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Case No: FD24P00716

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/06/2024

Before:

MR JUSTICE POOLE

Re G and H (Children: Return to Ghana)

Between:

A Father
- and -
A Mother

Applicant

Respondent

Mani Singh Basi (instructed by **Ji Solicitors**) for the **Applicant**
Ghazala Hussain (instructed by **Good Law International**) for the **Respondent**

Hearing date: 16 May 2024

JUDGMENT

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.

Mr Justice Poole:

1. This is an application dated 24 January 2024 for an order under the Court’s inherent jurisdiction for the return of the parties’ two children to Ghana. The children are both boys: G aged 13 and H aged 7. The applicant is the children’s father (“the father”), the respondent is their mother (“the mother”). She opposes the application. Both parties are Ghanaian nationals. They married in Ghana in 2009. The children were born there. The parties separated in 2016 when the mother was pregnant with H. By a series of court orders in Ghana, by the beginning of 2023 the child arrangements were that G and H would live with the mother but spend alternate weekends and half of the school vacations with the father provided that his work commitments allowed him to be available to look after them. The most recent Ghanaian child arrangements court order was made in October 2020. The court ordered that the children should remain in their then current schools and that there should be no change of school by a parent without the consent of the other.
2. The mother works in the finance sector and had a well-paid job in Ghana. After the separation, she and the children lived with the maternal grandparents who would look after the children when the mother travelled abroad on business. In 2022 the mother was given the opportunity to take a significant role with her company in England. She wished to take that opportunity and to relocate with the children to England. The mother and children had previously visited England and had always returned to Ghana without incident. In February 2023, unaware of the mother’s plans to relocate with the children to England, the father again consented to the mother taking the children to England for a short visit, returning on 1 March 2023. The mother did not return the children as agreed. She enrolled them in fee-paying schools in England and informed the father that they would be staying.
3. The father made an application in the Ghanaian court for an order for return of the children but it appears that the Ghanaian court decided that it did not have jurisdiction so to order. The mother obtained legal advice from a Ghanaian lawyer about the father’s application for return, which advice she has chosen to disclose in these proceedings. The father also appears to have applied to enforce the existing child arrangements orders by way of the mother’s committal. He was advised that enforcement would be difficult given that the mother was living in England. Then, on 24 January 2024, the father made the application in this jurisdiction with which this court is concerned.
4. The parties agree that at the time of their removal from Ghana, both children were habitually resident there.
5. The children have frequent indirect contact with the father but have not seen him face to face since they left Ghana.
6. The court made the children wards of the court on 8 March 2024. A welfare report was directed and subsequently filed on 29 April 2024 - it is prepared by Ms Baker who gave oral evidence before me.
7. The mother has made allegations of domestic abuse against the father which he denies. At the pre-trial review on 30 April 2024 Hayden J refused to order a finding of fact hearing as the mother had requested. That decision was made after the receipt of the welfare report. Following further evidence from the father in response to evidence from

the mother for which Hayden J gave permission, the mother renewed her application for a finding of fact hearing at the outset of the hearing before me. I refused the application and said that I would give my full reasons in this judgment. My reasons are:

- i) The father's further evidence goes beyond a response to the mother's additional evidence and so beyond the permission for further evidence given by Hayden J, but his further evidence does little more than repeat his previous denials of the mother's allegations of abuse.
- ii) The further evidence is not significant, does not introduce any new material issues, and does not provide any basis for revisiting the application which Hayden J refused.
- iii) In any event, in exercising my case management powers I am mindful of the authorities including the Court of Appeal decision in *Re A and B* [2022] EWCA Civ 1664 in which Moylan LJ referred to FPR PD 12F:

“Applications for return orders to a non-Convention State are specifically addressed in Part 3 of Practice Direction 12F, International Child Abduction. This states, in paragraph 3.1:

"The extent of the court's enquiry into the child's welfare will depend on the circumstances of the case; in some cases the child's welfare will be best served by a summary hearing and, if necessary, a prompt return to the State from which the child has been removed or retained. In other cases a more detailed enquiry may be necessary (see *Re J (Child Returned Abroad: Convention Rights)* [2005] UKHL 40; [2005] 2 FLR 802)."

Moylan LJ held that a “judge has a discretion when deciding the extent of any welfare inquiry including the extent to which allegations of domestic abuse require investigation and determination” And later:

“As Lord Wilson said in *Re NY*, part of that exercise will include the court determining, in respect of all relevant matters, but in particular in respect of the matters set out in section 1(3) of the Children Act 1989 and any allegations of domestic abuse, whether, in order sufficiently to identify what the child's welfare requires, the court should conduct an inquiry into any or all of those matters and, if so, how extensive that inquiry should be.”

- iv) I have regard to the guidance within FPR PD12J, and within the Court of Appeal decisions of *Re H-N* [2021] EWCA Civ 478 and *K v K* [2022] EWCA Civ 468, and within the *Fact Finding Hearings and Domestic Abuse in Private Law Children Proceedings – Guidance for Judges and Magistrates*, from Macur LJ dated 5 May 2022, all of which are pertinent to the present case. They indicate

that the court should consider the relevance of the allegations to the issues the court has to determine, and the necessity and proportionality of holding a finding of fact hearing. The parties have been separated since 2016. They have worked with child arrangement orders which have been made, sometimes by agreement of the parties, by the Ghanaian courts. The issue for this court is whether the children should be returned to Ghana not whether they should live with the father or spend more or less time with him. On her own case the mother came to England, bringing the children with her, because of a work opportunity, not because of the alleged abuse. The court can take into account her allegations, and the father's denials, without making specific findings of fact about the allegations. The bulk of the allegations concern events which occurred several years ago, some even before the marriage in 2009. The allegations are of limited relevance to the issues this court has to determine which concern the children's welfare and a separate finding of fact hearing is not necessary in order for the court to make its determinations.

- v) As Ms Hussain acknowledged, if the court were to accede to her application then the hearing would have to be adjourned and re-listed, with appropriate directions, for further hearing (probably lasting two to three days) on a later date. Delay is generally against the best interests of the children who are the subject of proceedings. In this case the children have had the uncertainty of whether they will remain in England or return to Ghana hanging over them for months. It is in their best interests for the decision on their father's application to be made rather than to be put off to a date in the future which might be several weeks, even several months away.

The Evidence

8. I was provided with a hearing bundle that included statements from the parties, Ms Baker's report, a copy of legal advice given to the mother in relation to which she waives any privilege, and additional evidence including from the boys' schools, police documents from Ghana, court documentation from Ghana, correspondence from a Presbyterian minister in Ghana, and some photographs.
9. One matter that was not addressed in the written documentation, but ought to have been, was whether or not the mother intended to return to Ghana with the children if the father's application were to be granted. At the beginning of the hearing before me I asked her Counsel what the mother's position was. I was told that she would stay in England if the children were returned. I decided that it was necessary to hear oral evidence from the mother on this particular issue. It is an issue of considerable importance, it had not been addressed in written evidence, and Mr Basi on behalf of the father, did not accept that the mother would not return with the children and wished to challenge her on that assertion made through her Counsel. I also heard oral evidence from Ms Baker.
10. The mother's allegations of abuse against the father are set out at paragraphs 1 to 31 of her statement:

“I left [the marriage] after years of consistent abuse which included physical, emotional psychological verbal abuse and even sexual abuse. The day I left, I was pregnant and whilst asking him a question he had pushed me and held me to the wall.”

She left the relationship and the family home in 2016, eight years ago. She alleges physical abuse prior to the marriage and then during the marriage. She alleges:

“On one occasion, he physically assaulted me by punching, biting, and dragging me on the floor, leaving deep bite marks and torn clothing.”

The mother complains also of emotional or psychological abuse:

“He routinely belittled me, disregarded my privacy, and imposed arbitrary restrictions on me. He would leave the bathroom door open during social gatherings, exposing me to guests. He forbade my parents from entering our home and denigrated my family in front of our first son and even proceed to tell him at the age of 3 years old, that his maternal Grandfather was a foolish man.”

The mother alleges rape and anal rape:

“He subjected me to painful sexual acts, both vaginally and anally without my consent.”

That is the entirety of her evidence on that allegation. No other details are given. She alleges coercive and controlling behaviour, including that the father locked doors to prevent movement, controlling the mother’s access to friends. She then says:

“In the midst of this, I got pregnant again and due to the continued abuse, our son was born with a congenital heart defect and eventually died at 7 months old.”

That is a striking claim which would, on the face of it, be extremely difficult to prove, i.e. that the congenital heart defect was due to abuse of the mother by the father.

11. The mother’s statement is unclear as to what, if any, alleged abuse has continued after separation in 2016 – but she refers to the father exposing the children to age inappropriate and sexually explicit videos or films - without any details at all - to his having road rage and to his girlfriend making crude gestures from the car. She refers to a dispute involving the father’s time with the children when he argued and tussled with the mother’s brother causing some injury to the brother.

12. Hence, it is not clear to me that there are allegations of continuing controlling behaviour or physical abuse, sexual abuse of psychological and emotional abuse after the separation. There is general bad behaviour alleged, a tussle with the mother's brother, and a selfish attitude to child arrangements.
13. The allegations of abuse within the marriage are very serious and include rape and coercive and controlling behaviour, but very few details are given and I cannot find clear allegations of continuing abuse after 2016. The mother refers to communication from a pastor that appears to confirm that the father accepted abusive behaviour within the marriage (but there is no evidence of an acceptance of abuse to the extent alleged by the mother). The father denies the allegations of domestic abuse before or during the marriage or after separation. He refers to police documentation showing that the mother made but did not then pursue allegations of abuse against him, for example in March 2015. He says that he has had to make repeated applications in the courts in Ghana to secure his relationship with his sons. He says the mother changed G's school a number of times which was against his best interests and that he, the father, had to secure an injunction to prevent the mother from doing so again. In fact, the relevant Ghanaian court order prevents either parent from changing the children's schools without the consent of the other. This order was in force when the mother relocated the children to England and enrolled them in schools here without the father's consent. The relevant order in Ghana records four different schools in a three year period for G.
14. The mother contends that all the Ghanaian court orders were by consent. The father does not agree. I have been provided with some orders from the Ghanaian courts. The very first order, made in 2016, records that it was made by agreement of the parties. On the face of one other order which related to the children's schooling, it is recorded that it was by agreement of the parties. No such recording appears on the other child arrangements orders. By inference these orders were not by consent, but I cannot be certain of that. All the orders appear to record the legal representation of both parties.
15. The Ghanaian courts have been involved with this family on a number of occasions between the separation in 2016 and the relocation in 2023. And have allowed, indeed directed, unsupervised time, including overnight and for prolonged periods in holiday time, with the father. It is said on behalf of the mother that the fact that Ghanaian court orders have been made by consent is evidence that the mother has submitted to the will of the father but (i) the orders regarding contact after the initial agreed order in 2016 are not recorded as having been by consent, (ii) the father denies that they were by consent, and (iii) the parties have had legal representation at the hearings so that, even if the orders have been made by consent, that would be equally consistent with the mother being content that the children were safe in the father's care.
16. The Ghanaian court orders allowing the children to spend unsupervised time with the father for substantial periods followed evidence from the mother making allegations of abuse of the kind she has made in these proceedings. They also followed the mother having made complaints about the father's behaviour to the Ghanaian police which resulted in no action being taken against him. Accordingly notwithstanding the allegations, over a period of years the Ghanaian courts were content that the children's welfare was met by the arrangements in place.
17. The mother has disclosed legal advice she received in May 2023 regarding the father's application in Ghana for the return of the children to that country. The mother describes

the author of the advice, Gloria Cofie, as her legal counsel. Counsel's main conclusion was:

“The Tribunal, in determining the application filed by [the father], may grant it on the basis that if you wanted to vary the Access Order you should have applied to the Tribunal instead of deliberately breaching it. Conversely, the Tribunal may decide to consider the welfare principle which deals with the best interest of a child and then relying on the report from the Deputy Head of G's school, your position as the Children's mother and primary care giver vary the Access Order despite your breach of the order if it concludes that it will be in the best interest of the Children for them to remain in the United Kingdom.”

Counsel advises that the mother's actions do not amount to “kidnapping” because in Ghanaian law that offence cannot be committed by a person, such as the mother, who has been granted custody of a child. She advises the mother that an application may be made to the Ghanaian court for permission to vary the child arrangements orders to allow the mother to relocate the children to England. Indeed the advice seems to be that the Ghanaian court would be likely to find that it would be in the best interests of the children to remain in England with the mother. It is clear from the advice that the Ghanaian court would take a view of all the circumstances and make decisions that accord with the best interests of the children. This advice and the Ghanaian court orders show that the mother has access to the courts in Ghana and can afford legal advice and representation in that jurisdiction.

18. The circumstances of the relocation of the children to England are that the mother had an opportunity to take a role in England working for her employer which would be a well-paid role with considerable responsibility. She had previously turned down the opportunity to take a similar role in two other countries – one in Africa and one in the Caribbean. In July 2022, her company acquired the licence necessary to operate in England. It sponsored her to come to England. She says, “At that point, I faced the dilemma of whether to leave my children in Ghana or bring them along with me.” She says that she researched schooling options for the children in the summer of 2022. She then says:

“6 months later, In December 2022, feeling the mounting pressure, I applied for a student visa for G and H, realizing the need for a prompt decision. I chose to keep it confidential until I had fully processed all the details.”

The mother had to come to England with the children in order to collect their biometric resident permits (“BRPs”):

“Initially, my plan was to travel to London, collect the BRPs, return to Ghana, inform their father and school, and then depart with them.

Considering the unreasonable nature of his actions, I hesitated to disclose anything to him prematurely, fearing it could jeopardize my efforts. I was also apprehensive about losing my job, particularly because I had already relinquished two crucial roles - decisions influenced by years of enduring fear from the applicant's end.

Therefore, I chose to have all my ducks in a row because I recognized the immense potential the UK held for advancing both my career and our children's education and future prospects.”

At that point she secured the father's agreement to travel to England with the children for a short visit in February 2023. However, once here, there was a delay in the appointment to collect the BRPs and so she decided to change her plans, remain in England, and start the children at their English schools. She says that she informed the father at that point that the family would be staying in England.

19. By her own admissions the mother acted unilaterally and clandestinely, without the consent of the father, in breach of clear and recent court orders, and without seeking permission of the court to relocate the children abroad or to move their schools. She may have thought that the children would receive a better education in England than in Ghana, but it is clear that her main motivation for relocating to England was related to her career.
20. The mother and children's visas will each require extensions in the near future. The mother's evidence is that her employer has begun the application process on her behalf and will continue to sponsor her to remain for a further five years under a global business mobility visa. She expects that so long as the children remain in their English schools, their student visas will be extended accordingly.
21. Ms Baker was able to interview the children separately. She sets out the evidence she obtained from each of them in her report. Her instructions were limited to obtaining updated information from the children's schools, ascertaining the children's wishes and feelings where possible, and advising whether they should be joined as parties. She did not recommend joinder of the children.
22. Ms Baker spoke with H, the younger brother, for about one hour. He said that he did not really enjoy his school in England but liked some teachers. He made it clear that he wanted to see his father face to face and missed doing so. He reported that when they were together his parents would fight, but in fact he was not born at the time when they were together. He suggested that when he was ten, he would like to go back to Ghana and then share his time between Ghana and England. He said that in Ghana “everyone liked me” and he had a lot of friends. In England, in contrast, he has fewer friends in part because he is a Christian and he looks for Christian friends. He misses his father, his grandparents, and “so many people” in Ghana. When Ms Baker asked H whether he liked living in England he said he was worried about answering. He would not answer and demonstrated to Ms Baker that he was anxious about the question. She said

- to me in her oral evidence that H seemed to be worried about upsetting one or both parents by answering.
23. H's school reported that he "is a kind and well-mannered student who has made positive friendships with other students. In the playground, H plays nicely with other students." His academic progress is "average". He engages in a number of activities. His mother's engagement with the school is good.
 24. Ms Baker spent about 75 minutes talking with G. He made it clear that he wished to stay in England. As to the prospect of returning to Ghana, he said, "I disagree with that as at the end of the day it's about my life and there's more opportunities here". He wrote a letter to me as the Judge emphasising the opportunity he had been given to improve his sports in England, with more intensive training. He recalled his father being angry with his mother and fighting her when he was young and said he was unhappy with his father for that. He feels that his father hates his mother. He said that when he expresses these feelings about his father to his mother, she tells him not to speak about his father like that. After the children had been brought to England his father had spoken to G about taking "extreme measures" to return the children to Ghana and this has caused G a great deal of anxiety.
 25. G has undergone school counselling and the school report to Ms Baker shows that he had considerable emotional difficulties during his first few weeks and months after relocating to England.
 26. G scored living in England 10/10 and Ghana 5-6 out of 10. G would be angry and upset if he were told he had to return to Ghana. He had been happy to see both parents when in Ghana and thought that the child arrangements there had been "fair" but he did not want to give up the opportunities he now feels he has in England. Nevertheless he missed his friends and grandmothers in Ghana. He missed his father "a little". It had been a "surprise" to him to be relocated to England but he had had a chance to say goodbye to his grandparents. He confirmed that both parents would chastise him physically in Ghana, in common with the way all parents there chastise their children, but that such chastisement is not permitted in England so it has stopped.
 27. G's school reported to Ms Baker that he had made friends but struggled with perceived injustices and had accused others of racism on a number of occasions. His academic progress in is in line with the national average but he has struggled with some formal assessments, with organising his time, with revision and working independently. He is an excellent musician and a keen sportsman. His mother can be difficult to reach but she has actively engaged with the school. She makes G work hard such that sometimes he expresses reluctance to return home at weekends. G's school reports that he is "incredibly anxious" about his parents' relationship. He has talked to the school about his concern that his father might "do something" in relation to a return to Ghana. His school consider that G is immature in some respects and very open with other boys about his emotions.
 28. Some school counselling notes from 16 March 2023 record that

"We continued to speak about G's father and he mentioned that his father has struck him and this happened just before he came to the UK. This was because he lost some of his grandmother's

money. G motioned being struck on the forehead with his knuckles. G did ask why I was making notes and I explained that I may need to speak with NC about our conversation. He didn't like this and asked me not to as he was concerned someone might tell the police. I let G know that I couldn't promise not to speak with anyone and may need to inform NC who is in charge of safeguarding. I explained that NC will probably want to speak with him about our conversation and she is a fantastic person to talk with. G's concern was for his father as he doesn't want him to be in trouble because he likes him."

This account has to be read in the context of G's comments about physical chastisement being accepted in Ghana but not in England, and that both parents would use physical chastisement when the children lived in Ghana.

29. Ms Baker has not been asked to give an opinion about the best interests of the children but she did accept in cross-examination that it would not be in the children's best interests to divide them. As to their wishes and feelings, she confirmed to me in court that G had a maturity commensurate with his age and had expressed a firm wish to remain in England. H was much more ambivalent but he was not of an age or maturity when he could weigh up the pros and cons of return to Ghana. It is clear that he misses seeing his father face to face and that Ghana holds a number of attractions to him.
30. The family is Christian and both boys mentioned their faith to Ms Baker. I understand that the family had connections with a church in Ghana because the mother has disclosed communications from a pastor who knew the family. The boys appear to value their connection to the church. The maternal and paternal grandparents all live in Ghana. The boys used to live with their maternal grandparents and mother in a house in Ghana. For all their lives until their removal in early 2023, the boys grew up in the Ghanaian culture, their friends were in Ghana, and they were educated there.
31. The evidence to me is that there are some members of the wider maternal family in England including some of the boys' cousins whom they see, although they did not mention them to Ms Baker. The boys have developed friendships at their schools in England and have been educated here for over a year now. The mother rents a home here. She has a very well paid job which clearly takes up a lot of her time.
32. The mother told me in oral evidence that she would not move back to Ghana if the children's return were ordered. She said she could not do so because of her job which she was not willing to give up. Although her employer is based in Ghana, employs over 300 people there, and employed the mother in Ghana for several years before her move to England, she did not believe there would be a role for her back in Ghana. There is no other evidence available to me on that issue – I only have what the mother told me orally at the hearing. When questioned at court, the mother initially said that she did not know where the children would live in Ghana if they returned without her but, when pressed, she accepted that they had previously lived with her parents. That is where the children would go but she said that her parents were old and she could not leave the boys with them in the long term. The mother is paying approximately £40,000 a year in school fees for the boys. There seems little doubt that she would be able to pay for

school fees for the boys in Ghana, and to meet their living expenses whether or not she returned with them.

33. The mother said that she had not taken the boys back to Ghana for a visit since arriving in England in February 2023 because of the ongoing dispute but she would be happy for the children to return to Ghana for visits in school holidays. The mother told me that she prioritises the welfare of the children but that their welfare depends on her earning sufficient money to give them the lifestyle and opportunities they deserve. That is why she would have to stay in England to work even if the boys were returned to Ghana.

Legal Framework

34. In *Re A and B* (above) Moylan LJ noted:

“The court's approach to the determination of whether to make a summary return order was extensively considered in *Re J* and in *Re NY*. The first, in which Baroness Hale gave the leading speech, involved a non-Convention country while the latter, in which Lord Wilson gave the sole judgment, involved a State that was a Contracting Party to the 1980 Convention.”

He then set out the relevant parts of Baroness Hale’s judgment in *Re J*, stating:

“[Baroness Hale] gave detailed guidance on the approach which the court should take when dealing with an application for a return order to be made on a summary welfare determination. She identified a number of propositions:

(i) at [22]: "There is no warrant, either in statute or authority, for the principles of the Hague Convention to be extended to countries which are not parties to it";

(ii) at [25]: "in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration";

(iii) at [26]: "the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits"; and

(iv) at [28]: "It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child".

Clearly, when deciding what order to make, as Baroness Hale said, at [29], the court's "focus has to be on the individual child in the particular circumstances of the case". However, she set out a number of specific factors.

These included:

(i) at [33]: "One important variable, as indicated in *In re L* [1974] 1 WLR 250, is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his "home" country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this.";

(ii) at [34]: "Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests. A child may be deeply unhappy about being recruited to one side in a parental battle. But if he is already familiar with this country, has been here for some time without objection, it may be less disruptive for him to remain a little while longer while his medium and longer time future is decided than it would be to return.";

(iii) at [37], on the relevance of "different legal conceptions of welfare": "Like everything else, the extent to which it is relevant that the legal system of the other country is different from our own depends upon the facts of the particular case. It would be wrong to say that the future of every child who is within the jurisdiction of our courts should be decided according to a conception of child welfare which exactly corresponds to that which is current here. In a world which values difference, one culture is not inevitably to be preferred to another ... Once upon a time, it may have been assumed that there was only one way of bringing up children. Nowadays we know that there are many routes to a healthy and well adjusted adulthood. We are not so arrogant as to think that we know best.";

(iv) at [38], she referred to the welfare checklist in section 1(3) of the CA 1989.

Baroness Hale addressed, at [39], the relevance of differences in legal systems. I set out the paragraph in full:

"In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will

depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned. If those courts have no choice but to do as the father wishes, so that the mother cannot ask them to decide, with an open mind, whether the child will be better off living here or there, then our courts must ask themselves whether it will be in the interests of the child to enable that dispute to be heard. The absence of a relocation jurisdiction must do more than give the judge pause (as Hughes J put it in this case); it may be a decisive factor. On the other hand, if it appears that the mother would not be able to make a good case for relocation, that factor might not be decisive. There are also bound to be many cases where the connection of the child and all the family with the other country is so strong that any difference between the legal systems here and there should carry little weight."

She returned to the relevance of differences in the respective legal systems under the heading of "Human Rights". She first noted, at [42], that "the unchallenged evidence before the trial judge was that the law in Saudi Arabia treats fathers and mothers differently and in significant respects the mother is in a less favourable position than the father". Interestingly, given her decision that the principles of the 1980 Convention did not apply, she considered, at [43]-[45], the potential relevance of article 20 which is not incorporated into our domestic law but which provides:

"The return of the child under the provisions of article 12 may be refused if this would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms."

She noted that the "importance of article 20 is that it asks whether what might happen in the foreign country would be permitted under those fundamental principles were it to happen here". Were it "incorporated, we would be entitled, though not obliged, to decline to return a child on that ground alone".

She went on to comment, at [45]:

"If we were, therefore, to be applying the spirit of the Hague Convention in a non-Convention case, there would be no reason not to apply the whole of the Hague Convention, including article 20. Any discrimination in the foreign country which was contrary to article 14 of the Convention on Human Rights would allow, but not require, the court to refuse to return the child. This consideration serves to reinforce the view that the legal system

in the foreign country cannot be irrelevant to the issue of summary return."

As can be seen, Baroness Hale used this analysis to support her earlier conclusion that the nature of the legal system in the other country cannot be determinative but equally cannot be irrelevant.

I would also emphasise that Baroness Hale was, equally clearly, not suggesting that there would not be cases in which the effect on the parent and/or the children caused by differences in legal systems, including the approach to welfare, would be sufficiently contrary to the children's welfare that a summary return order should not be made and, indeed, a return order should not be made after a full welfare inquiry. The impact on the welfare outcome would depend on the weight properly to be accorded to this factor in the circumstances of the particular case.

35. Ghana is a non-Hague country. Cobb J set out the legal principles applicable to an application such as the one herein, in *J v J (Return to Non-Hague Convention Country)* [2021] EWHC 2412 (approved by the Court of Appeal in *Re A and B* (above):

"[34] It is clear law that the court in this jurisdiction will determine an application for a summary return of a child to a non-Hague Convention country by reference to the child's best interests. My attention has been drawn to what Lord Wilson (in *Re NY* at [30]) and Baroness Hale (in *Re J* at [26]) both described as the "classic" observations, the "locus classicus", of Buckley LJ in his judgment in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, (obviously a pre-1980 Hague Convention decision but with evidently enduring relevance and standing). He said this:

p.264F: "To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country than that he should spend in this country the period which must

necessarily elapse before all the evidence can be assembled for adjudication here. Anyone who has had experience of the exercise of this delicate jurisdiction knows what complications can result from a child developing roots in new soil, and what conflicts this can occasion in the child's own life. Such roots can grow rapidly. An order that the child should be returned forthwith to the country from which he has been removed in the expectation that any dispute about his custody will be satisfactorily resolved in the courts of that country may well be regarded as being in the best interests of the child."

p.265A-B: "... judges have more than once reprobated the acts of "kidnappers" in cases of this kind. I do not in any way dissent from those strictures, but it would, in my judgment, be wrong to suppose that in making orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account, but, whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration."

...

[37] I was then taken to the current definitive statement of the law pronounced by the House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40. I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

i) "... any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];

ii) "There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it" [22];

iii) "...in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];

iv) "... the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases." [26];

v) "Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child" [28];

vi) "... focus has to be on the individual child in the particular circumstances of the case" [29];

vii) "... the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever" [32];

viii) "One important variable ... is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this" [33];

ix) "Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests" [34];

x) "In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned" [39];

xi) "The effect of the decision upon the child's primary carer must also be relevant, although again not decisive." [40]

Baroness Hale summarised her views ...

"These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. But

they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here." [41]

[38] I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent jurisdiction in what are accepted to be very different circumstances to those obtaining here. Mr Khan argued that I should give (as the judgment suggests) "some consideration" ([55]) to the eight linked questions posed by Lord Wilson in that case:

i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);

ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);

iii) In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);

iv) In a case where domestic abuse is alleged, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);

v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);

vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;

vii) The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";

viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63])."

Analysis and Conclusions

36. At the time of their relocation to England, both children were habitually resident in Ghana. They had been born there and had lived there all their lives. Their parents and grandparents lived in Ghana. They had been educated in Ghana. They had visited England but they had never lived anywhere other than Ghana. Their family and cultural ties to their country of habitual residence could not have been much stronger than they were.
37. The children have now been living in England for approximately fifteen months. They have been at schools in England for most of that period. They have made some friends here. They are engaged in activities including sport. They have contact with some members of their extended family in England. They have not travelled out of England in that period. From the perspective of a child, even a child of G's age, a period of fifteen months living in a new country is a long time, and both boys have now established connections in and with England.
38. To some extent the strength of the children's connections here must be qualified because of a number of factors:
 - i) The children have known that there is a dispute about whether they should return to Ghana – they know that is their father's wish. They have lived with uncertainty as to whether they are likely to remain in England.
 - ii) Their visas expire in November 2024. Their mother's visa expires sooner than that. Even if it is likely that all three visas will be extended, that is not guaranteed.
 - iii) The evidence shows that the boys were not fully aware that they were likely to be relocated to England on a long term basis. For G the move was a "surprise". Ms Baker told me that H is not clear as to the reasons for the move to England.
 - iv) The children have been separated from their father and grandparents. They used to see their father regularly and for long periods in the school vacations. They have not seen him face to face since moving to England. That will have created a sense of instability in their living arrangements compared with the well-established living patterns they experienced in Ghana.
39. On balance the boys each have a greater connection to Ghana than England through their own personal histories, their family members and friends, and their links with Ghanaian culture. However, their mother now lives and works in England and they have been here over a year themselves, so they do have important connections here too.
40. G has expressed a firm wish to remain in England. I do not believe that the mother has coached him, or H, to say certain things to Ms Baker or to anyone else. However, I do find that G's stated reasons for wishing to stay in England have been influenced by his mother. She is obviously keen for him to push himself at school and in his activities: G is sometimes reluctant to return home to her at weekends because she makes him work hard. His letter to me focused on his wish to improve himself, specifically in relation to his sporting activities. He talked to Ms Baker about the opportunities his schooling here gives him. These sentiments are not borne of a sense of feeling at home in England but

rather a wish to better himself. Furthermore, the report from his school to Ms Baker suggests that he has had many more struggles at school and with settling into life in England than his currently expressed wishes and feelings would indicate. However, I accept G's expressed wishes and feelings are sincere. G has been described as a little immature emotionally, but he is of an age when his wishes and feelings carry significant weight. I accept that he would feel angry and upset if the court ordered his return to Ghana against his wishes.

41. H is much more ambivalent about a return. He misses seeing his father face to face. He misses his grandparents. He misses friends at school in Ghana. He does not seem as enamoured with his school here as G does with his. In my judgement, he would not feel that his wishes and feelings had been overridden should the court direct his return to Ghana.
42. G's school report to Ms Baker and H's discussions with her both indicate that the children are very aware of their parents' difficult relationship and the dispute about where the children should live – England or Ghana. Parental hostility has, I am sure, had a harmful effect on the children. However, that will not be resolved simply by their remaining in England. Difficult issues will remain about how the children spend time with their father, how they will get to see their grandparents, how long they should spend in Ghana during school holidays, how their father might visit England, and how travel to and from Ghana might be financed. Notwithstanding the mother's assertion that she would facilitate the children seeing their father, the fact is that her actions to date have prevented the children seeing him face to face for fifteen months.
43. I take into account the mother's allegations of domestic abuse and the father's denials. The allegations centre on behaviour before and during the marriage and not after the separation in 2016. One allegation – that the father's abuse caused a third child to be born with a congenital heart defect – is based on what is very likely to be entirely speculative assumption by the mother about causation. Some of the mother's complaints contain no detail at all and are bare allegations. From the perspective of the children's welfare what is important is that there is parental hostility but that the hostility did not prevent effective arrangements for the children being adopted in Ghana. G is adversely affected by the hostility between his parents and he appears to blame his father for that hostility. He believes that his father "hates" his mother. However, the mother's unilateral decision to remove the children to England has had an adverse effect on the parents' relationship, and therefore on the children.
44. G has spoken of physical chastisement by his parents when in Ghana and his report of his father striking his head is troubling. However, he went on to say that he liked his father and I do not see any evidence that when in Ghana he was scared of his father or reluctant to spend time with him. G regards his parents' physical chastisements as par for the course in Ghana. He has been most affected by the father's comment that he would take "extreme" measures to secure the return of the children to Ghana. That is a product of the mother's clandestine relocation of the children and the father's determination to have them returned. However, the comment should not have been made to G and has caused G considerable anxiety.
45. Having considered all the evidence available to me, I have reflected on the refusal of the mother's application for an adjournment to allow for a finding of fact hearing and I remain of the view that it is neither necessary nor proportionate to hear further evidence

in relation to the mother's allegations of abuse. They do not seem to me to be particularly relevant to the decision whether the children should be returned to Ghana. The mother's decision whether or not to return is not based on the alleged abuse. It has not been suggested that on return the children should not spend unsupervised time with their father as they did before.

46. Despite the submissions made on the mother's behalf, I conclude that the mother's relocation of the children to England was indeed clandestine. She did it behind the father's back, without his consent, and without seeking the permission of the court. Even after receiving legal advice in May 2023 that she could apply to the Ghanaian court for permission to relocate the children to England and that the court would consider the best interests of the children and would be likely to find that their best interests lay with them remaining with their mother, she has continued to defy the existing court orders in Ghana regarding schooling and child arrangements. She has not made any court applications. She has known for a year or more that she has been in breach of Ghanaian court orders. On her own evidence she was making preparations for moving the children to England for many months before February 2023. She brought the children to England in 2022 as part of the preparatory steps. They did not mention anything to their father about schools in England. The mother did not mention anything to him about her work opportunity in England. She ensured that everything was kept from him and I infer that she co-opted the children into keeping secrets from their father. It is not the role of this court to "punish" the mother for her past actions. The children's best interests are my paramount consideration. However, the circumstances of the children's relocation to England are relevant to the impact on them of that relocation and their possible return to Ghana, and the mother's ability to work with the father and the courts in the best interests of the children in the future.
47. I have concerns that if the children are to remain in England, then they will not only see their father much less than they would do were they to live in Ghana, but that arrangements for them to spend time with him will be fraught with difficulty because of parental hostility, the father's difficulty obtaining access to the court here, and the challenges of making practical arrangements, in particular because of the imbalance in parental financial resources: the father would be reliant on the mother to pay expenses associated with him spending time with the children. Parental hostility did not materially interfere with child arrangements in Ghana but the father is resentful of the mother having relocated the children to England and of her having done so in the manner in which she did. He feels that he has been largely cut out of the children's lives by the mother's secretive and unilateral actions. Parental relations are under great strain and will affect arrangements for the father to spend time with the children if they were to remain in England. The children are currently wards of court but if wardship were discharged as being no longer justified, then the father would not have the benefit of public funding for representation in relation to any future applications for contact.
48. In Ghana, the children would be able to see their father face to face and they would be able to spend time with their grandparents - time which they have been deprived of since their move to England.
49. The Ghanaian court orders and the legal advice provided to the mother in May 2023 show that mother would have no difficulty with access to the family courts in Ghana and that the main consideration of the courts there would be the best interests of the children. The mother would be able to apply to relocate the children to England. The

mother told me that the courts in Ghana move very slowly and that it would take a long time before any application for relocation would be determined. However, I note that the Ghanaian orders made in July 2016, September 2019, and March 2023, were all made within a month or so of the relevant applications. Not all the other orders record when the applications were made. Counsel's advice to the mother does not warn her that any application to relocate would take an inordinate time to be determined.

50. If I were to accept the mother's evidence, the children would be separated from her if they were returned to Ghana. She would remain in England. This would be harmful to the children because their mother has been their main carer all H's life and, for G, since then parties' separation eight years ago. The parental hostility would be likely to deepen because of resentment caused by the father's application leading to the separation of the children from their mother. I do take into account that G is educated at a boarding school and so his mother is not his day to day carer during term-time weekdays. Nevertheless, both children's welfare would be adversely impacted by being separated from their mother by many thousands of miles.
51. One matter which the mother did not mention but which I have in mind is that the father applied in Ghana for the mother's committal to prison for breach of the child arrangements orders. Mr Basi has indicated on the father's behalf that he would be prepared to give undertakings and assurances to protect the children on return to Ghana. The court would need to know that there was no risk of the father causing the mother to face imprisonment as a result of her breaches of the child arrangements orders. The mother's legal Counsel has not suggested that she would be at risk of such a consequence of the breaches. The father would also have to undertake not to seek to remove the children from the care of the other or the mother's parents until any first hearing in the Family Court in Ghana.
52. I listened carefully to the mother's oral evidence. As she explained her decision to remain in England even if her children were returned to Ghana, she was quite matter of fact in her manner. Her initial position was that she would not return even though she did not know where her children would live upon return. That showed a lack of concern about their welfare that I found surprising and troubling. My judgement is that the mother would not be uncaring about where the children would live but had not properly thought through her apparent decision not to return. Later in her evidence, she accepted that it was likely that they would live with her parents as they had done, albeit with the mother, prior to their relocation to England. The mother discounted the possibility of obtaining work in Ghana even though she has an established history and a high-ranking position with her current employer. She has experience and skills. She has not provided any evidence from her employer about her position were she to return to Ghana, but perhaps she does not want her employer to know that that is a possibility. It is notable that she had not put in writing her position regarding her decision not to return. That suggests to me that she has only recently adopted that position and, as already noted, has not properly thought it through. There is no evidence that the mother has adopted a settled or entrenched position that she will not return with the children if their return were ordered.
53. When weighing all the evidence on the question of whether the mother would indeed not return to Ghana with the children, I take into account that, on her own evidence, the mother contemplated leaving the children in Ghana when she decided to take up the role she now occupies in England. That suggests that she might indeed be prepared to

remain here if her children were returned. I also take into account the fact that the mother has placed G in a boarding school rather than choosing for him to live day to day with her. She has shown that she is prepared to be separated from G to that extent at least.

54. On the one hand it is difficult to accept that the mother would willingly allow herself to be separated from her children by many thousands of miles. She has never lived apart from them. She is and has been their main carer. On the other hand, she did contemplate leaving the children behind in Ghana rather than bringing them to England with her, she sends G to a boarding school rather than having him at home with her, and she tells me that the best way to support her children is by maintaining her current paid role in England so that they can have a good education. The fact that she is prepared to spend so much (over half) of her net income on school fees demonstrates how she prioritises their education (albeit the number of changes of school she made in Ghana was considered not to be in their best interests). She would doubtless arrange for private schooling for the children in Ghana if they returned. She would want to keep up her high level of earnings. Hence, her assertion that she would not return to Ghana is not manifestly incredible and she has made that assertion under oath.
55. Having considered all the evidence on this issue I find that if the court ordered the return of her sons, the mother would arrange for them to live with her parents as was previously the position. She would apply to the Ghanaian court for the children to be relocated to England. I accept that such an application might take some months to conclude. As I have noted the Ghanaian court orders with which I have been provided do not indicate a culture of undue delay in the family justice system there, but a relocation application would take time to prepare and require careful consideration by the court. Such an application might well take several months before conclusion in England and Wales. Pending the outcome of that application the mother would try to maintain her job in England and so would divide her time as she could between England and Ghana. Hence, the children would probably be separated from their mother for periods of time until the Ghanaian court determined the mother's application to relocate. Ultimately, if her application failed, I find that she would return to Ghana rather than live apart from her children for the next five years or so (the likely duration of her current working role in England). Despite her evidence to me, I find it to be more likely than not that the mother would ultimately return to Ghana were a return order made in respect of her sons and she could not secure permission to relocate them to join her in England. She would recognise the adverse impact on them of being separated from her. She would want to live in the same country with them. She has strong ties to Ghana. She has a strong relationship with her employer. She might have to take a less well-paid role upon return but her skills and experience would put her in a good position to apply for roles within her present company or with other employers.
56. Counsel's advice to the mother implied that a relocation application by her in Ghana would be likely to succeed because the Ghanaian court would be likely to conclude that it was in the best interests of the children to live with their mother who is the primary carer with "custody" and the main earner in the family and so has had good reason to bring the children to live with her in England. However, I cannot assume the outcome of any application in Ghana. What I can and do conclude is that the Ghanaian court is well placed to make welfare decisions about the two children. They have done in the past and the evidence shows that they will make decisions applying the best interests

principle. The Ghanaian courts have made child arrangements orders whether by consent or otherwise for these children since 2016. The father has no substantial connection with England. The English courts do not have a history of making welfare decisions for these children. The father would struggle to gain effective access to the courts here in relation to child arrangements. Given the Ghanaian court's previous involvement, the family's close connections to Ghana, and the ease of access to the Ghanaian courts that both parties can enjoy, I conclude that the Ghanaian courts are better placed than the English courts to make determinations about the longer term living arrangements that will meet the children's best interests.

57. The mother is clearly very able to care for the children. She has done so all their lives. Whilst she had support from her parents from 2016 to 2023 and she has used a boarding school to help her since 2023, she has been their main carer for the past eight years. My view of the evidence is that the father has been able to care for the boys when they have spent time with him. I have no evidence that they have suffered physical, psychological, or emotional harm in his care, save for the use of physical chastisement as has been described by G. It appears that both parents use physical chastisement in Ghana but the account of the father using his knuckles is of concern. As it happens, G appears to be largely undisturbed by the use of physical chastisement against him which he regards as the norm in Ghana. I do not think the use of physical chastisement by the father renders him incapable of meeting the children's needs. Were the children to return to Ghana and live with their maternal grandparents, supported by the mother who would visit Ghana pending a decision on a relocation application, and spending time every other weekend and during half their school vacations with their father, those arrangements would be similar to those the boys have experienced when their mother has previously travelled abroad for work purposes. For a time they may spend longer apart from her than previously, but I am satisfied that the arrangements would meet the children's needs.
58. Had I been hearing this application within three months or so of the children's arrival in England I would have had no hesitation in ordering the children's return to Ghana. This would have been an "swift and unsentimental" decision that return was in their best interests. However, fifteen months have passed since the children arrived in England and started school here. G now expresses a firm wish to remain here and would be angry and upset if he were compelled to return to Ghana. The connections that the children now have with England and G's expressed wishes to remain here are important factors which I have to weigh in the balance.
59. Given the length of time the children have now lived in England, I do consider it necessary to consider their welfare in more depth than might have been the case had this hearing taken place a year ago. A return to Ghana would advance the children's best interests because they would be returning to the country with which they have the closest connections. They would be able to have face to face time with their father on a regular basis as they had been used to prior to February 2023. They would have contact with their grandparents as they have been used to all their lives. They would be reunited with their old friends and be able to return to their old schools. However, their mother's career would be potentially adversely affected and they might have to spend at least a period of time living in a different country from her. G's wishes and feelings would be overridden and he would lose the opportunities he sees his English school as giving him. He would be angry and upset.

60. The effect of return on the children's main carer is a relevant consideration even though she has to a large extent brought the present problems on herself and her children. The mother might lose her current role and have to take a less well paid position in Ghana. There are other consequences of return which could adversely affect the children: there might well be a contested application in Ghana to relocate the children to England which will cause further conflict within the family. There is a possibility that upon return, the Ghanaian court might subsequently permit the mother to relocate with the children to England, thereby causing them to be uprooted yet again.
61. Remaining in England would allow G to remain at the school of his choice and the mother to pursue her career and earn sufficient money to provide well for her children. Although G's reasons for wishing to remain in England are tied to his schooling and have a flavour of being influenced by his mother's ambitions for him, I do take into account his sincerely expressed wishes. However, if the children were to remain in England, that would place hurdles in the way of ensuring that they spent adequate face to face time with their father. I am concerned about the mother's willingness to take action to ensure the children have adequate quality time with their father and about his ability to secure time with his children through the courts in this jurisdiction. Further litigation might well follow in this jurisdiction with further disputes between the parents which will adversely affect the children's welfare. Furthermore, by remaining in England, the children would be separated from their grandparents and wider family and friends in Ghana. They would be detached from the culture in which they have previously grown up.
62. It is in the boys' best interests to remain living together in the same country. I cannot see how it could be in their best interests to separate them.
63. The boys have about half a term left in their school year. If I were to order their return to Ghana, it would seem to me to be in their best interests to allow them to complete their school years in England. They might well be unable to secure school places in Ghana for the few remaining weeks of the academic year. Any return is going to be another significant change to them and disruptive to their lives and education. This is not what is sometimes called a "hot chase" case. I see no significant benefit to the children from ordering an immediate return that would cause avoidable interference with their education when their return to their home country could be effected in July when they have each completed their school year.
64. Were I to order the return of the children to Ghana when both had completed their current school years, presumably in July 2024, the mother could make her application in Ghana to relocate the children to England immediately. She has already indicated that she has no objection to the children seeing the father in Ghana during school holidays and the children would be returning at the start of those holidays.
65. A return would not be on a time-limited basis and if the Ghanaian courts have not made a decision on the mother's application by the start of the next school year, the children would have to start that school year in Ghana. However, if I order the return of the children to Ghana in July, then (i) if the Ghanaian courts decide it is in their best interests to remain in Ghana, there will be no further upheavals for them; or (ii) if the Ghanaian courts decide that it is in their best interests to relocate to England, the further upheaval will be minimised, with only a limited time away from their English schools

(and none if the Ghanaian courts were to decide that it was in their best interests to start the new school year in England).

66. Having considered all the evidence and analysed the matters as set out above, I consider that it is in the children's best interests to be returned to Ghana. Until the mother uprooted the children, they enjoyed settled lives in Ghana, regularly spending time with their father whilst living with their mother and maternal grandparents. They were educated privately. They had networks of friends. The mother took a unilateral decision clandestinely to remove the children not for their direct benefit but so that she could remain as their primary carer whilst taking up a good career opportunity in England. I do not criticise her for wanting to further her career but the fact is that her decision to take up the position in England was not motivated primarily by her children's best interests. She relocated the children in clear breach of court orders and without the father's consent. Since bringing the children to England she has not taken steps to ensure that they have face to face time with their father. She has not made arrangements for him to come to England to see them. I have concerns about her willingness to make arrangements for the children to spend suitable time with their father in the future. I have concerns about the father's ability to access the courts in England to secure time with his children in the absence of agreed arrangements. The parties' relationship was already under strain but it has deteriorated because of the mother's actions in relocating the children without consent or permission. The courts in Ghana are well placed to make determinations about the children's welfare. Both the mother and the father would have ready access to the Ghanaian family courts. The children have closer connections with Ghana than England. They would be easily able to see their father there. The factors weighing against return, including G's express wishes, the mother's reluctance to return herself, the length of time the children have been in England, and the disruption return will cause to their education and lives, are outweighed by the benefits to them of return and the fact that, in my judgment, the Ghanaian courts are better placed to make determinations about the children's welfare.
67. Very clearly the mother ought to have applied to the Ghanaian courts for permission to relocate before taking the unilateral decision to do so, in breach of the existing (and continuing) court orders. This has caused, and will continue to cause, avoidable disruption to the children's lives. To minimise the disruption to the children's education I shall order return to be effected once the children have both completed their current school academic year, which I expect to be in July. The parties shall agree a date for return, failing which I shall make a decision on paper as to the date of return. Protective measures are required including undertakings by the father not to be present at the airport when the children return, not to seek to remove the children from their mother's or maternal grandparents' care pending a first hearing in the family court in Ghana, and to withdraw his application to commit the mother to prison for contempt of court. Indeed there is time for him to withdraw that application and prove that it has been withdrawn prior to the children being returned to Ghana, and that is what I shall require him to do.
68. The child arrangements orders in Ghana continue in effect and so the children will spend time with the father in accordance with those orders unless or until the Ghanaian courts order otherwise. The mother is free now (and has always been free) to make an application in Ghana to relocate the children to England. She may choose to try to keep the children's school places in England open pending the outcome of such an

application, but that is a matter for her. My decision does not bind the Ghanaian courts in any way. My view is that the Ghanaian courts are best placed to determine the longer term child arrangements, including whether the children should relocate to England, in their best interests. To avoid any misunderstandings, this judgment and the order of this court should be provided to the Ghanaian court.

69. G wrote a letter to me. I shall write letters to the children which will be sent in draft form to Ms Baker for her to suggest any revisions. The final letters will be provided to the children by Ms Baker as she thinks fit. Copies will be provided to the parties once they have been delivered to the children.
70. Subject to the conditions set out above, I allow the father's application and, exercising the court's inherent jurisdiction, direct that the children shall be returned to Ghana.