Neutral Citation Number: [2021] EWHC 3778 (Fam)

Case No: MA19P00681

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
& IN THE FAMILY COURT AT MANCHESTER
Sitting remotely at Chester

THE CHILDREN ACT 1989
THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/10/2021

Before:

MS JUSTICE RUSSELL DBE

- -

Between:

F	**Applicant**
and	
M	**1st Respondent**
and	
X	**2nd Respondent**
(A Child by his guardian)	

F (Litigant in Person) **the Applicant**
M (Litigant in Person) **the 1st Respondent**
X (A Child) represented by Mr Toby Craddock (instructed by Solicitors) **the 2nd Respondent**
(By his guardian)
Hearing dates: 15th & 16th February 2021

- -

Approved Judgment

.....

MS JUSTICE RUSSELL DBE

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

The Honourable Ms Justice Russell DBE:

Re X (Temporary removal: Non-Hague Country)

Introduction & background

1. These protracted private law proceedings concern a little boy (X) who is eight (born in the autumn of 2012) years old and lives with his mother (M) in the north of England. His parents separated when he was still an infant and in 2014 his father the Applicant (F) decided to move to Saudi Arabia where he has since remained. At the time of the hearing and since there have been continued restrictions on travel between the UK and Saudi Arabia caused by the Covid pandemic. The hearing took place remotely via MS Teams F, who represents himself, took part in the hearing by video-link from Saudi Arabia, M was joined by video link in England, the child was represented by counsel Mr Craddock through his children's guardian Ms Hunt. I am indebted to Mr Craddock for his assistance in this case.

2. In respect of the essential relevant evidence and background this hearing is but a repetition of previous applications made to the Family Court in Manchester by F to remove X from the jurisdiction temporarily to Saudi Arabia (a non-Hague country) as part of child arrangement orders pursuant to s8 of the Children Act 1989 (CA). There was a "final" order made which provided for X to live with his mother in April of 2018. This application was issued two years ago April 2019 and is the third private law application that concerns X as observed in the submissions of his counsel, sadly X has been the subject of ongoing litigation for the majority of his short life. The previous application to remove X was opposed by his mother M and by the guardian. X has had the same guardian throughout (Ms Hunt prepared a s7 CA 1989 report previously) which has enabled the Court to have a comprehensive welfare analysis over a relatively lengthy period of this child's life.

3. In her s7 report dated 25th September 2019 Ms Hunt recommended that X be joined as a party *"to proceedings and a Guardian is appointed pursuant of rule 16.4 and expert evidence is ordered to provide advice and guidance about the safeguards that could be put in place to minimise the risk of retention and to secure the child's return if that transpires. This is deemed necessary prior to recommendations being made as to whether the father should be able to remove the child to a non-Hague convention country."* Ms Hunt refers to F's affiliation with Minhaj ul Quran International (a Pakistan based organisation which has been associated in the past with subversion of the ruling regime in Saudi Arabia but also with matters educational) and to M's concerns in respect of F's membership and his holding extremist religious and political views which could prove harmful or present a risk to X's safety or wellbeing. It is the Court's understanding based on the expert evidence (see below) that it is not lawful in Saudi Arabia to be a member of any organisation which is externally based. This is not disputed by F.

4. In addition, in respect of the guardian's analysis there has been reference to concerns about F failing to return X if he is taken to a non-Hague convention country, to X's age (he was only six at the time) and to him having additional needs which placed him in a vulnerable position. The family background and inter-familial conflict has caused additional concern with M believing that the paternal grandmother and her family were manipulative and antagonistic towards her which would be bound to cause emotional

harm to X. These wider family dynamics are a complicating feature and there appears to be a deep-seated dysfunction. Both M and F are UK nationals of Pakistani decent and both belong to the same extended family; X's parents are first cousins, the maternal and paternal grandparents are siblings, and it is accepted that there is a serious rift in the family with the paternal grandmother (who has lived in Saudi Arabia along with F for over five years at the time of the hearing) being on one side and the maternal grandparents on the other.

5. The foundation for the poor relationship and lack of trust between F and M and the basis of their inter-personal antagonism is the rift in their immediate family which has contributed to a continuing level of conflict between X's parents. It is M belief that F and his immediate family are, and will, attempt to manipulate X against her and although F refutes this there can be little doubt, as X's guardian has observed, that the marked level of conflict between the adult parties, which originates from within their own closely inter-related families, and which is clearly reflected in evidence contained in their statements to the Court. Equally, there can be little or no doubt that the level of conflict between the parties, as evinced within their respective statements, remains albeit that M and F have managed some level of communication as parents when arranging F's contact with X.

6. The conflict between extends to M's concerns about F's political and religious views, particularly in respect of F's affiliation to the organisation Minhaj ul Quran. It is to be recognised that both parents are devout Muslims but the conflict between them has extended to religious matters which is another area of continuing conflict that is likely have an impact on the child, himself. The child arrangements order (CAO) dated 13th April 2018 provided that F *"must not engage in any form of political or associated religious activity whilst spending time with the child"* an order which remained in place. Since this order has been in place there has been no evidence of F taking X to engage political or associated religious activity during contact. X has spent up to five consecutive days with F within this jurisdiction and M has not raised concerns about F influencing the child in respect of his own political and religious views, nonetheless when interviewed by the guardian F has said that he would take X to *"religious gatherings"* whether in the UK or in Saudi Arabia, and, of course, any court order would be unenforceable were F to take X to such a gathering in Saudi Arabia.

7. It should go without saying that the persisting conflict is not in X's best interests. His guardian has expressed long-standing concerns about the harmful effects of the repeated litigation, family conflict and of manipulation of X by F. On consideration of all the evidence before it, the Court finds that the fears of M about retention are not, on balance, either fanciful or ill-founded. While F indeed does, as he points out, have family in the UK, which of course, includes M and her side of his extended family, he is indisputably well settled in Saudi Arabia with his own mother and sister (and her child) living there with him. Moreover F has re-married, and his wife and stepchild also live in Saudi Arabia with him; he has told the Court in terms that he has no intention of re-settling in the north of England. The fact is that his principle and closest ties are not in the UK but in Saudi Arabia. Furthermore, it is not disputed that F has retained X in his care on two occasions during the previous proceedings and, whatever F may say about his reasons for these retentions, it required the intervention of the Family Court on both occasions to have X returned to his mother's care. In this, as in any case, the decision of the Court must be informed by the history of this case and the previous acts

of the child's father. If in X were in Saudi Arabia with F, in the absence of any legally enforceable safeguards, the evidence supports the conclusion reached by X's guardian that the risk of unlawful retention in this case is not trivial, a conclusion with which I agree.

8. This then, forms the background to F's application for permission to remove X from the jurisdiction to spend two weeks in Saudi Arabia during the school holidays. It is an application opposed by the child's mother and by the guardian on behalf of X himself; who as the child's Court appointed guardian has undertaken a considered risk assessment and welfare analysis as articulated in her original section 7 report. This report was subsequently amplified by X's legal representatives in the position statements submitted on X's behalf and contained the Court bundle. I have considered that evidence and those submissions along with the statements and oral evidence of F and M. The guardian's proposals for X's contact with F were put in writing and circulated prior to her giving evidence. In addition, the guardian set out the rationale for those proposals in the closing submissions filed by counsel for the child.

9. At the instant hearing and in evidence and consistant with her previous recommendations, the guardian did not support F's application for leave to remove X from the jurisdiction. The guardian recognised that X's relationship with his father should be allowed to develop but that it could and should do so within this jurisdiction during extended periods of holiday contact. This recommendation was made is notwithstanding, but in the context of, M's concerns, and to a more limited extent the guardian's, that X is likely to be negatively influenced by F, and the paternal family in general. F had returned to the UK regularly (pre-Covid) and taken up contact with X. While this is positive, demonstrating a commitment on the part of F, and is to be encouraged, it forms part of his responsibilities as a parent to spend time with his son. F has chosen to move to Saudi Arabia and to remain living there. It would be regrettable if an impression was given that the expectations of the exercise of parental responsibility were any less for F as a father, simply because he has travelled to England to see his son.

The Law

10. The legal framework governing applications for prohibited steps orders and child arrangements are set out in the Children Act (CA) 1989 as amended by the Children and Families Act 2014 and are familiar to the Court. The Court was reminded of the relevant case law and in particular as it was set out in *AB v TB (Temporary Removal to Jordan)* [2014] EWHC 4663 (Fam) in the judgment Mr Justice Peter Jackson (as he then was) who cited *Re R (Prohibited Steps Order)* [2014] 1 FLR 643, CA to make the following observations in reference to the decision of the Court of Appeal in *Re R* which confirmed that: "*The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of visiting that country outweigh the risks to welfare of a failure to return."*

11. As the Court of Appeal set out that within a judgment for temporary removal to a non-Hague country a court must consider the issue of risk broken down into three inter-related elements, a) the magnitude of the risk of breach of the order if permission is

given; b) the magnitude of the consequence of breach if it occurs; and c) the level of security that may be achieved by building in to the arrangements all of the available safeguards. In endeavouring to do so below I shall have regard to the welfare checklist in s1(3) CA 1989 as the prism for the pertinent information in respect of the risks set out in a) and b) and of the safeguarding in c); but, in short, the overriding consideration in deciding about the temporary removal of a child to a non-Hague country is whether the order would be in the best interests of the child, in this case X.

12. Along with the decisions in case law that I have been referred to, I have also reminded myself of the relevant case law and commentary in respect of temporary removal non-Hague jurisdiction and endeavoured to follow the approach taken in *Re R* and, in particular, to references cautioning a court against too ready a dismissal of the risks involved in removal in cases of this kind. X's welfare is my paramount concern and as such I must consider with care the likelihood of any harm to X, particularly as a consequence of any breach of an order, any further retention by F and the harmful effect on X of being kept away from his mother, his home, his school and all that he is familiar with in his settled life in England were he to be retained in Saudi Arabia, along with the almost insuperable difficulties in returning X to the UK were such an event to occur.

13. Expert evidence. While it is not unusual for cases such as this to involve expert evidence regarding the laws of the foreign jurisdiction and prospective safeguards that can be accommodated there; this case is unusual in the fact that F insisted in the Court hearing the expert evidence when it was not required by M or the child's representatives. Nonetheless, the evidence was heard, and I was rightly reminded by counsel for X the Court of Appeal in *Re R* and the seminal judgement of Lord Justice Thorpe in *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084). I have kept the words of the Court of Appeal clearly in mind. *"The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in Re M, we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the Court should err on the side of caution and refuse to make the order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course."*

14. I was also referred to the case of *DO v BO (Temporary Relocation to China)* [2017] EWHC 858 in which Baker J (as he then was) rigorously scrutinised a mother's application to take her three children to China for reasons familial, cultural, and appertaining to their dual heritage and refused her application sets out the comprehensive nature of such scrutinization.

15. Expert evidence and F's membership of Minaj ul Quran. In this case the Court, at F's insistence, heard oral evidence from Aina Khan OBE and Dr Yousef Al-Amry who attended the hearing remotely. It bears repetition that neither M nor those representing X had required their attendance, as F's case and his argument, such as it was, centred not on what safeguards could be put in place (such as those, for example, considered in the case of *Re DS (Removal from Jurisdiction)* [2010] 1 FLR 576) but on the issue in respect of F's membership of an organisation that is likely to be unlawful in Saudi Arabia and may add to the overall risks to X, if he were to be taken by F to a religious gatherings in Saudi Arabia which were considered unlawful by the authorities in that country. At the time of the hearing neither M nor the child's representatives were relying on F's membership of Minhaj ul Quran (which he does not deny) as part of their respective cases, but F expressed concern that he was being seen as a parent who may seek to radicalise his son.

16. As the child's representatives, responsible for public funding defrayed on X's account as part of their case, and as an adjunct to the substantive issues in this case the child's representatives sought the costs of the experts attendance from F, as he alone had insisted on their attendance. The child's solicitor and his counsel are not and cannot be criticised for doing so, they are publicly funded and bear a duty to the public purse. Furthermore they had given F full notice of their intention to do so as set out in the skeleton argument produced for a previous hearing by Miss Swinscoe of Counsel. Nonetheless the need for the Court to hear competent expert evidence in respect of safeguarding and any measures that can or cannot be put in place has been approved by the Court of Appeal, and although the evidence regarding the paucity of such measures was effectively unchallenged by F the need for the Court to have that confirmed and open to cross-examination by F means that the Court cannot dismiss the attendance of Dr Yousef Al-Amry (an legal and academic expert based in Saudi Arabia who was identified and instructed by Aina Khan to prepare an expert opinion for the Court) as unnecessary.

17. As was submitted on behalf of the child, Mrs. Khan and Dr Al-Amry could not assist the Court further when they gave their evidence as F had already largely accepted their analysis of Saudi Arabian Sharia law and the lack of available safeguards in Saudi Arabia. Similarly the Court warned F that areas of cross-examination that he was anxious to explore with Mrs. Khan and Dr Al-Amry solely in respect of his membership of Minhaj ul Quran were unlikely to assist the Court or his case, and that cost implications could follow, nonetheless F proceeded to question both witnesses. While F was given the opportunity of challenging their evidence as a whole in respect of any safeguards that could be put in place to ensure X a safe return to the UK he chose to concentrate on the peripheral issue of Minaj ul Quran. In respect of the former the oral evidence of both Mrs. Khan and Dr Al-Amry confirmed and supported their written opinion when asked about the absence of safeguards available under Saudi law and thus both M and X's representatives, as well as the Court, able to rely on it incontrovertibly.

18. In respect of the evidence of Mrs Khan, she does not profess to be an expert in Saudi Arabian law (or indeed radicalisation). Dr Al-Amry is an expert in Saudi Arabian Law and it was his evidence that should X be permitted to travel to Saudi Arabia with F, when there F would be considered to be X's legal guardian so that if F chose to retain X in Saudi Arabi, then there is no legal remedy immediately or readily available to ensure X's safe return to the UK. Further it was Dr Al-Amry's opinion that in those

circumstances, if any proceedings were issued in Saudi Arabia it is likely that a Saudi judge would summarily dismiss the case because of F's status as X's legal guardian and because M lived in a non-Islamic country. This evidence was not challenged by F nor were any suggestions made by him or put by him to Dr Al-Amry of any measures that F himself could put in place to ensure X's safe return to the UK

19. As I have already observed F was determined to address his issues in respect of his membership of Minhaj ul Quran. Sometimes, Minhaj-ul-Quran International or MQI, is an NGO founded in Lahore, Pakistan in October 1980 by Muhammad Tahir ul Qadri. There are branches in the UK, Australia, Canada and the USA. The Court understands and it was Dr Al-Amry's evidence that historically NGOs have not been able to operate in Saudi Arabia and some religious organizations are banned, but, as Dr Al-Amry told the Court that he is not an expert in the area and, while confirming that membership of external organisations was usually illegal he specifically told the Court he was not an expert in security laws nor in respect of any the action that may or may not be taken by the Saudi security services against F were it to become known that he is a member of MQI. Dr Al-Amry is not an expert in radicalisation, nor was he instructed as such. As a result the Court remains unable accurately to assess the likelihood of F of being subjected to intervention or punitive action by the Saudi security services or prosecution by the Saudi authorities as a consequence of his membership of MQI or, by extension, any risks to X in that respect.

20. On behalf of X his legal representatives and the guardian accepted that neither Mrs. Khan nor Dr Al-Amry are qualified to report on Saudi Arabian security law in respect of Pakistani based NGOs. Those representing X submit, accurately, that whether F's membership of the organisation or the ideology it espouses itself pose risks to X are impossible to determine on the basis of the evidence before the Court. Understandably X's guardian remains concerned that the organisation and his father's affiliation to it may pose a risk to X were he to be in Saudi Arabia, as F himself has accepted that both external political and religious groups are outlawed by the Saudi Ministry of the Interior. Indeed there can be no other logical reason for F's acute concern that he would be identified as being directly involved in the Facebook posts in respect of MQI, posts made by him which had previously denied. The guardian accepted that the risk to X could not be quantified and it is not known what if any action the Saudi authorities may or may not take against F if his affiliation or association with MQI were to become known.

21. <u>The risk and effect of retention</u>. Nonetheless and more pertinently in respect of X's immediate welfare and F's application to take X to Saudi Arabia, the Court is able to assess the risk of retention by F in Saudi Arabia. In the absence of any legal safeguards, the Court is only be reliant on F's assurances. Any such assurance is questionable at best as there has been retention by F in the past requiring Court intervention in the United Kingdom. As X was retained by F in England, here the Family Court was able to ensure that he was returned to his mother's care in compliance with court orders. The Court finds that X's guardian's concerns that X could be unlawfully retained in Saudi Arabia based on F's close connection to Saudi Arabia and the level of conflict between the parents and within the wider family is well-founded.

22. There also remains the possibility that F's affiliation to, and membership of, Minhaj-ul-Quran may bring him into conflict with the Saudi authorities. The Court is unable to dismiss this issue entirely because of F's marked concern regarding his membership of

the organization. I have already made allusion to the fact that F initially denied that he was involved in sending the Facebook messages in respect of that organisation (exhibited to M's final statement); a denial which in itself raised questions regarding his credibility. The guardian rightly raised a further concern intimately concerned with X's welfare which is that F's description of X's wishes and feelings differ markedly from the guardian's own independent and professional assessment of what this child wants and feels, particularly about travelling to Saudi Arabia with F; at best F has demonstrated a lack of sensitively and of concerned parenting, at worst he has deliberately misrepresented what X has said or has put X under pressure to tell his father what F wanted to hear.

23. In respect of F's connection to Saudi Arabia it is an undisputed fact that the F has been settled in Saudi Arabia for a number of years and is habitually resident there. As can be seen, his connections are closer than those he retains in the UK. F has re-married, lives in Saudi Arabia with his wife and they care for his stepson there. It is there that he is employed as a university lecturer. Although F retains his British citizenship he has no intention of returning to the United Kingdom other than for temporary visits. His mother and younger sister (along with her daughters, F's nieces) have emigrated to Saudi Arabia and now live there and have done so for several years. It is they who have provided evidence in support of F's application. The guardian's submission that F's connection to the United Kingdom has reduced and his connection to Saudi Arabia has increased is amply supported by the evidence before the Court.

24. While the Court is concerned with an application by F for X to be taken to Saudi Arabia on holiday the fact is that this is not in any sense a "holiday" destination. It is F's intention for X to spend the time there as F's country of residence and F wants X to learn about Saudi Arabia as where his father lives and to utilise the visit to develop X's relationship with close members of the immediate paternal family who live with F in Saudi Arabia. The Court has to be mindful of F's past retention of X in breach of extant Court orders which took place on two occasions, there is, in fact, a real and continuing risk that this may recur. The likelihood and risk of retention must be increased and exacerbated by the conflict within the maternal and paternal sides of the wider family, as well as from the parents mistrust of one another. Not only has X experienced retention and required the intervention of the Court when retained by his father twice in the past, this child has also been involved proceedings in respect of his contact and living arrangements for the past six or more years. Both parents acknowledge that they have been unable to work together in the past, and I accept that, as is submitted on behalf of the guardian, any prognosis for change in that regard is poor particularly when members of the wider family continues to align themselves with F and/or M's interests rather than those of X himself.

25. The active participation in these proceedings of the paternal grandmother (herself resident in Saudi Arabia) in support of F's case and what can only be described as the lobbying on his behalf by F's sister (who has also moved to live in Saudi Arabia) is telling and betrays a marked level of partisanship in favour of F and not of X's best interest. They both went as far as to propose that their property in the UK could be used as collateral. Even if such a proposal were capable of legal enforcement the fact both the paternal grandmother and aunt live and have their homes in Saudi Arabia and no longer based in England nor are living in their property here substantially undermines the evidential weight and significance of their suggestions. There is little or nothing in

their evidence which suggested or demonstrated that either F's mother or his sister had considered F's applications from X's point of view or in the light of his best interests and welfare, rather their primary objective appeared to be siding with F against M.

26. F's credibility has been brought into question in the evidence he has given to this Court. In considering whether it is safe to allow X to travel to Saudi Arabia to stay with F in the absence of legally enforceable measures safeguarding X, capable of ensuring his return to the UK the credibility of F is pivotal. The reaction of F to the Facebook messages he posted in respect of MQI which were exhibited to M's final statement was both relevant and telling; there was no need to deny it in the first place as MQI is not a proscribed organisation in the UK. His later acceptance of the post on Facebook was made defensively, F then failed to provide a clear or a consistent explanation for his actions, neither in placing the post on Facebook nor his reasons for his initial denial. In the context of his insisting on the attendance of both experts (one of whom, Mrs Khan, was the facilitator of evidence rather than an expert in Saudi Arabian Law herself) and on persisting in questioning both experts about MQI despite the Court's warning that their evidence on that subject could have little weight F's anxiety about his membership of MQI remains concerning.

27. In respect of the issue of MQI F's oral evidence and his answers given in cross-examination by X's counsel were evasive and inconsistent with his answers to other questions which he apparently felt able to deal with in greater frankness. It was submitted by counsel for X that evasion and prevarication demonstrated by F when he gave oral evidence was because he knew that if he openly admitted to being involved in the MQI Facebook exchange it would demonstrate that his affiliation and membership Minhaj-ul-Quran is both long standing and likely to be political in nature. It was evidence largely concerned with F himself and would affect X only obliquely, and the evasive nature of F's evidence in respect of this issue and his lack of candour about a matter that is demonstrably of considerable importance to him substantially and seriously undermined any argument made by him that he could be trusted by the Court in respect of X's safe return to the jurisdiction. The evidence in respect of the retention as set out in this judgment leads me inevitably to the conclusion that there is substantial and significant risk of retention by F in Saudi Arabia and with no realistic measures that could be put in place to ensure X's return were he to be retained, there is a risk of substantial harm to F.

28. X's wishes and feelings in respect of travelling to Saudi Arabia. Although at the time of the hearing in February 2021 the possibility of travelling to and from Saudi Arabia had been severely curtailed by the Covid-19 pandemic and F was unable to put any concrete plans for travel before the Court, X's wishes and feelings about going to Saudi Arabia nonetheless remain an important consideration as a matter of law by virtue of s1 of the Children Act 1989. X had told his guardian his wishes and feelings in respect of travelling to Saudi Arabia which were unambiguous and clear; X is not willing to go there, he does not want to travel to Saudi Arabia and does not wish to go there with F. F does not accept this and accused the guardian of influencing X during his interview with her either consciously or subconsciously. The guardian denies doing so and there is no objective evidence, at all, that she did so consciously or deliberately.

29. Moreover the Court finds that Ms Hunt, who a professional experienced in working with children, and an experienced guardian, is well used to ascertaining the wishes and feelings of children and has used methods and best practice corresponding to her

training and experience. I find that the questions she put to X were open-ended to allow for an unelicited or suggested response and which were tailored X's age and level of understanding. Moreover there is no discernible reason at all why Ms Hunt should want to influence X even unconsciously, she is appointed to consider his welfare and make recommendations accordingly. Objectively, in respect of the guardian's evidence, it is more likely that X would respond to the guardian more openly and frankly than to a parent whom he is more likely to wish to please. X at eight years old may still be very much a child but I accept that he had said he was not as willing to travel to Saudi Arabia, and despite F's insistence to the contrary, I find that his guardian has reported accurately in respect of X's wishes and feelings. To force a young child to travel to against his will and express wishes and feeling must of itself be more likely than not to cause him distress and emotional harm. It is incumbent on the Court to listen to X and to take into account his wishes and feelings as part of its consideration of his welfare and as a matter of law. While as X's age it is not necessarily determinative on its own, this is significant evidence which weighs in the balance against any order permitting travel to Saudi Arabia.

30. Harm caused by retention. There can be little doubt that X would suffer substantial, even significant, harm were he to be retained in Saudi Arabia by F. Indeed it is self-evident, that in cases such as this retention constitutes a significant risk of harm to the welfare and emotional well-being of the retained child. As X himself has made plain that he does not want to go to Saudi Arabia to stay with F, it is axiomatic that any retention would cause him significant emotional harm in the form of traumatising distress caused by fear and the losses he would experience as a result: in respect of the latter X would lose his mother, his settled home, school, friends and the social milieu to which he is accustomed and which provides him with a sense of security as well as companionship as X is of an age where friendships and attachments of his own are being formed and, in turn, are an important part of his social, emotional and educational development. If retained X would lose all that is familiar to him in his home in England. I repeat that it is accepted and common ground there would be little or no mechanism or legal framework in place to affect X's return.

31. In her welfare analysis his guardian has described the harm that would be caused to X were he to be retained in Saudi Arabia in this way, *"It would sever [X's] relationship with his maternal family, it would be emotionally detrimental for [X], and would result in significant changes to his lifestyle, home life and educational needs. In terms of his attachments, development and potential it would be a catastrophic event."* The fact is, as was submitted by his counsel, that X is an 8-year-old child who has lived in the full-time care of his mother since F moved to Saudi Arabia over six years ago. His mother is unequivocally X's primary carer, and as such it is she to whom he turns for his sense of safety, stability, and security. If X were to be separated from his mother, then he would consequently feel unsafe, unstable, and insecure. As his guardian has said, Saudi Arabia is foreign to X in every sense of the word. It would be a strange and unfamiliar place to X and the only people available to X would be the family members, who, as F implicitly accepted himself as part of his case, have spent limited time with X and who are in many ways and in effect, strangers to him. From X's point of view, were he to be retained, he would be stranded and isolated in a strange country surrounded by strangers; that is before the questions of language, culture and substantially different social mores are taken into account. To be placed in such a situation, and against his will, would be of significant determent to X's welfare.

32. Available Safeguards. As F accepts that there are not any effective available safeguards he has said that he would be willing to provide various forms of security. I have already dealt and must dismiss with the proposals concerning the property in the UK of the paternal grandmother and F's sister; but to be clear, F is not the legal owner of either the paternal grandmother's property nor his younger sister's property and is unable to dispose of it and his mother's statutory declaration offered little by way of security as it is far from clear that it could be enforced. The Court is unaware ofwhether the paternal grandmother or aunt have taken independent legal advice before proffering the potential loss of their property through the action or inaction of a third party. Thus, and in any event, the risks to X were he to be retained are not reduced, any proceedings enforcing the breach of a statutory declaration would be time-consuming, costly, and potentially futile. The paternal grandmother and aunt are resident in Saudi Arabia and in the past have sided with F in any dispute over X. The only asset F has offered in the event of any unlawful retention is £5,000, but as F accepted when cross examined, this was not a significant sum as far as he was concerned as he had spent significantly more than this on international travel in recent years.

33. F had not undertaken the half al-yameen (oath) but as this would be contingent upon his word and given his lack of openness over his affiliation or membership of MQI and his previous breach of Court orders in retaining X his word is not something the Court would readily be able to rely on; F has himself acknowledged that promises can be broken. The only remaining and theoretical option which might be said to provide some safeguard would be if M were to agree travel to Saudi Arabia with X as, again theoretically, she may be able to instigate proceedings there if F refused to return X to her care, which may, in turn lessen the risk of retention. Wholly unsurprisingly M does not wish to go to Saudi Arabia. There are then no available safeguards.

Conclusions

34. In her submissions to the Court on behalf of X the guardian said that she considers there is a real risk of retention and that would have "*catastrophic consequences for X*." Based on the evidence set out above and for the reasons considered in the body of this judgment I agree with the submissions made on behalf of the child. In the absence of any safeguard and having found that F lacked credibility was unreliable in his evidence, coupled with his past failure to comply with Court orders in respect of returning X to his mother's care and X's retention by F. I have found that there is a real risk of further retention and the ensuing detriment and harm to X's welfare were that risk to materialise would be substantial. The Court is not satisfied that any advantage to X of visiting F in Saudi Arabia outweigh the risks to his welfare which the visit will entail. In terms I am not satisfied that there is, or would be, sufficient benefit to X in a two week visit to Saudi Arabia which would outweigh the considerable risks to his welfare; added to which there are no safeguards that can be put in place to ameliorate the risks identified. Prior to the Covid-19 pandemic F was able to visit England regularly and X's relationship with his father was developed in the United Kingdom; once restrictions are lifted and travel resumed so can the contact between X and his father.

35. The guardian's contact proposals have been incorporated into an order which is in force with the specific intention of serving as a map for the road ahead. There is a stepped arrangement that preserves the quality contact X currently enjoys with F, extends term-time and holiday contact to include additional overnight stays. The arrangement for staying contact increases when X is 9, and further when he is 10. The limits on

flexibility is deliberately designed to leave as little room for misinterpretation as possible and reduce the possibility of such misunderstanding on the part of either parent. It is intended both be discouraged from making further allegations and returning to court and litigation.

36. Although X requires an end to the proceedings but his guardian acknowledged that it would be premature to conclude the case until the Court was in a position to make an order that would conclude proceedings including making an order pursuant to 91 of the CA 1989 (as amended). F was not on notice of any such application for the Court fairly to consider. The hearing in the autumn of 2021 is intended to provide an opportunity assess current contact and for F to address the Court on any application for a s.91limitation on future litigation.

37. This is my judgment.