



Neutral Citation Number: [2023] EWHC 3427 (Fam)

Case Number: FD23P00565

**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

The Royal Courts of Justice
The Strand
London
Date: 13 December 2023

Before:

MR RICHARD HARRISON KC

Sitting as a Deputy High Court Judge

Re K (A Child) (Retention in non-Hague Convention State)

Mr Mark Jarman KC (instructed by **JMW Solicitors**) appeared on behalf of the Applicant
Mr Amar Alyas (instructed by **Direct Access**) appeared on behalf of the Respondent

Hearing dates: 12 and 13 December 2023

APPROVED Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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

MR RICHARD HARRISON KC:

1. I am concerned with a very young child called K, born in April 2023. The parties to the proceedings are his mother and his father. They are respectively represented by Mr Jarman KC and Mr Alyas. I am very grateful for their written and oral submissions.
2. The father seeks an order for K to be summarily returned to England and Wales from the Emirate of Dubai.
3. It is necessary for me to consider (i) whether the court has jurisdiction to deal with the father's application and, if so, (ii) whether it is in K's best interests to make the order sought by the father.
4. At the outset of the hearing both parties' counsel informed me that they did not consider that it was necessary for me to hear oral evidence and invited me to determine the application on the basis of submissions.

Background

5. The father is a UK national aged 35. His family are Hindu. His parents, sister and other members of his extended family live in England.
6. The mother was born in Pakistan. Her family are Muslim. Sadly, her father died in November 2022. Her mother and her siblings live in Dubai. She says that her entire support network is in that jurisdiction.
7. The mother and her family first became legal residents of Dubai in 2003. She says that she has lived 'on and off' in that jurisdiction for the past 20 years. I understand that the 'off' periods include approximately four years when, at the aged of 10, the mother moved to live with her family in the USA.
8. The parties met in May 2018, when the mother was living and working in Dubai.
9. In February 2019, the mother and her family (i.e. her mother, her two brothers and her sister) left Dubai and went to live in Turkey.
10. The parties married in Turkey on 23 September 2020. Following the marriage, the father returned to England and the mother remained in Turkey awaiting a UK spousal visa. From the early part of 2020, the Covid-19 pandemic made international travel challenging for periods of time and as a consequence the parties spent long periods apart.
11. In March 2022 the mother was granted a spousal visa, following which she came to live in England. Thereafter the parties lived at the home of the paternal grandparents. From what I have read, it is apparent that the mother did not consider this to be a satisfactory arrangement.
12. In February 2023 the mother's family left Turkey and returned to live in Dubai.

13. K was born on 03 April 2023 in England. In common with the father, the child is a UK national.
14. In July 2023, the parties agreed to travel to Dubai. The father says that the agreed purpose of the trip was a holiday to enable the mother and K to visit the mother's family. The mother's evidence is that the parties had instead agreed to move to Dubai as a family '*to explore life opportunities there*'. Flights were booked departing from England on 2 August 2023 with returns from Dubai on 31 October 2023.
15. The parties arrived in Dubai on 2 August 2023. The mother's case is that the following day, 3 August 2023, the father agreed that she and K could reside in Dubai whilst he returned to the UK to sort out his financial position. The father denies this, maintaining that at no stage did he agree to K remaining in Dubai beyond the end of October 2023. The parties and K stayed at the home of the maternal grandmother.
16. On 14 August 2023 the father returned to England alone. On the mother's case, the father then changed his mind on 15 August 2023, reneging on his agreement and insisting that K be returned to England. Her case is that by this date K had become habitually resident in Dubai.
17. On 16 August 2023 the mother arranged to obtain her marriage certificate from Turkey. I infer from her evidence that this was done in order to issue divorce proceedings.
18. On 22 August 2023 the mother made an application for residency for herself which was granted on 24 August 2023. She then sought residency on behalf of K which was granted on 29 August 2023. It appears that this residency status will last for a period of two years, after which it can be renewed.
19. On 28 August 2023 the mother appointed lawyers in Dubai to represent her and instructed them to file proceedings in Dubai for divorce, custody and guardianship of K, temporary custody and a travel ban preventing K from leaving the jurisdiction of the UAE.
20. On 20 September 2023 the father travelled again to Dubai. He remained there for ten days, returning to England on 30 September 2023. During this trip the father stayed in a hotel. The plan (his plan at least) had been for the mother to join him at the hotel, in part so that they could celebrate their third wedding anniversary. The mother did not, however, join him; she remained at the home of the maternal grandmother. The father was able to see K most days during the trip. Mr Alyas explained that on some days K was ill and thus it was not possible to have contact with the father on those days.
21. On 21 September 2023, the mother's lawyers issued proceedings in Dubai in accordance with her instructions. The father, despite being present in Dubai, was not informed.
22. On 28 September 2023, the Dubai court took the procedural step of approving the registration of the mother's case. Following this, the mother made an interim application for custody and for a travel ban.

23. On the mother's case, on 29 September 2023 she reaffirmed to the father her decision to be apart from him. Her evidence is that this occurred during a conversation with his sister. She says that she made clear to the father that she and K now had their lives in Dubai and that he accepted this. On her case the father told her '*to take as much time as I needed to recover from his abuse*'. She does not appear to have told him about the applications which by then she had issued.
24. The interim orders which the mother had applied for were granted on 5 October 2023.
25. After obtaining the interim orders, the mother decided to end direct communication with the father, specifying to the father that going forward communications should be via her mother. She later took the step of blocking him on Instagram.
26. These proceedings were issued on 13 November 2023. They came before Mrs Justice Morgan on 27 November 2023, when directions were given including listing the matter for this hearing.
27. I was informed by Mr Jarman KC that since that hearing the mother has issued a further application for divorce in Dubai based upon the fact that the father is a non-Muslim. I have not, however, seen a copy the application.

The law

28. The first issue I need to determine is jurisdiction. This substantially turns upon whether K was habitually resident in England and Wales on 13 November 2023, the date of the father's applications: see Art 5 of the 1996 Hague Convention and section 2(1)(b)(ii) of the Family Law Act 1986.
29. In order to determine whether the court has jurisdiction under the 1996 Hague Convention it is necessary first to consider habitual residence on the date of issue of the proceedings. The court may, however, lose jurisdiction if, by the time of the hearing, habitual residence has transferred to another State. In that event, and assuming that no other ground for jurisdiction under the 1996 Convention is satisfied, section 2(1)(b)(ii) of the Family Law Act 1986 (read in conjunction with sections 3 and 7 of the Act) confers a residual jurisdiction on the court based upon the child's habitual residence on the date of the application: see in this connection *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659.
30. Mr Jarman KC submitted that even if the court did not have jurisdiction on the basis of habitual residence there exists an alternative jurisdiction founded upon K's British nationality: the so-called *parens patriae* jurisdiction. Although the jurisdiction exists, the court needs to exercise circumspection before deciding to exercise it. Given my conclusions on habitual residence, this is not an issue I need to consider.
31. The second issue – whether to make a substantive order – requires the court to undertake a welfare analysis having regard to the matters set out in the welfare checklist and PD12J. The approach to be adopted was determined by the Supreme Court in *Re NY (A Child)* [2019] UKSC 49.

Habitual residence

32. The concept of habitual residence has been considered by the Supreme Court on a number of occasions since 2011. In *Re B (A Minor: Habitual Residence)* [2016] EWHC 2174. Hayden J summarised the principles as follows:

‘i) The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment (*A v A*, adopting the European test).

ii) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses. It must be emphasised that the factual enquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence (*A v A*, *Re KL*).

iii) In common with the other rules of jurisdiction in Brussels IIR its meaning is 'shaped in the light of the best interests of the child, in particular on the criterion of proximity'. Proximity in this context means 'the practical connection between the child and the country concerned': *A v A* (para 80(ii)); *Re B* (para 42) applying *Mercredi v Chaffe* at para 46).

iv) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent (*Re R*);

v) A child will usually but not necessarily have the same habitual residence as the parent(s) who care for him or her (*Re LC*). The younger the child the more likely the proposition, however, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence which is in question and, it follows the child's integration which is under consideration.

vi) Parental intention is relevant to the assessment, but not determinative (*Re KL*, *Re R* and *Re B*);

vii) It will be highly unusual for a child to have no habitual residence. Usually a child lose a pre-existing habitual residence at the same time as gaining a new one (*Re B*); (emphasis added);

viii) ...¹

ix) It is the *stability* of a child's residence as opposed to its *permanence* which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there (*Re R* and earlier in *Re KL* and *Mercredi*);

x) The relevant question is whether a child has achieved *some degree of* integration in social and family environment; it is not necessary for a child to be *fully* integrated before becoming habitually resident (*Re R*) (emphasis added);

¹ Omitted from the list in accordance with the decision in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105

xi) The requisite degree of integration can, in certain circumstances, develop quite quickly (Art 9 of BIIR envisages within 3 months). It is possible to acquire a new habitual residence in a single day (*A v A; Re B*). In the latter case Lord Wilson referred (para 45) those '*first roots*' which represent the requisite degree of integration and which a child will '*probably*' put down '*quite quickly*' following a move;

xii) Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (*Re R*).

xiii) The structure of Brussels IIa, and particularly Recital 12 to the Regulation, demonstrates that it is in a child's best interests to have an habitual residence and accordingly that it would be highly unlikely, albeit possible (or, to use the term adopted in certain parts of the judgment, exceptional), for a child to have no habitual residence; As such, "if interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has an habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former" (*Re B supra*);

33. In *Re B (A Child) (Habitual Residence)* [2016] UKSC 4, Lord Wilson drew an analogy between the process by which habitual residence transfers from one jurisdiction to another and the operation of a see-saw. He did so to illustrate the point that a change of habitual residence is likely to take place seamlessly such that an existing habitual residence will be lost at the same time a new one is gained. As to the length of time needed for a transfer to take place, Lord Wilson, whilst declining to provide formal guidance on the issue, set out the following 'expectations' at para 46:

“(a) the deeper the child's integration in the old state, probably the less fast his achievement of the requisite degree of integration in the new state;

(b) the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his achievement of that requisite degree; and

(c) were all the central members of the child's life in the old state to have moved with him, probably the faster his achievement of it and, conversely, were any of them to have remained behind and thus to represent for him a continuing link with the old state, probably the less fast his achievement of it.”

These expectations were recently highlighted by Moylan LJ in *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659.

34. By contrast, in *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)* [2020] EWCA Civ 1105, the Court of Appeal held that Lord Wilson's see-

saw analogy needs to be approached with some caution. Moylan LJ stated at paragraph 58 that:

‘Lord Wilson’s analogy and his other observations were directed simply to the expectation that the acquisition of a new habitual residence would be likely to coincide with the loss of the previous habitual residence. He did not intend to alter the key question which, in every case, is: where is the child habitually resident? Even though the acquisition of a new habitual residence can be expected to coincide with the loss of the previous one, hence the see-saw analogy, this issue is not determined by asking simply the question whether a child has lost their habitual residence...’

He concluded at paragraphs 61 and 62 that:

‘while Lord Wilson’s see-saw analogy can assist the court when deciding the question of habitual residence, it does not replace the core guidance given in *A v A* and other cases to the approach which should be taken to the determination of the habitual residence. This requires an analysis of the child’s situation in and connections with the state or states in which he or she is said to be habitually resident for the purpose of determining in which state he or she has the requisite degree of integration to mean that their residence there is habitual.

Further, the analogy needs to be used with caution because if it is applied as though it is the test for habitual residence it can, as in my view is demonstrated by the present case, result in the court’s focus being disproportionately on the extent of a child’s continuing roots or connections with and/or on an historical analysis of their previous roots or connections rather than focusing, as is required, on the child’s *current* situation (at the relevant date). This is not to say continuing or historical connections are not relevant but they are part of, not the primary focus of, the court’s analysis when deciding the critical question which is *where* is the child habitually resident and not, simply, *when* was a previous habitual residence lost.’ (emphasis in the original)

35. A crucial element of the ‘core guidance’ to which Moylan LJ referred is that ‘*The habitual residence of a child corresponds to the place which reflects some degree of integration by the child in a social and family environment*’. In *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659 at para 41 Moylan LJ added this important qualification:

‘It is clear, however, not only from *Proceedings brought by A* itself but also from many other authorities, that this is a shorthand summary of the approach which the court should take and that “some degree of integration” is not itself determinative of the question of habitual residence. Habitual residence is an issue of fact which requires consideration of all relevant factors. There is an open-ended, not a closed, list of potentially relevant factors.’

36. After citing from *Proceedings brought by A, Re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] AC 1038 and *Re R*

(Children) (Reunite International Child Abduction Centre and others intervening) [2015] UKSC 35, Moylan LJ continued at paras 45 and 46:

‘I refer to the above, not to put forward any gloss on the meaning of habitual residence... but simply to demonstrate that “some degree of integration” is not a substitute for the required global analysis.

I would add that, self-evidently, a test of whether a child had “some degree of integration” in any one country cannot be sufficient when a child might be said to have *some* degree of integration in more than one State. This is why, as referred to in my judgment in *Re G-E (Children) (Hague Convention 1980: Repudiatory Retention and Habitual Residence)* [2019] 2 FLR 17 (“*Re G-E*”), at [59], the “comparative nature of the exercise” requires the court to consider the factors which connect the child to each State where they are alleged to be habitually resident.’

37. In *Re B (A Child) (Abduction: Habitual Residence)* [2020] EWCA Civ 1187 the Court of Appeal considered the approach to be taken when there are two countries in which it is said a child may be habitually resident. Moylan LJ (at para 83) drew attention to the fact that in order to establish the habitual residence of a child it is only necessary to show that there has been ‘*some*’ degree of integration in a social and family environment as opposed to ‘*full*’ integration. He then continued at paragraph 84:

‘What degree of integration will be “sufficient” will obviously vary from case to case depending, for example, on the extent to which a child has connections with, say, two states and could, potentially, be habitually resident in either of them. This is why the court has to undertake a “global analysis” which, as Ms Renton submitted, is a factual, child focused assessment, as made clear by the CJEU’s decision of *Proceedings Brought by HR (With the Participation of KO and Another)* [2018] Fam 385 ... This will involve the court assessing the factors which connect the child with the state or states in which he or she is alleged to be habitually resident.’

38. Moylan LJ further highlighted the importance of ‘*proximity*’ meaning ‘*the practical connection between the child and the country concerned*’. He also cited the judgment of Black LJ in *Re J (A Child) (Finland) (Habitual Residence)* [2017] 2 FCR 542 in which she emphasised the need for a judge considering an issue of habitual residence to demonstrate ‘*sufficiently that he or she has in mind the factors in the old and new lives of the child, and the family, which might have a bearing on this particular child’s habitual residence*’. He made clear that a new habitual residence can be acquired quickly, even in a day. As set out above, the need for a judge to have in mind all of the relevant factors connecting the child to each of the two states under consideration was again emphasised in *Re A (A Child) (Habitual Residence: 1996 Hague Child Protection Convention)* [2023] EWCA 659.

Analysis and conclusions on habitual residence

39. It is undoubtedly the case that between the date of the child’s birth in April 2023 and the departure of the family to Dubai on 2 August 2023, K was habitually resident in England and Wales.

40. The father's case is that it was only ever agreed that the child would travel to Dubai on holiday. Although the trip may have become extended for longer than originally planned, at no stage did he agree to K remaining in Dubai beyond the 31 October 2023.
41. The mother's case is that the father agreed on 3 August 2023 that K could remain living in Dubai. Thereafter she took steps to secure his residence in that jurisdiction. She argues that, in accordance with the father's agreement, he lost his habitual residence in England and Wales and became habitually resident in Dubai.
42. Although I have not heard oral evidence, on the basis of the written materials I have considered, I am unable to find that the father agreed at any stage to K remaining in Dubai for longer than the end of October 2023. On the contrary, on the balance of probabilities, the evidence leads me to conclude the opposite. I reach this conclusion for the following reasons:
 - (a) It is inherently improbable that he would have agreed to a permanent relocation on 3 August 2023, in circumstances where on the mother's case there had been an argument the previous day during which the father insisted upon retaining K's passport.
 - (b) The notion that there was a consensual relocation is wholly inconsistent with the fact that the mother took steps to secure K's residence in Dubai on a clandestine basis without informing the father. Such steps included registering a company on 3 August 2023 (the date upon which the father is alleged to have agreed to K remaining in Dubai) to act as a sponsor for her residency.
 - (c) Similarly, the mother made applications to the court without notifying the father what she was doing. This too is inconsistent with the father having agreed a permanent relocation.
 - (d) The mother's explanation for having taken various unilateral steps is that the father changed his mind on 15 August 2023 following which she became concerned to protect K. This is inconsistent with the fact that she initiated the process of obtaining residency on or before 3 August 2023.
 - (e) The parties exchanged frequent messages, in particular using WhatsApp. The bundle contains a run of these between 1 July 2023 and 13 October 2023. These contain no reference to the agreement which the mother alleges was in place. Although, it is the mother's case that the agreement was reached verbally I find it wholly implausible that, were that the case, the many messages which the parties exchanged would not even have alluded to it. The same point can be made in relation to the conversation alleged to have taken place on 29 September 2023 in which the father was said to have told the mother that she should take all the time she needed to recover from his abuse.
 - (f) On 8 August 2023 the parties exchanged messages on the subject of moving out of the father's parents' home to their own home. In one such message, the mother said *'Once you're in the UK, let's have a look at the areas we can move out to'*. This wholly inconsistent with the notion that the parties had agreed prior to that date that K would live permanently in Dubai.
 - (g) There is a transcript of a conversation between the parties which took place on 2 October 2023. The father made clear that he was not prepared to agree to K remaining in Dubai beyond the period of 3 months he had agreed. There was no suggestion by the mother, in response, that he had already agreed to a permanent

relocation and that he was now reneging on his agreement. The same point can be made about an exchange of text messages on 7 November 2023.

43. In my judgment, the evidence demonstrates that the mother deceived the father into travelling to Dubai with K, leading him to believe that they were going there on holiday, when in fact she never had any intention of returning. Almost immediately upon her arrival in Dubai she set about taking steps with the objective of securing K's residence in that jurisdiction, the first such step being the registration of the company on 3 August 2023. While she took various unilateral steps, both administratively and through the courts, she was duplicitous. She sent the father messages aimed at giving him the false impression that the parties continued to be in a loving relationship. After she had obtained interim orders from the court, including a travel ban, the tone of her messages changed and she restricted her communications with him.
44. The absence of consent to a relocation does not necessarily mean that the child's habitual residence did not change by 13 November 2023. It is possible for one parent to cause a child's habitual residence to change through their unilateral actions. In assessing where K was habitually resident on that date, it is necessary to undertake an evaluation of all the relevant circumstances focussing on his connections, as at the date in question, with each of the two jurisdictions under consideration.
45. The following matters point in favour of habitual residence having transferred to Dubai:
 - (a) K had been in Dubai for just over three months.
 - (b) He was living with his primary carer mother, who intended to remain living in Dubai permanently or indefinitely. She may well have become habitually resident in Dubai by that stage.
 - (c) Dubai was not a new jurisdiction for the mother. It was where she had lived for the substantial majority of the previous 20 years.
 - (d) K was also, at least for some of the time, living with his maternal grandmother and was able to spend time with other members of his maternal family.
 - (e) The mother had taken steps to secure K's residence in Dubai including obtaining a residency permit for him and obtaining temporary orders from the court which conferred custody upon her and prevented him from being removed from the jurisdiction.
46. On the other hand, the following point the other way:
 - (a) Although the fact that the mother acted unilaterally and in secret is not decisive on this issue, it is a relevant consideration.
 - (b) The father, although not the primary carer, was a central figure in K's life. The two of them had been living in the same household. He remained living in England and had no right to reside in Dubai.
 - (c) K had been accustomed to living with and spending time with members of his paternal family. They too continued to reside in England.
 - (d) K is a UK national.
 - (e) Before being taken to Dubai he had only ever lived in England.
 - (f) His routine during the early months of his life was based around his home at the property owned by his paternal grandparents.

- (g) The mother had previously obtained a spousal visa enabling her to live in England with the father and had moved to this jurisdiction in April 2022.
- (h) The mother's own family had only been in Dubai since February 2023 having spent a period of years in Turkey before that.
47. Having weighed up all of the relevant factors I have reached the conclusion that K's stay in Dubai had not resulted in a transfer of habitual residence to that jurisdiction. His degree of integration was insufficient to bring about a change. In particular, his time in Dubai lacked the necessary quality of stability to amount to an habitual residence on 13 November 2023. For the initial period, I was informed by Mr Alyas that he and his mother were staying in the maternal grandmother's property. They only moved to their own separate accommodation on 30 September 2023. K's situation in Dubai was fundamentally unstable. There were no arrangements in place for him to have contact with his father on a regular basis (or at all). The mother had taken actions which had the effect of preventing him from returning to his country of birth and nationality. The father was being marginalised and prevented from exercising his parental responsibility. K was the subject of litigation in Dubai and caught in the middle of an increasingly acrimonious dispute. He was on the point of being the subject of litigation in England. All of those matters lead me to the conclusion that this was a case in which a transfer of habitual residence from England and Wales to Dubai would, to paraphrase Lord Wilson, be slow to occur. That transfer had not, in my judgment, been achieved by 13 November 2023.
48. Accordingly, I find that this court has jurisdiction to make welfare orders in relation to K both under section 8 of the Children Act 1989 and under the inherent jurisdiction.
49. I reject the mother's contention that I should strike out the father's applications. She has not made a formal application for a stay of proceedings, but for the avoidance of doubt I consider that the courts of England and Wales are far better placed than the Dubai courts to conduct a holistic welfare evaluation. I was informed by Mr Alyas that in Dubai any decision about K's custody was likely to be a foregone conclusion. The fact that the father is a non-Muslim will almost inevitably mean that custody will be awarded to the mother. I attach no weight to the fact that the Dubai proceedings were issued first in time, given that this was achieved to a significant extent by the mother's duplicity.

Should I make a return order?

50. The parties have each made allegations against the other which I am not in a position to determine. At this juncture, I am not making long-term decisions as to K's welfare. Such decisions will require a fuller investigation by the court in which findings may need to be made in relation to at least some of the allegations in dispute. I also consider this to be a case in which the court is likely to need assistance from either Cafcass or an independent social worker.
51. The question I need to resolve is whether to order K's return to this jurisdiction so that he remains here while the fuller welfare investigation is ongoing, a period likely to be in the region of 4-6 months. The alternative is to allow him to remain in Dubai for that period.

52. In making my decision, K's welfare is of course my paramount consideration. I take into account all of the matters in the welfare checklist. In view of the mother's allegations (albeit largely unparticularised) that the father has been physically and emotionally abusive towards her, I also bear in mind the provisions of PD12J. I am not in a position to determine the veracity of her allegations and must therefore be cautious not to make any orders unless I can be satisfied that K and she will be adequately protected.
53. In my judgment, of the various matters in the welfare checklist the most significant are:
- (a) K's young age;
 - (b) His emotional needs;
 - (c) The likely effect on him of a change in his circumstances;
 - (d) Any harm he is at risk of suffering;
 - (e) How capable his parents are of meeting his needs.
54. An order requiring K to return to England at this juncture will entail some disruption for him. The mother wishes to remain in Dubai where she has the support of her network of family and friends. She will be unhappy at the prospect of having to return to England. Without support from her family there is some risk that she will care for K less well than if she remains in Dubai, fully supported. Given the allegations the mother makes against the father, she is likely to be more anxious about having to remain in the same jurisdiction as him even if she is living in a different household.
55. Conversely, if K does not return to England he will be deprived of the opportunity of developing a solid bond with his father, which at his young age is an important part of his development. Video contact is incapable of being a meaningful experience for a child of his age. I consider that there is a substantial risk that the mother would seek to marginalise the father from K's life. Mr Alyas informed me that she has no intention of facilitating contact in England or indeed of bringing K to England. Her position is that if ordered to return him here, she would disobey the order.
56. When I asked Mr Alyas about the mother's proposals for contact in Dubai, his initial response (on instructions) was that she would allow supervised visitation rights but would need to seek the authority of the UAE court; this was something she was willing to consider. When I sought further clarification, he added (again on instructions) that the mother wants the father to have a good relationship with K and would be happy to give him visitation rights in Dubai. The mother's equivocal response to my enquiry, coupled with her actions to date and her duplicity in her communications with the father leave me with no confidence at all that she would seek to promote K's paternal relationship. Neither does an email which the mother sent to the court on 7 December 2023 in which she made clear that while she was in agreement to the father having visitation, he would need to go to court in Dubai to claim his rights; in the event that he were to proceed with this hearing she intimated that she would have no other option but to withdraw all contact (direct and indirect) unless authorised by the Dubai court. Moreover, her stated willingness to disobey orders of this court is a matter for considerable concern. In my view, if K were to remain in Dubai it is likely that he would see his father at best for limited periods of time over such occasions as the father was able to travel to Dubai. Such limited contact would be wholly contrary to K's interests given his young age. It would not meet his emotional needs. His inability

properly to develop his relationship with his father would have potentially enduring consequences for him. Aside from his father, K has a right to be able to spend time with his paternal family (with whom he lived for the first few months of his life) and to spend at least some time in the jurisdiction of which he is a national (although this latter factor may be more of a long-term consideration).

57. Allowing K to remain in Dubai would have significant disadvantages for the forensic process. It would be harder at the end of the process for the court to reach reliable conclusions as to the jurisdiction in which K should live on a long-term basis and the parent with whom he should live, if he had not had the opportunity to spend regular and meaningful time with his father. In assessing the extent to which K should divide his time in future between his parents, it may well be of value for any independent welfare reporter to observe K in the company of his father.
58. Given the mother's stated position that she will disobey any order that requires K to come to England, any such order is likely to have to be the subject of enforcement proceedings in Dubai which will lead to delay in the process. I find it difficult to conceive of a long-term welfare-based conclusion which did not entail K spending at least some time in England. Ensuring that this happens as soon as possible is likely to promote his interests.
59. Ultimately, subject to ensuring that the mother and K can be sufficiently protected upon their return, I am satisfied that the potential disadvantages to K of a return order are outweighed by the advantages.
60. The father has set out various undertakings he is prepared to offer. These include financial undertakings to pay for return flights, independent accommodation and maintenance in an amount to be agreed. If the amount cannot be agreed, I will hear submissions as to how the issue should be resolved.
61. The other undertakings proposed by the father are to ensure that K is not removed from the mother's care save for agreed or ordered contact, not to enter nor attempt to enter the mother's accommodation, non-molestation undertakings and additional undertakings not to seek without notice orders from the court. In my view, these matters should be regulated by orders rather than undertakings. I invite the parties to draw up appropriate orders under the Children Act 1989 and the Family Law Act 1986 to cover these points. A breach of a non-molestation order would likely lead to the father's arrest, a proposition which will provide the mother with additional protection and reassurance.
62. I hope that the mother will reflect upon her stated position not to obey a return order. It will be much to K's benefit if she comes to England and participates fully in proceedings here. She wishes ultimately to return to live in Dubai and this is an outcome which, in my view, has a realistic prospect of success following a full welfare evaluation. The court is more likely to be sympathetic to her position if she comes back to England and demonstrates that she is sincere when she says that she wishes to promote K's relationship with his father.