focused on costs I will not descend into the background or substantive issues but set out some of the legal procedural history as it is in my view relevant to the background within which I make this wasted costs order.

Proceedings to Date

6. The application first came before the court on 28.06.24 and then again on 08.07.24 when various orders were made to locate the mother and the children. The mother's address and contact details were disclosed to F's solicitors and the Tipstaff by the Department of Works and Pensions. The Location Order was executed on 11.07.24 (Tipstaff Notice), and M was served via email and WhatsApp (as permitted by the orders made on 28.06.24 and 08.07.24) on 12.07.24.

7. A hearing was listed on 24.07.24 which the mother attended with the children. She sought an adjournment to secure legal aid and representation. The court permitted that application and adjourned the hearing to 08.08.24. The mother was directed to file and serve a statement by 05.08.24.

8. The mother's 1st statement was received immediately prior to the hearing on 08.08.24. The mother made various unspecified and unsupported allegations of abuse against the father and paternal family and alleged that she and the children were 'kept' in Nigeria by the father. She sought permission to file a further statement primarily to exhibit evidence upon which she sought to rely. The court made directions timetabling the application to a PTR on 08.10.24 and then to a final hearing on 26.11.24 with a time estimate of 3 days. The court directed that the mother permit the children to have video contact with their father three times per week, with such contact being independently and professionally supervised by an appropriately qualified person.

9. At the hearing on 08.10.24 the father then appeared in person. Unfortunately, the court's timetable had not been complied with. The final hearing listed on 26.11.24 was vacated and relisted to be heard on 16.12.24 with a time estimate of 3 days. Directions were given timetabling the parties' further evidence. A further PTR was to be listed and came before the court on 8.11.24. At that hearing the court further

adjourned the PTR to be heard by the trial judge (subsequently listed on 04.12.24) to determine the issue of oral evidence at the final hearing. Because of the short timescales the court dealt with and permitted the father's application for an expert opinion in Nigerian law, directing the joint instruction of an agreed expert.

10. It is the father's case that due to the delays by the mother's representatives, the draft order was not agreed and sealed until 25.11.24, thus delaying the instruction of the (agreed) expert. The order that the expert file his report by 11.12.24 (ahead of the hearing on 16 December) could not be complied with and no prior authority for the instruction of the expert had been made by the time the case came before me on 4 December 2024.

11. The mother was throughout this time represented by Messrs Burnham Law (as she was from, I understand , 8 August 2024).

12. Mindful of the delays which had already beset this case and the requirement for the prompt determination of the summary return application I determined that the hearing commencing 16 December should proceed and should be used to consider the primary issue of habitual residence and to hear evidence on factual matters related to domestic abuse. I noted that on the facts of this case it was an unusual and fact-heavy argument, and that oral evidence would be needed to resolve any issues of fact on which my determination of the question of law would then be made. The father confirmed that he would do what he could to take leave from his work (he works currently in X) and he would both attend the hearing and see his children when travelling to this jurisdiction in December. His decision to travel at that time was primarily due to the court's clear indication that evidence would be necessary.

13. I then listed the hearing for a further 2 days, if necessary, before me on 27 & 28 January 2025 by which time, were I to determine that the children were habitually resident in Nigeria, I could then go on to consider the other issues and be assisted by the Nigerian expert.

14. The directions for the instruction of the expert were extended to provide for a report by 20.01.24. Additional agency directions were made for disclosure by 12.12.24. By consent the court ordered direct supervised contact between the children and the

father to take place on 19.12.24 and 20.12.24. The mother was to file a schedule of the allegations she made against the father.

15. Counsel who appeared before me at that hearing for the mother made it plain that she was no longer available for the hearing in December and noted that she would inform her instructing solicitor and steps would be taken to secure alternative counsel. I received an email from her on the afternoon of 4 December stating that:

I have just made enquiries in chambers who had a back up counsel who has now become unavailable as such my IS will need to look outside of chambers.

16. On 12 December, as directed I received a skeleton argument and summary of the law by Ms Amiraftabi but nothing from the mother or her team. The court bundle was the same I had for the PTR and had not been updated.

16 December 2024.

17. At 9.36am on the morning of 16 December I was advised by the court staff that the following email had been received from the mother's solicitor:

> Dear Sirs,
>
> **Request for an adjournment**
>
> I have learned from our barristers that they have received a phone call from the XX firm (anonymized for this judgment) that our client, Ms. J, no longer needs their services, as well as our services. After speaking to Ms. j this morning, she confirmed that she contacted other solicitors about two weeks ago, but she later decided not to proceed with giving them instructions.
>
> Our barristers then rang the XX firm this morning, and found out that they are not representing the client as the client decided not to proceed.

Our barristers are not able to re-allocate Counsel for the day. In this regard, I would like to apologise to the Court, and request that today's hearing be adjourned.

18. I responded with questions of the author who replied by 1104 am and I set out his responses below:

Dear Judge,

Further to the Court's email response today, please find below my response:

Q1. When did those emailing me today know that their services were no longer required?

Friday, 6th December
The XX firm, represented by AR, contacted chmabers to confirm that the client, Ms. J, wished to dismiss Burnham Law Practice due to a legal aid issue and instruct the XX Firm instead. Chambers informed them of difficulties in securing counsel availability, Chambers confirmed that this was issue already communicated to both the Court and the XX firm. In response, AR indicated that they would handle the matter themselves.

Friday, 13th December
Counsel stated that they received correspondence from the court, which needed to be forwarded to the new solicitors. The solicitor emailed Burnham Law Practice to inquire about their contact with the new solicitors, but did not receive correspondence from Burnham Law until this morning.

Monday, 16th December
Chambers immediately contacted the XX firm for clarification. AR explained that while the client had expressed a desire to dismiss Burnham Law Practice, she was still deliberating and had not finalized the decision. This information was promptly relayed to Burnham Law Practice.

Q2: Why did no one check on Friday?

I received a forwarded email from chambers asking for the new solicitor's contact. My understanding was chambers was referring to the solicitors for the applicant. I was aware that there was some difficulty in looking for counsel in today's hearing, however, I was made to understand that chambers will make the necessary arrangements, which they normally are able to do. I was not aware of the circumstances (The XX firm) until this morning.

Q3.: Do they consider themselves instructed at all today?

Chambers has confirmed that they have now secured counsel for tomorrow.

I again apologise to the Court in the circumstances.

19. At 1116am a further email was sent saying that he had misunderstood and Chambers were attempting to find a barrister for the next two days but had not yet secured one.

20. At 1156 I reminded mother's instructing solicitor that he had not responded to direct questions about whether and when they considered themselves on the record and noted that the only Notice of Acting the court held had them as solicitors on the record and I ordered them to court.

21. Solicitor with conduct of the case arrived at court at about 3pm.

22. I was informed that efforts were being made for alternative counsel and that Messrs Burnham Law accepted that they had been throughout and remained 'on the record' and as it later transpired knew nothing until Monday 16 December of any possible transfer of their legal aid certificate nor any of the 'issues' around securing counsel until that morning.

23. The solicitor with conduct of the case was due to leave the jurisdiction with his family that night, and the next day another associate from the firm (who did not have rights of audience) was sent to manage the evolving issues. I have no criticism of him and the steps he took to assist this court and granted him rights of audience.

24. Understandably when it became clear that despite all efforts the 3-day hearing could not proceed (no counsel across England and Wales being able to attend court, so I was told), the father invited me to consider an application that their costs wasted by the actions of the mother and or her legal team should be met by them (either by the solicitors or mother in shares to be determined).

25. I directed information to be gathered from Chmabers who in fact sent an email of their own accord, from AR of the XX Firm and from the solicitor with conduct of this case. He duly submitted that along with a skeleton argument. I directed that a short hearing be listed in the New Year ahead of the 27 January hearing to address further arguments as to wasted costs and to ensure that the case was on track.

26. I made it plain to the mother, who was in court throughout, that she must be clear if she wished to transfer her legal aid certificate to a new firm to do so promptly as I would need significant persuasion to further adjourn these proceedings in January. In seeking to clarify whether she had at any stage told Messrs Burnham Law that she did not need their representation or whether she had tried to contact them in advance of the hearing she advised me that she had emailed her instructing solicitor in the previous week, not least on 11 December and on more than one occasion and had had no response. They knew nothing from her of a possible transfer of legal aid certificate. She was clear that when told by the XX Firm that time was too short to transfer the legal aid certificate, she then emailed Burnham Law to progress her case.

27. I listed the hearing in person on 7 January primarily to afford Messrs Bunrham Law time to reflect on their role in the wasted costs of the father and to allow them time to make offers to settle (if they formed the view this should happen). It further appeared right to me that errors of law in the skeleton argument drafted by them could be considered orally and any arguments on the correct legal principles could be made to me in court. Ahead of that hearing I was provided with a very helpful skeleton argument on behalf of the father in which the leading case law was set out alongside the Family and Civil Procedure Rules.

28. I had also received a statement from AR of the XX Firm in which she explained what she has said to the clerks at Chambers and whilst I note it was perhaps premature of that firm to have made any calls when they were not on the record, I am clear that nothing was said or done by them which could impacted on the conduct of Messrs

Bunrham Law and the duties imposed on them holding a legal aid certificate, in particular of course as they knew nothing about the involvement of the other firm

29. I was also sent an email from a clerk at chambers. They plainly were not at any stage sent instructions for counsel nor did they have any contact whatsoever from solicitors to confirm counsel was needed. They did email Messrs Burnham law (as set out above) but even then had nothing to say counsel was needed.

30. Ahead of this hearing I also reminded myself of the Appellate authorities cited below and of the Solicitor's Regulation Authority Code of Conduct ("SRA Code of conduct"). I note in particular codes 2.6 and 2.7 (for practitioners) which say it is a duty and obligation of every solicitor to ensure that:

    a. You do not place yourself in contempt of *court*, and you comply with *court* orders which place obligations on you.

    b. You do not waste the *court's* time.

    Further at 3.2 that:

    > You ensure that the service you provide to *clients* is competent and delivered in a timely manner.

The Law:

31. The jurisdiction of the court to make a wasted costs order is provided for by section 51(6) of the Supreme Court Act 1981. Section 51(7) defines wasted costs as:

    a. *'In subsection (6), "wasted costs" means any costs incurred by a party—*

    b. *(a)as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or*

    c. *(b)which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay.'*

32. The provisions of CPR 1998 Rule 46.8 (see also PD 46 paras 5.1 to 5.9) apply when the court is making a wasted costs order. Rule 46.8 provides:

a. '*(1) This rule applies where the court is considering whether to make an order under section 51(6) of the Senior Courts Act 1981 (court's power to disallow or (as the case may be) order a legal representative to meet, 'wasted costs').*

b. *(2) The court will give the legal representative a reasonable opportunity to make written submissions or, if the legal representative prefers, to attend a hearing before it makes such an order.*

c. *(3) When the court makes a wasted costs order, it will –*

    (a) specify the amount to be disallowed or paid;

d. *or (b) direct a costs judge or a District Judge to decide the amount of costs to be disallowed or paid.*

e. *(4) The court may direct that notice must be given to the legal representative's client, in such manner as the court may direct –*

    (a) of any proceedings under this rule; or

    (b) of any order made under it against his legal representative.'

33. The leading case remains *In Ridehalgh v Horsefield, and Watson v Watson (Wasted Costs Order) [1994] 2 FLR 194*. The CA set out guidelines as to exercise of discretion:

    (a) any procedure should be as simple and summary as possible, while remaining consistent with fairness to the respondent legal representatives;

    (b) the court approved the procedure in *Re A Barrister (Wasted Costs Order) [1993] QB 293*:

        (i) where the court intends to exercise the wasted costs jurisdiction it must set out clearly and concisely the complaint and grounds upon which the order is to be made.

        (ii) a three-stage test would apply: (i) Had there been an improper, unreasonable or negligent act or omission? (ii) As a result had any costs been incurred by a party? (iii) If the

answers to both questions was 'yes', should the court make an order; and if so what specific sum should be considered?

(iii) submissions should be invited from the respondent legal representatives, and the court will give a formal ruling after hearing from any other party as may be necessary;

(iv) the court must specify the sum to be disallowed.

34. The meaning of the words *'improper, unreasonable or negligent'* were considered and defined as follows:

i. '*Improper*' covers conduct which might lead to disbarment, striking off or other serious professional penalty; however, it is not restricted to this and might include other conduct stigmatised by the court in appropriate circumstances;

ii. *'Unreasonable'* includes conduct which is vexatious or harasses other parties, but it does not include an approach which merely leads to an unsuccessful result or which a more cautious representative might not have adopted;

iii. *'Negligent'* is to be approached in a non-technical way. A legal representative may come within the definition by failing to act with the competence reasonably to be expected of a member of the legal profession. A legal representative is not to be regarded as acting improperly, unreasonably or negligently by pursuing a hopeless case for the client, providing this does not represent an abuse of the court's process. It is the responsibility of a lawyer to present the case and of the court to judge it.

35. Further these passages of Sir Thomas Bingham MR (as he then was) are highlighted:

> **Causation**
>
> As emphasised in *Re a Barrister (wasted costs order)* (No 1 of 1991) [1992] 3 All ER 429, [1993] QB 293, the court has jurisdiction to make a wasted costs order only where the improper, unreasonable or negligent conduct complained of has caused a waste of costs and only to the extent of such wasted costs. Demonstration of a causal link is essential. Where the conduct is proved but no waste of costs is shown to have resulted, the case may be one to be referred to the appropriate disciplinary body or the legal aid authorities, but it is not one for exercise of the wasted costs jurisdiction.
>
> ….
>
> **Discretion**
>
> It was submitted, in our view correctly, that the jurisdiction to make a wasted costs order is dependent at two stages on the discretion of the court. The first is at the stage of initial application, when the court is invited to give the legal representative an opportunity to show cause. This is not something to be done automatically or without careful appraisal of the relevant circumstances. The costs of the inquiry as compared with the costs claimed will always be one relevant consideration. This is a discretion, like any other, to be exercised judicially, but judges may not infrequently decide that further proceedings are not likely to be justified. The second discretion arises at the final stage. Even if the court is satisfied that a legal representative has acted improperly, unreasonably or negligently and that such conduct has caused the other side to incur an identifiable sum of wasted costs, it is not bound to make an order, but in that situation it would of course have to give sustainable reasons for exercising its discretion against making an order."

36. In *Medcalf v Mardell* [2003] 1 AC 120, HL, Lord Bingham of Cornhill stated at para 23:

> *"The court should not make an order against a practitioner precluded by legal professional privilege from advancing his full answer to the complaint made against him without satisfying itself that it is in all the circumstances fair to do so. This reflects the old rule, applicable in civil and criminal proceedings alike, that a party should not be condemned without an adequate opportunity to be heard. Even if the court were able properly to be sure that the practitioner could have no answer to the substantive complaint, it could not fairly make an order unless satisfied that nothing could be said to influence the exercise of its discretion. Only exceptionally could these exacting conditions be satisfied. Where a wasted costs order is sought against a practitioner precluded by legal professional privilege from giving his full answer to*

the application, the court should not make an order unless, proceeding with extreme care, it is (a) satisfied that there is nothing the practitioner could say, if unconstrained, to resist the order and (b) that it is in all the circumstances fair to make the order."

It is not suggested in this case that FM's conduct was either improper or unreasonable in the sense described by Sir Thomas Bingham MR, nor could it be. The case they face is squarely an allegation of negligence. Therefore it seems to me that the applicable principles that governed this application were (and are) as follows:

i) R2 and H have the burden of showing that FM failed to act with the competence reasonably expected of ordinary members of the solicitors' profession. R2 and H have to prove as much as they would have to prove in an action for negligence against FM.

ii) The demonstration by R2 and H of a causal link between FM's conduct and the wasted costs, and only to the extent of the wasted costs, is essential.

iii) Even if these conditions are satisfied H and R2 have to persuade the court to exercise its discretion to make a wasted costs order.

iv) Where the respondent lawyers are precluded by legal professional privilege from advancing a full answer to the complaint made against them the court should only make an order for wasted costs exceptionally where (a) it is satisfied that there is nothing the lawyers could say, if unconstrained, to resist the order and (b) it is in all the circumstances fair to make the order.

37. It seems to me therefore that in examining the factual issues in this case I must be satisfied, and am clear that it is essential that I find that there is a direct causal link to the wasted costs and the conduct of those facing such an order. Any costs not directly caused by the actions complained of are not to be included into the order.

38. I have provided the solicitor with conduct of the case an opportunity to be heard, both through written documents and orally in this hearing. I considered that this hearing was necessary for the reason set out in this judgment.

39. During the hearing I had to remind the advocate of his client's right to legal professional privilege, but this did not prevent him in my judgment being able to advance a full case against the application for costs. I read and considered the statement prepared by Messrs Burnham Law the exhibits attached to it and the statement from AR along with the email from Chambers.

Analysis & conclusions

40. The starting point in this case is that Messrs Burnham Law held a live legal aid certificate to represent the mother in these proceedings. On 6 December they were I find, and this is in the statement filed on behalf of Burnham Law, told by Counsel instructed by them, that the adjournment they applied for had been refused in so far as it related to ongoing progress of the allegations of domestic abuse and habitual residence and that the hearing remained listed on 16 December for 3 days. They were told that counsel could not attend that hearing and that new counsel would need to be found. I am told that this conversation took place by phone and I have been shown no attendance note of the same. This accords with the email sent to me by Ms H on 4 December 2025.

41. I was told by Messrs Burnham Law that they were not sent a copy of the draft or final order, however equally they did not chase for it nor did they show me anything to suggest they took any steps to speak with counsel again or request the order from the Court.

42. At no stage did Messrs Burnham Law know anything about the mother considering moving to a new firm and I find that at all times between 4 December and 16 December 2024 they believed themselves to be solicitors on record as indeed they were.

43. I find that at no stage did any member of Burnham Law contact any chambers to enquire if Counsel was available to attend the hearing nor did they contact the named chmabers to ensure that counsel was instructed; this in particular in a situation where on their own evidence to me they were made aware that counsel could not attend as expected and that new counsel would need to be instructed.

44. Submissions made to me were that Counsel should have undertaken this task and she did not. I find that this is not the proper way to approach this issue and it was wrong

of Burnham Law to have sat back and done nothing. Counsel did nothing wrong and had reported back to her instructing solicitors after the hearing.

45. At no stage did Messrs Burnham Law respond to emails sent to them by the mother in the week ahead of the court listing. They did accept emails were sent and they did not respond. This was a failure of their duty to her to prepare her case ahead of a listed hearing.

46. At no stage did Messrs Burnham Law consider any issue about prior authority to instruct the expert.

47. At no stage did Messrs Burnham Law provide instructions to counsel and ensure that Counsel, who they knew would be new to the case, had instructions on how to prepare the case, what papers to prepare and to ensure that the newly instructed Counsel did not need to speak to the client, to them or indeed need anything to undertake steps to prepare the case.

48. No steps were taken at any time to ensure that Counsel was instructed. No brief was sent.

49. In summary I find that Burnham Law:

i. did not take any steps to prepare and send a brief to counsel for the hearing commencing 16.12.24;

ii. did not prepare and lodge a trial bundle for the hearing - order of 08.11.24 and rules of practice;

iii. did not take any steps to arrange for a witness bundle to be available;

iv. did not take any steps to ensure that the contact details of the witnesses giving evidence remotely were made available to the court – order of 08.11.24;

v. they did not comply with any directions of the court made on 04.12.24.

50. Further I find that there was no indication whatsoever of the possible issues arising from the lack of counsel ahead of the email sent on Monday 16th December seeking an adjournment. In my judgment this ought to have been recognised in the week before and the difficulties in securing counsel shared with both the father and the court.

51. The submissions made to me that Counsel ought to have 'instructed' new counsel were in my view wholly misplaced and demonstrated a failure to understand the basic process undertaken between solicitor and Counsel and the manner in which Counsel are instructed by solicitors. The Bar Code of Conduct speaks throughout of instructions being provided and enshrined in that code of conduct is a duty on Counsel to read instructions to ensure that deadlines are met, the case is understood and to ensure that said instructions can be properly accepted in line with the issues, complexity of the case and the ability of Counsel to comply with them.

52. It is important that solicitors remember their role in the proper instruction of Counsel and that they must ensure that Counsel is properly and fairly instructed and in a timely manner so that they (Counsel) can in turn comply with their regulatory and ethical duties to client and court. I make the clear observation that all solicitors instructing counsel must ensure that they do so in this fair way, and in a timely fashion. It is the responsibility of solicitors to comply with their Regulatory duties so that Counsel can comply with theirs and the clients be properly represented and court time is not wasted.

53. The courts of England and Wales are under immense pressure. Cases such as this, for summary return of children are to be dealt with, where at all possible in a short time frame (6 weeks) and this, of course, holding the needs of the children at the centre of the court process.

54. In this case there had already been significant delays in holding the necessary 3 day hearing. I do not, in relation to the historic failures, and in this judgment assess or apportion blame for anything which happened ahead of the hearing on 4 December and have focused on conduct between that date and the morning of 16 December 2024.

55. Ms Amiraftabi submitted to me on behalf of the father that when considering the conduct of Messrs Burnham Law I can be satisfied that the conduct traversed all three headings set out in the caselaw, that it was improper, unreasonable and negligent. I need only find one of those engaged.

56. I am satisfied that there was a direct causal link between the inaction and failure to ensure that this case was properly prepared and an advocate instructed to attend the hearing and the fact that the hearing could not then proceed. There is therefore a link between the acts or lack of acts by Mess Burnham Law and the loss to the father of the costs he had paid to his direct access counsel which were wasted because the hearing could not proceed.

57. I am entirely satisfied that Messrs Burnham Law had proper time to advocate against the Cost order when Notice to show cause was orally made by the father. Further they had additional time over the Christmas period to review matters and to reflect on their actions.

58. I find that Messrs Burnham Law were negligent, in that they did not act with the competence reasonably expected of ordinary members of the profession in the preparation of this case for the 3-day hearing and in their failure to both instruct counsel and enquire whether counsel was available to be instructed. I further find that it was unreasonable of Messrs Burnham law to expect counsel to 'instruct' new counsel to take the case when she was not able to.

59. I find too that Messrs Burnham Law failed in their core SRA duties as set out above.

60. I was invited by Messrs Burnham Law to find that they acted diligently, but they were unable to direct me to evidence where they took any steps whatsoever in the week before the hearing to prepare the case for trial, to speak to their client and or to ensure counsel was instructed. That they knew nothing of the possible transfer of legal aid certificate or enquires made by AR only underlines the fact that those issues had no impact on what they should have been doing to ensure that their duties to their client and to this court were met and to ensure that the court's time was not wasted.

61. I was advised that the father's funds to continue to instruct counsel to attend the future hearings are diminished. I note that he is already at a financial disadvantage as the mother has a legal aid certificate and he does not.

62. I further note that I sit on this case as a fee paid Deputy High Court Judge, brought in to ensure that the hearing date was not lost or adjourned to the parties. My fees, like those of all other fee paid Judge are paid by the Ministry of Justice. There is a responsibility on all in the Family Justice system to ensure that each hearing matters, that all available resources are used properly and that hearings are not wasted.

63. Accordingly, I made an order that Messrs Burnham Law should met the entirety of the father's counsel's costs for the 3 days hearing; I note that Counsel is instructed through the Direct Access scheme and had fully prepared the case, including drafting detailed opening note, summary of law and producing an accessible bundle of videos for the court. I find her fees in the circumstances reasonable and fair.

64. Notwithstanding the submission to me that I should exercise my discretion and determine that the costs incurred by the father in travelling to this jurisdiction (flights and accommodation) should not form part of the costs order as he was able to see his children, I find that the primary purpose of the father's attendance was in light of my direction that I would wish him if possible to be at court in person to give evidence to me. I also make an order that those costs are paid. They are fair and reasonable costs in my judgment.

65. Lastly, I order that Counsel's costs in drafting the skeleton argument for this hearing and her attendance are also met by Messrs Burnham Law who made no offer to settle until mid-way into this hearing.

66. Messrs Burnham Law did not oppose interest being paid between the time Counsel's fees were paid and the date of settlement, nor did they oppose an order that interest will continue to accrue until the costs are met.

67. The costs order I therefore make is that Burnham Law shall pay to the father the amount of £XX together with interest from the date of payment (11.12.24) within 10 days of the hearing on 07.01.24.

68. I gave an extempore judgment on 7 January 2025 but informed the parties that in my view the issue in this case was such that the case I would publish this judgment and would take time to finalise a written judgment.

69. I further advised that I consider any submissions in relation to appeal and or timing of the same and as to anonymisation of this judgment. Having considered those submissions this is the anonymised judgment. I formed the view that no party, counsel or chambers should be identified but that Messsr Burnham law should be.

70. If no application for Permission to appeal is made the costs shall be paid by 17 January 2025.