Neutral Citation Number: [2024] EWHC 3332 (Fam)

Case No: FD19P00343/ CM22P90427

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 4th September 2024

Before :

Mrs Justice Arbuthnot

Between :

FATHER	**Applicant**
- and -	
-MOTHER	**1st Respondent**
- and -	
CHILD **(Acting by his Children's Guardian)**	**2nd Respondent**

Miriam Best (instructed by The International Family Law Group LLP) for the **Applicant**
Dr Charlotte Proudman (instructed by Morgan Wiseman) for the **1st Respondent**
Ruth Cabeza (instructed by Bindmans LLP) for the **2nd Respondent**

Hearing dates: 29th – 31st July 2024
Additional written submissions received on 6th August 2024 including
from Ms Chhina on behalf of the mother
Draft judgment sent on 10th August 2024
Handed down on 4th September 2024

Judgment

Mrs Justice Arbuthnot:

Application

1. This is the father's application pursuant to Article 21 of the Hague Convention to extend the present contact he has with the parties' child, in this jurisdiction so that he can take his son abroad on holiday first to Europe in the coming months and then to the United States where the father and the paternal family live.

2. In November 2021, the father's application for the summary return of the child to the United States was refused. The mother had raised an Article 13b defence, that there was a grave risk that his return would expose the child to psychological harm or otherwise place him in an intolerable situation.

3. In these proceedings, the father also asks that the mother's consent for the renewal of the child's United States passport is dispensed with because the mother refused to be involved in its renewal. She was concerned that the United States embassy might be involved in the reabduction of the child. Finally, there is the question of whether the retention of the mother and the child's passport and a port alert should be continued. The father argues they should, but the mother and guardian say no.

4. The mother opposed any extension of contact if it involved a journey abroad whether it was to Europe or the United States.

5. She opposed the child's passport being renewed as she was concerned that the father would abduct the child to the United States or that the Embassy would somehow retain the child.

6. There were some further disputes over the length of time for, and number of, contacts which will take place in the coming months and years including the Facetime contacts between the child and his father.

7. The father has been represented by Miss Best, the mother by Dr Proudman and the child's guardian by Ms Cabeza. I have been much assisted by written submissions and position statements as well as by the oral advocacy of all three advocates and final additional written submissions including from Ms Manveet Chhina, solicitor for the mother. Although it must be said that the proceedings have been a tad fraught at times, every possible argument in favour and against the proposed contact arrangements for the future has been placed before me. I have also had much evidence to draw on.

8. At the centre of these proceedings is a little boy. He is on the autistic spectrum although that has only recently been confirmed. He is much loved by both parents and is clearly a lovely and loving little boy. Both parents want the best for him. The child has a guardian who replaced an earlier guardian.

9. In an effort to reduce the issues for the court, Ms Cabeza on behalf of the guardian has provided a draft order. I set out the main provisions in it below.

The parties' positions

10. The father wanted contact in Europe at Easter 2025 followed by contact in the United States in the Summer of 2025. In the future he would like half of all holidays. He wanted four times a year contact gradually increasing in this jurisdiction. He would like to continue with his three times a week Facetime contact.

11. The mother opposed any contact at all outside this jurisdiction. In her skeleton argument Dr Proudman argued that the same factors which led to the refusal of the father's application for summary return should lead to this court refusing the father's applications. She said that the contact in the United States, would expose the child to the same emotional and psychological harm found by Holman J in the Hague proceedings.

12. The guardian provided a draft order, parts of which were not accepted by the father or the mother. The guardian proposed the following, subject to various pre-conditions and undertakings. I set out her proposals alongside the parties' positions:

    a. A lives with order in the mother's favour. This was agreed by the parties.

    b. The child to have Facetime contact with his father, on Tuesdays and Thursdays at 5pm UK time but no longer on Sundays. This was supported by the mother but opposed by the father who wanted the current arrangements of three times a week to continue.

    c. In terms of direct contact, the guardian proposed at least twice a year contact. This had the support of the mother but the guardian understood the concerns about whether any more than the minimum might take place if not ordered. The father's position was that the court should order four times a year contact otherwise the mother would allow only the minimum.

    d. Any contact should allow the child to have his own bedroom for him to have the space to be quiet when he needs to. The mother's position was that the father should rent the same home for the contact visits to allow him and the child's half sibling, S, to mirror the child's home routines. The father preferred the guardian's proposal that any hotel he booked should have an interconnecting room for the child.

    e. The child should have direct contact for four consecutive nights on 28th December to 1st January each year. This was supported by the mother but opposed by the father who wished to have alternating Christmas and New Year so it would dovetail with his contact with S.

    f. In 2025, the father should be able to have contact for seven consecutive nights between 2nd and 9th August for a holiday in Europe. In August 2026 and each year thereafter, the father should have 10 days (including travel) in the United States and have seven days in England.

    g. After I suggested that the mother should provide a position on contact, on 22nd July 2024, the mother set out her proposals. She proposed no contact outside the jurisdiction within a two year appeal period after the enrolment of the order, which might allow the father to vacate the order on the grounds of duress. Her position was that after the two year period the father should submit a new application for a review of international contact. After the US legal expert gave evidence, the mother's position varied to no contact at all outside the jurisdiction.

    h. The mother proposed that the father should arrange play dates with the child's friends and take him to his extra-curricular activities and assist her in obtaining assistance for the child's needs. The father did not argue against this proposal, and I would support these proposals to ensure that the father is more involved in the child's day-to-day life.

13. There were pre-conditions to contact taking place outside the jurisdiction proposed by the guardian set out in her proposed order.

14. These included the following:

    a. The father evidencing the completion of a four week 'Understanding Autism Course' provided by the University of Kent and various other courses. This proposal had the support of both parties.

    b. The father was to provide the child with a 'social narrative' in the form of a scrapbook filled with information about the father's home and family in the United States. This had the support of both parties.

    c. Not less than four weeks prior to any period of contact the father was to provide the mother with a schedule setting out where the child would stay, the planned daily activities and the details of the journey and when the child would have indirect contact with the mother. This had the support of both parties.

    d. Before any contact abroad the father was to provide copies of the return tickets and hotel bookings. This had the support of the father.

    e. In relation to any final order made by this Court, the father should instruct a lawyer to enrol the order as a foreign judgment in the local US court adopting the language suggested by the US legal expert, at his own cost and then provide proof that he has done so. The mother refused to assist with this and said she did not support the enrolment as she was concerned this might affect her primary position.

    f. Significantly, having listened to the father's explanation of his current financial situation, the guardian also suggested the father pay a bond of £10,000 on order of the court, to be paid not less than 28 days before the child's visit abroad and then not to be released to the father until the mother had confirmed that the child has been returned. This had the support of the father but the mother argued that £10K would not be sufficient to allow her to instruct her own lawyers in the United States.

    g. The father should not remove the child from England and Wales except for the purpose of contact. He was not to enrol the child with healthcare services or for education in the United States.

    h. The father was to provide his passport to an agent nominated by the mother or a solicitor when having contact in this country whilst the mother was to provide the child's passports to the father when he collects him to take him abroad. They would be returned at the end of contact. The father accepted these proposals.

Background

15. The parties were living in the United States and married there in 2015. The child was subsequently born in the United States. So far as I can gather they last lived together in 2016. Sadly, the father later issued proceedings in the local US court. The relationship had broken down.

16. During this time the child had contact with his father, the paternal grandparents and with S at the father's home. The quality of the contact is disputed. The mother said the father could not

meet the child's needs and that the contact was sporadic and inconsistent. The father did not agree.

17. Whatever the quality of the contact, in 2019, the mother removed the child from the United States saying she would return on in five days. She then sent a message extending the trip. Twenty days after first leaving the United States, she sent another message this time saying that she wanted to stay and consult an ENT expert regarding the child's health.

18. The matter came to the local US court that same month in 2019, the child's return was ordered. He was not returned. The next month, the father issued proceedings in this jurisdiction for the child's summary return pursuant to the Hague Convention.

19. The proceedings were served on the mother. Around ten weeks after the mother and the child had left the United States, there was Facetime contact between the father and the child. The mother then disappeared with the child and went underground for two years when the child had no contact with his father and the child was moved from house to house.

20. Just over two years after the mother and the child left the United States, , the Judge sitting in the local US court made a sole custody order in favour of the father and also a financial order against the mother. She had chosen not to participate in the proceedings after she had abducted the child.

21. One month after the US sole custody order,, the maternal uncle was detained at LHR by the Tipstaff on his way to his home in the United States. He was produced at the High Court a week later. When the maternal uncle was due in court, the mother attended the High Court hearing unexpectedly. The mother was subject to strict protective measures and the Court stayed the collection order.

22. In the contested Hague proceedings which took place four months after the mother's sibling had been produced in the High Court, the mother opposed the child's return and sought to establish a defence under Article 13b. During those proceedings, a jointly instructed child and adolescent psychiatrist, Dr Sales, reported that the child appeared to have a profile of difficulties in keeping with autistic spectrum disorder (ASD). Dr Sales described concerns about his speech and language development and said the child was also a very active and fidgety child. It was too early to say whether he met the criteria for a diagnosis of attention deficit hyperactivity disorder.

23. Towards the end of 2021 Holman J declined to order the return of the child to the United States on the basis that that he accepted the evidence of the mother that she herself would not return if the child's return was ordered and that that would be "disastrous" for the child. Dr Sales had said in evidence that a move to the United States without his mother would have a catastrophic impact on his psychological welfare. She said and I quote from Holman J's judgment: "Separating him from his mother would cause profound damage to [the child's] emotional development. As a child with autistic traits/autistic spectrum disorders, [the child] would be more affected by changes to his routine and living arrangements than a child without such difficulties" (paragraph 15).

24. In these proceedings the mother admitted that she had gone underground for a prolonged period "in the mistaken belief that she would thereby create a defence of settlement for the purposes of Article 12 of the Convention" (paragraph 33 of judgment). She also said that she had moved to numerous different addresses over the two years as she was trying not to be

found. This could not have been in the best interests of this child who has autism spectrum disorder but was about the mother trying to avoid the search instigated by the High Court.

25. Contact had been ongoing in the lead up to the Hague hearing but as soon as the decision was made, the mother reduced Facetime contact and then gave various reasons why direct contact should not take place.

26. Unsurprisingly perhaps, the father started these proceedings early in 2022. In Holman J's judgment, he had recognised that his decision was reached on limited and partial evidence and he said it was open for the father to apply in English private law proceedings under the Children Act 1989 for the return of the child to the United States and if he wished for an order that the child reside with him there.

27. The father did not apply for those Children Act orders nor did he appeal Holman J's decision. He applied for contact.

28. Cafcass produced a safeguarding letter in mid 2022, after interviewing the parents. This gave a snapshot of the allegations the mother was making against the father.

29. The mother told the Cafcass officer that she had been the victim of several incidents of physical and verbal domestic abuse perpetrated by the father and his parents whilst she was living with them. This would have been in 2016 because they separated in November that year. She said that the child had witnessed one incident of verbal abuse.

30. She said that in the United States the child had movement difficulties but that the father did not acknowledge this which made her concerned about his parenting capacity "if he does not acknowledge [the child's] needs additional help due to special needs". She said that the father influenced the child against her and that he was aware of the animosity. She said she was afraid the father was going to remove the child from the United Kingdom to the United States where he had a sole custody order for the child. In mid-2022, the mother wanted the father to have supervised contact.

31. The father said to the Cafcass officer that there had been no incidents of physical or verbal abuse between the parents but there had been heated arguments. He said the child had not witnessed these.

32. Significantly for what has happened since, the father told the Cafcass officer that the mother made up illnesses or medical conditions for the child without medical diagnoses or evidence and she claimed the child was autistic. The father did not accept the psychologist Dr Sales' diagnosis in the Hague proceedings and told this Court in evidence that it was because he considered her diagnosis lacked rigour.

33. The Cafcass officer pointed out that the parents acknowledged there was conflict and animosity between them, that the child was caught in the middle and that this would have an impact on his emotional well-being. It was his view that the father's concerns of a further abduction of the child by the mother and the mother's fears that the father would abduct the child back to the United States all stemmed from parental conflict and animosity where one parent wanted to exclude the other from involvement with their child.

34. The Cafcass officer said the child should be given the chance to build a relationship with both parents. They should be encouraged to focus their attention on what was in the best interests of their son. He recognised that whether the father accepted the child had a medical condition should be assessed by the court. .

35. The Cafcass officer in mid-2022, considered the parents' descriptions of their relationship and concluded that the risk of harm from domestic abuse was reduced because the parents and
36. the child were no longer living together and the incidents were "historical". He considered PD12J and did not think that a fact finding should be held as the allegations were not a barrier to contact.

37. More recently mother's representatives have suggested a fact-finding should take place. There has been no support for this suggestion from the child's guardians. The Cafcass officer and the guardians' positions were clearly correct. The allegations dated back to 2016 and were not going to prevent direct contact.

38. In these proceedings direct contact was ordered from mid-2022 and has continued to take place. It is currently taking place with four overnights about three or four times a year. Facetime contact, which is not wholly reliable, takes place three times a week.

39. Since these proceedings were initiated, the principle of direct contact has not been in issue. The mother has at all times supported this although at nearly every hearing before me she had wanted it reduced.

40. An attempt to appeal a decision that direct contact should take place was rejected as totally without merit. Despite this, it is very much to the mother's credit that she has supported contact in the sense that she has not stopped the child from seeing his father.

Some Law

41. My role is to look at the evidence and applying the principles set out in the Children Act 1989 work out a future approach to contact which I consider in the child best interests.

42. The child's welfare is my paramount consideration and I have particular regard to the welfare checklist. I should make the least interventionist order which meets his welfare needs. The Article 8 rights of the family under the Human Rights Act 1998 are engaged by the father's proposals for contact and the child's Article 8 rights take priority over his parents' Article 8 rights. Having said that the Court will undertake a balancing exercise between the competing rights. Any interference with the Article 8 rights of a party must be lawful, necessary and proportionate to the aim.

43. Relevant to these proceedings, is that there is a presumption in favour of birth parents being involved in a child's life, but this presumption does not require that the involvement of each of the parents be equal to each other.

44. Rule 3A and Practice Direction 3AA of the Family Procedure Rules 2010 requires the Court in all family proceedings to consider whether a party's participation or quality of evidence is likely to be diminished by reason of vulnerability, and if so whether it is necessary to make one or more participation directions. Given the mother's allegations of domestic abuse by the father, she was considered a vulnerable party and was afforded special measures which were examined in detail at a ground rules hearing before the final hearing began. At one point I was asked to find that an intermediary was necessary to assist the mother give her best evidence. I refused the application and nothing I have seen and heard has led me to doubt that decision.

45. Practice Direction 12J of the Family Procedure Rules 2010 ("PD12J") requires the Court in all family proceedings in which it is alleged or admitted, or there is other reason to believe, that

the child or a party, has experienced domestic abuse perpetrated by another party, or there is a risk of such abuse, to: a) identify the factual and welfare issues involved; b) consider the extent to which the abuse alleged, admitted or evidenced is likely to be relevant in deciding whether and in what terms to make a child arrangements order; and c) whether a fact finding hearing is necessary in relation to any disputed allegation of domestic abuse - in order to provide a factual basis for any welfare report and in order to provide a basis for an accurate assessment of risk before it can consider any final welfare-based order(s) in relation to child arrangements.

46. I have given careful consideration to PD12J over a number of months. From mid-2022 onwards, after considering the positions of the Cafcass officer and the guardians, the Court decided there was no need for a fact-finding hearing. All parties agree that direct contact should take place. It is where, when and how often that needs to be decided by the Court.
47. Any abuse is alleged to have taken place before 2017 and on the mother's account there was just one incident of verbal abuse in front of the child. These past events are not relevant to determine the welfare arrangements for the child.
48. PD12J requires that any contact must be safe and beneficial for the child. I bear in mind that I am not to give excessive weight to short-term problems and any Court should take a medium and long-term view in relation to contact or the parties will return to Court which is not in the child's best interests.
49. Regarding the making of a Prohibited Steps Order ("PSO"): under s. 8(1) of the Children Act 1989, a PSO is defined as: "…an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court." The legal test is whether it is in the child's welfare to make the order. The guardian has proposed three PSOs. These are not opposed by the parties and I make the orders.
50. I have borne in mind all of the principles set out above in arriving at my decisions in this case. Although the statutory language relating to the arrangements for children has changed as a result of the amendments to section 8 of the Children Act 1989, I have used the term 'contact' at times for the sake of brevity and clarity.

Evidence and discussion

51. I have set out the law above. I do not accept that because the court in 2021 found the grave risk defence and did not return the child, that should bind this court in its approach. In 2021, the Court was considering the child's permanent return to the United States without his mother. In the case before me, I am considering what sort of contact with his father is in the child's best interests. I am concerned with holiday contact here and abroad. I am being asked to consider what safeguards may be imposed to ensure the child's return from holiday. Any holiday contact will end with a return to the mother's care. That is very different to what was being considered in the Hague proceedings in November 2021.

52. It is contact abroad which concerned the mother the most. Having abducted the child and stopped contact between him and his father for two years, she is genuinely frightened that he will do the same to her. These concerns date back to 2022 when she said this to the Cafcass officer writing the safeguarding letter.

53. The father had his own concerns, but in relation to whether she would further abduct the child once their passports were released back to her.

54. It is the lack of trust in each other which is the essential problem in this case. There is very little a Court can do about that except to make orders which are in the child's best interests taking into account all the evidence read and heard.

55. The evidence I heard included the parents and the guardian and also Dr Willemsen, the psychologist and the US legal expert.

56. A report from MIND was obtained this year. These specialists had provided an Autism Diagnostic Assessment Report by a multi-disciplinary team ("MDT"). This was unchallenged documentary evidence consisting of a report and then answers to additional questions. It was very helpful.

57. The MDT advice to the parents is worth repeating in full as it underlines the view that both these parents bring value to the child, not just one or the other.

58. The report stated that "The MDT acknowledged that both parents bring their own strengths to parenting [the child] and that they have been able to support him well by sharing information and maintaining appropriate lines of communication such as OurFamilyWizard for the purposes of sharing parenting responsibility and healthcare decisions. The MDT would encourage both parents to continue to maintain open lines of communication with regard to healthcare and educations decisions, joint participation by both parents in any initiatives such as night-time enuresis support for bed-wetting is also likely to ensure that these interventions have a greater chance of success, whilst also ensuring that the additional burdens of time that these interventions and associated training are distributed equitably between parents".

59. MIND had analysed a wide range of information including from the parties and the school. The school said that they had not seen the child "display anxiety, stress or frustration" during the school day. The only time he had been unsettled was when there was a sudden and unexpected change to his day. The school wanted him to manage this, to widen his interests and to be able to take off and put on his jumper on his own.

60. The MIND assessment used a structured interview in a formal setting. The parties were questioned at length (with 93 questions) about the child's general behaviour. There were some lovely examples given of the child around other children. The father described the child being sad and giving his sister his stuffed toy when his sister lost hers. The assessors noted that most concerns reported by the school were rated as mild or moderate or as giving no cause for concern.

61. The child was assessed by a Clinical Psychologist and had to complete various tasks. The assessment conclusion was reached at the MDT meeting on 17th May 2024. They concluded that the child met the criteria for a diagnosis of Autism Spectrum Disorder. They noted the mother was more observant of the child's behaviours.

62. In terms of the child's difficulties with communication, they said it was felt differently across different contexts. They noted that the father reported no substantial concerns and the MDT noted there was evidence of the father showing willingness to attempt to extend the child's tolerance for activities "in a manner that was safe and appropriate, such as his tolerance for noise". This was a positive.

63. They said the contact that the father had was quantitatively and qualitatively different to the mother's and characterised by activities and settings of the child's choosing with more time spent on leisure activities. The report said the impact of the child's behaviour would be felt more in the primary caregiver's home where he would be subject to a higher level of demand to engage in mundane activities which would not be his first choice. This might explain why the mother found the child's behaviour at times to be dysregulated whilst the father did not. To put it in laymen's terms, she had a tougher time with the child because he had fun adventures with the father on an occasional basis whilst he had to do day-to-day activities with his mother.

64. The MDT was also asked to consider whether the child might be masking his differences and difficulties. They pointed out that masking is typical human social behaviour to disguise undesirable thoughts, behaviours or traits. It could be about replicating what an individual may believe is more socially acceptable behaviours or it could be that a person's environment may mask a person's level of difficulty.

65. In terms of whether the child was masking, they said it was a "possible explanatory factor" when considering the way he acted at school, home, at the clinic and with his father but it was impossible to say. The child may have a delayed response to certain situations which only manifests itself when he was at home. It was more practicable to do this where a relationship is a permanent one so the individual is not required to keep up a social façade.

66. Masking would involve additional cognitive effort which could leave an individual more exhausted by social situations. This may cause an individual to misdirect their frustrations towards people who have had no part in causing them, particularly if there is no perceived need to mask their emotions. The MDT put this in context by saying, this is an "entirely typical behaviour in some respects and will be recognisable to most adults of working age".

67. The MDT said the likely scenarios where the child might mask were school and when he was with his father. The question of the child's masking with the school was considered by the MDT but they noted that his behaviours such as liking trains were well received by them, the implication being he would have no need to mask.

68. The MDT could not rule out alternative hypotheses including that school and contact with his father were less demanding or complex than situations with his mother and would elicit fewer traits of autism. An alternative hypothesis was that contextual factors may overshadow "the extent of [the child's] difficulties", in other words, his traits might not be so obvious to the school or his father. In conclusion the MDT said that it was possible he was masking but it was more likely that masking was one of a combination of factors which would explain his different presentation in different contexts.

69. In terms of identifying when the child was masking and responding to this, the MDT recommended that the teaching staff receive some additional training and that the parents be encouraged to get training on how to extend strategies from school to home "in encouraging [the child] to recognise and regulate his emotions".

70. The MDT report was full of good advice. They said that one should be mindful that the child's capacity to accept change and absorb it should not be assumed to be typical for his

age. Any "significant changes to routine or circumstances" should be explained and managed with care. The child would be likely to thrive on predictability, continuity and sameness and significant changes should be introduced gradually.

71. In their responses to the questions, the MIND assessors said that they could not assess the harm caused to the child by his "adverse experiences". In my view it was significant, that there was a consensus amongst the professionals that he may be at risk of emotional harm due to the animosity between the parents. The MDT agreed that the child had not received timely and appropriate support in the past. Both parents could be said to be responsible for this.

72. In terms of the parents, the MDT said that his relationship with both parents was likely to be supported by "both parents continuing to cooperate as much as is possible". The MDT accepted that the parents did not have the opportunity to experience what the other parent did of the child in their respective roles of parenting. The MDT hoped that their independent and rigorous assessment would largely strike a balance between the views of the parents.

73. The MDT encouraged both parents to attempt to establish parity in "understanding, knowledge and awareness of autism so that they are best able to support [the child's] needs". The MDT recommended the parties to familiarise themselves with guidance online. The MDT also recommended mediation for any disagreements.

74. In terms of contact, the MDT could not give a specific recommendation but it said that they would support any arrangement that enabled the child "to enjoy meaningful and lasting relationships with both parents, who both appear to have [the child's] best interests at heart, and with their extended families". The parents should reach decisions jointly or mediate where there was disagreement. This would be "essential to [the child's] future wellbeing". Essentially the report was recommending co-parenting, something the parents have found difficult.

75. Dr Willemsen was a single joint expert, the guardian having taken the lead. The clinical psychologist was instructed to undertake a psychological assessment of the parents and the child focussing on the family dynamics and relationships and the parents' attitude towards the child's needs. He was asked to consider contact. He was not asked to consider whether the child was on the autistic spectrum although in his evidence Dr Willemsen took into account Dr Sales' and MIND's conclusions about the child's neurodiversity. Dr Willemsen was asked to comment on the child's intellectual and emotional development.

76. He filed his first report on 7th February 2023 and an addendum on 24th July 2024. He was asked a great number of questions by the parties, was provided with the updated papers and he gave oral evidence in court.

77. The expert considered the parties' accounts which included the mother saying she had been grabbed by the father on an occasion and that he was controlling and coercive in nature. The father said that whereas the mother said that the child has neurodiversity, and has autism, he was "a great deal more reserved about [the child's] behaviour. He will state he does not observe behaviour akin to autistic traits when he spends time with [the child]".

78. I noted that the father (and the school) had a different experience of the child to the mother. The father doubted that their son had a diagnosis of autistic spectrum disorder as he did not

observe this behaviour. The school also did not consider the child had any particular issues other than he used ear defenders from time to time. Neither of the two guardians who had each observed contact between the child and his father noticed any signs of autism.

79. Dr Willemsen was criticised strongly by Dr Proudman. One of her criticisms of him was that he had set out the different accounts given by the parties and described being given two hypotheses, one by each parent. The two hypotheses were either that the mother was a victim of abuse and her fear and anxiety lead to her leaving the United States or that the mother suffered from paranoid anxiety and the father did not abuse her. Dr Willemsen did not decide the truth of either of these hypotheses. That was not his role.

80. Dr Willemsen said that the child had suffered an unstable life. He had not been in school in England and had lived at a considerable number of addresses in a range of areas and situations. Dr Willemsen was right about this, the child had. Dr Willemsen mentioned other concerns, co-sleeping with his mother at the age of five and wetting the bed. Dr Willemsen considered that the mother had high levels of anxiety and that the child was exposed to this.

81. The expert considered that the child's anxiety might have been not about being with his father but being away from his mother against a background of a child that may have difficulties with transitions. The school and later MIND both said that the child was not good with change.

82. Dr Willemsen said of the mother that she was focussed on the child's neurodiversity but not on environmental factors. Dr Willemsen said that the mother's thinking was concrete, with "minimal reflection on her behaviour and experiences". I noted too from the mother's evidence that there was little to no acceptance of responsibility for what she did to the child, a child who did not like change, in taking him away from all that he had known then moving house repeatedly.

83. The mother said to Dr Willemsen that she could not think of one thing the father had done to improve the child's life. I saw an example of what Dr Willemsen meant when the mother was asked in evidence a similar question. She said the father had taken the child to various activities in London but then went on to find negatives about him.

84. Dr Willemsen had observed contact as had the two guardians, all of whom had seen it was positive. Dr Willemsen said that although he was at ease with his father, he rejected him when he was not with him. It suggested the child was aware of his mother's feelings about the father.

85. In his conclusions, Dr Willemsen said there was a lack of balance in either of the parents. The father thought the mother was using neurodiversity to leverage the child away from him.

86. There was no evidence that I heard which undermined this conclusion which seemed to be justified on the evidence. The father did think the mother was using neurodiversity to leverage the child away from him and he did not accept then that he should have a diagnosis of autism spectrum disorder. Dr Willemsen said that the child was attached to each of his parents but the attachment to his mother was stronger. In my judgment, this assessment too was correct.

87. Dr Willemsen did not attempt to decide which of the parents' hypotheses was the correct one but what he did do in his conclusions was consider that the development of the child's contact was in his best interests.

88. It seemed to Dr Willemsen that the child could make the transition to his father when he had contact with him. The expert accepted Dr Sales' advice that the transition needed to be carefully planned but there were no signs of "catastrophic anxiety" or development of trauma but more of separation anxiety. The child appeared to enjoy being with his father. Dr Willemsen's advice was that contact should be built up gradually to longer periods so that "in time" the child could go to the United States to be with his father. I found this advice particularly helpful.

89. More worryingly, Dr Willemsen was also of the view that the mother was not able to support the relationship between the child and his father due to the view she had of him. Part of these concerns were based on what the child said about his father which he must have got from his mother. In fairness to the mother, there had been little opportunity for her to support a relationship between the father and the child outside proceedings and her abiding fear (this is my comment not Dr Willemsen's) was that the father would remove the child from her.

90. One of my concerns in these proceedings has been that the mother was oversharing with the child. Dr Willemsen noted it and also the first, and very experienced guardian reported it in 2022. The latter said that a worker from an abuse charity said she had had four to five sessions with the child which had then stopped. The child had said to the guardian that the work had ended because of the father's intervention. It can only have been the mother who had suggested that to a young child.

91. When that guardian had interviewed the child in 2022, he said that the mother had told him that his father wanted to take him to the United States. This guardian also said that he had been projected a negative view of staying overnight with his father. Oversharing was something I had noted from the current guardian's report.

92. The original guardian observed contact and saw that the child was enjoying his time with his father. She considered the messages given to the child about his father were negative but she saw the child come out of class to meet his father and lean in for a squeeze. The guardian walked behind them as they walked hand in hand. They were speaking and the child said he would be having a great time.

93. In the original guardian's report dated in 2022 she summarised the parents' approach and said that they remained "polarised as to their understanding of [the child] and his wants and needs". The saddest observation made by the guardian in her report was that despite the parents wanting the child to excel and have the best possible life chances, the continuing parental disputes risked adversely affecting life chances.

94. The second guardian replaced the original guardian and after making enquiries produced her report dated in 2024. I heard from the second guardian. Her most significant evidence was in relation to the child's wishes and feelings. He was scared about going to America and of "being taken away". He knew his mother did not want to go to America. The child expressed negative views about his father and uniformly positive views about the mother. I have dealt with the guardian's recommendations for contact in other parts of this judgment.

95. The child can only have received the information about the United States from the mother. By sharing this information with him, it seemed to me that she was frightening him. The father had said repeatedly that he would not retain the child in the United States whilst the mother had made it clear she did not believe him, but there is no reason why the child should know the mother's views. In my view it is in the child's best interests that this oversharing should stop.

96. The US legal expert gave an opinion on the meaning of the orders that had been made in the United States and how to register any order made by this court to ensure that the child would not be retained in the United States. She wrote various reports and responded to further questions most recently in July 2024. She gave helpful evidence and said that the parties should register the High Court's order in the United States using the wording set out in her report.

97. The answers she gave to Dr Proudman in cross examination were important but not entirely clear. She was asked by Dr Proudman about an order recently made in the United States changing father's sole custody of the child to "temporary shared custody".

98. She said that the order indicated there were still custody arrangements in the United States until the final judgment in terms of parenting was made. A temporary shared custody order was made until a final judgment was entered. If the judgment was enrolled, then the temporary order would no longer have force and effect. She accepted that the temporary order showed that the US court had accepted jurisdiction very recently and that there were decisions made about custody arrangements in the United States at the same time as child arrangements were being made in the London courts.

99. The most concerning evidence given by the US legal expert was that she agreed with Dr Proudman's analysis that the father had, at least on one view of things, set up a potential or possible defence of duress in his petition for modification filed in 2023. This would allow him to revisit an order made subsequently.

100. At 2 c in the petition, the father had said that he did not believe the UK Court would allow him to come to the United States with his son as long as the Order in the local US Court awarded sole decision making and parenting time to him. At paragraph 4 in the petition, he said that the mother had used the London courts to "coerce" him to remove the existing United States Order provisions related to parenting decisions. In paragraph 5, he spoke of it being in the best interests of [the child] that he be allowed to spend time with his family in the United States to rebuild the relationship between his family and the child "which the Respondent ripped from him". It was in that context that the father asked the court to modify the sole custody order made in his favour in relation to the child in 2019.

101. Dr Proudman made the good point that in 2022 there was a court order in London saying that the child was to live with the mother in England and Wales yet seven months later the father was saying in the United States that the London courts had used or were using coercion in relation to contact and residence. The father's explanation that it was his lawyers' who chose the language was weak.

102. In terms of the registering of the England and Wales judgment and order in the United States, the US legal expert said the father would have two years after the entry of the judgment to file a petition on the basis of duress. In contradistinction, the US legal expert agreed that if the father were to retain the child in the United States, in theory he could argue

that the mother was never actually exercising custody as the child was a wrongfully abducted child. The US court would retain jurisdiction and habitual residence would remain there. The time might begin to run from the date the child arrived in the United States.

103. The mother could bring Hague proceedings but these might take a year. She could argue that the retention of the child would be an intolerable situation for him.

104. In conclusion, the US legal expert made clear that if the order made by this court was enrolled and all the safeguards she recommended had been incorporated into the English order, it would be a heavy burden for the father to try and persuade the local US court to refuse to enforce the English order. It was likely that the child would come home and if the father did not do that voluntarily then the local US court would enforce it. She said after two years it would be even harder and it would be very unlikely that the father would succeed.

105. Both parents' earlier statements were about contact and its many failures. In the father's later statement and in his evidence, He had considered the evidence from the experts including the MIND Autism Diagnostic Assessment report from June 2024.

106. From his evidence, I concluded that he had been on a voyage of acceptance. From refusing to believe their son had autism, to a final acceptance having read the clinical assessment carried out by MIND and its MDT. He said he would attend an accredited autism awareness course. He would ensure that S and the paternal grandparents had some knowledge of autism too. He understood that his and the school's experience of the child was different to the mother's. He said he would work with the mother to support the child's needs and would try and ensure he had a consistent routine with the child that mirrored the mother's one.

107. In relation to contact, the father had pointed out that he was the only child of elderly parents with medical issues in the United States and on occasions had had to take them to medical appointments there. He also worked alongside his parents and he had been having various issues with the business since Covid. On occasions he had had to cancel contact to help his parents and once too when the bankers wanted to visit the business.

108. The mother had been in high powered and well-paid work and she had exhibited a spreadsheet of the father's contacts which showed he had missed 13 Facetime contacts since January 2024. Bearing in mind that contact had been happening three times a week since then, I did not find that surprising although I accepted it would have been disappointing for the child.

109. The father spoke of two very successful contacts staying at a hotel although he had had to cancel others. The father pointed out that since July 2021, the father had made 16 trips to the UK to meet the child and professionals. I could see the commitment shown by the father to the child. The mother may not accept this, but too many fathers just walk away from their children. This father had been doing the opposite since the mother disappeared underground in 2019.

110. The issue for him in relation to contact was the difficulty in having contact at a hotel. Contact had to be by way of day excursions. In the United States, the child could have his own room, he could sleep in his own bed and have home cooked food. He would like to take him to football or baseball matches and play in the yard with him. The father felt restricted

in England in the hotels. Another reason for his application was that his ageing parents had not met the child for a long time. His mother was too infirm to travel to the UK. He would like too for the child to grow up knowing his United States identity.

111. He said he would not enrol the child in a school in the United States although he may want to enrol him in holiday activities, if appropriate. He would be happy for the child's passport to be held by a neutral third party in the United States. He was also happy to post a bond of US$5K for the duration of the trip. Furthermore he would provide a return ticket for the child. He would collect the child to travel and bring him to the United States or get a third party to do this. He was willing for the maternal uncle to do it. He would give all addresses that the child would stay at. In this jurisdiction he would try to ensure that the child had his own bedroom so he could be alone when he wanted to.

112. Although in her written evidence the mother had stated that she wanted the father to rent the same home whenever he came over, I considered that an unreasonable demand. The expense would be prohibitive and there was no guarantee that the father would be able to rent the same accommodation, I was content that the father would try and ensure that he got a separate but interconnected room for the child.

113. In terms of abducting the child, the father said that he would not dream of it as he knew how harmful it would be for him. The child's home was England now. He knew what it was like to be at the receiving end of an abduction. I found this evidence credible. He had found it very upsetting and also S and the paternal grandparents had suffered in the two years when they did not know where the child was. Having heard his evidence I found it was unlikely that he had an intention to unlawfully retain the child in the United States but I could see that the mother believed that was his intention.

114. In relation to the experts' evidence, the father was willing to take any steps that this court ordered including in relation to the enrolment of the order as a foreign judgment in the local US court using the wording recommended by the US legal expert.

115. The father said he accepted that the English Court had jurisdiction over the child on the basis of his habitual residence and he would undertake not to petition the United States court or seek to appeal the order in the United States.

116. He assured the mother also that he was not aware of any criminal case in the United States and undertook not to assist in any prosecution. On the second day of evidence, the father received an email from the FBI making it clear that it did not have an active investigation into the abduction.

117. Whereas the mother was concerned about the child travelling in a plane, the father had done some preparation and he was able to point out that there were airlines which support young people with autism and some produce age related appropriated literature, such as 'Taking an airplane: A guide for people with autism'.

118. He would wish the child to travel on his United States passport and certainly immigration queues would be considerably less coming into the United States on an American passport.

119. The differences between the parents was shown in the mother's evidence. She said that the father's approach to the child caused her distress. He was not willing to co-parent with her. He was trying to portray her as unstable. I did not gather that from the evidence I heard; whatever happened in the United States had not been the case in these proceedings.

120. The mother complained that the father refused to recognise that the child had additional needs and said she did not think he was meeting their son's needs. In her earliest statement the mother was concerned the father did not seek to have any insight, understanding or acceptance that the child may have autism which was damaging for him.

121. From her earliest statement in these proceedings the mother said that the child would return from contact, distressed and dysregulated. She said that he struggled with a change to his routine. His enuresis increased and his sleep pattern and diet were affected. The mother was concerned about the lack of structure in relation to the four nights he stayed with his father. She said the child needed to be able to use his pull ups, his chew toy and his ear defenders.

122. The mother's concerns could be catered for by the mother telling the father about the child's routines on the app OurFamilyWizard. The father would have to be able to accept that he needs to mirror the child's routine with his primary carer. In short, co-parenting needed to happen.

123. The mother's view was that the child masked his difficulties with his father. The MIND report said that this was possible but it was more likely that a combination of factors explained his different presentations in different contexts. I accepted that if he was masking this was an "additional cognitive burden" for him and that this could leave them "more exhausted by social situations than others…". I accepted that if masking was taking place this "may cause" him to misdirect his frustrations towards his mother who had no part in causing additional demands. I concluded from the MIND report that if the child was masking it was essentially that he was on best behaviour at school and with his father but had no need to camouflage his difficulties with his mother.

124. I agreed with the mother that for a long time the father had been in denial that the child was on the autistic spectrum but that was because he showed fewer of the traits when he was with the father (and indeed at school).

125. The mother said the father had prevented the child from getting the support including therapy that he needed. This had caused direct harm. She blamed this on the father's need for control. She said the father had not supported the child from birth. He failed to recognise the importance of the child having access to specialist support.

126. In her later statement, the mother reminded the court that the father was coercive and controlling towards her. She said that his conduct through the courts had become more aggressive, had harmed the child and herself, and lead her to a complete breakdown in trust in him. It must be said I had not observed this aggressive behaviour during the numerous hearings I had presided over. This certainly was not a case of lawfare.

127. In relation to the mother evidence, I was struck by her failure to take any responsibility for these lengthy proceedings. The Hague proceedings were pursued because she had abducted the child and the child had had not contact with the father for two years. When the mother reduced and cancelled contact after those proceedings finished, unsurprisingly the father had had to start proceedings to ensure the child was able to have contact with him. In these proceedings, the mother had resisted contact (although she had not breached a court order), going from supporting supervised only contact in to supporting only three overnight contacts at any one time and renewing her applications for a reduction of direct contact at nearly every hearing.

128. During her evidence in court, I made an allowance for the anxiety the mother would have undoubtedly felt in giving evidence about something as important as the child, but I was struck nevertheless that she did not accept any blame for the continuation of the proceedings. There was no sign of regret that she hid the child for two years moving addresses continuously, a little boy who needed routine and consistency. She was unable to find anything positive to say about the father, which threw into relief his approach where he accepted she was a good mother who had brought up this delightful kind little boy with good manners (my summary of what he said, not his exact words).

129. The mother raised a number of concerns about contact. This included that the father and his family would influence the child against her. The mother felt that the father had behaved poorly in relation to S and her mother (the father's ex-wife). I was not going to go into the detail of what had or had not happened six or more years ago but what I did note was that the father splits S's holidays including Christmas with her mother. During the hearing, it was clear that S was with her mother and was staying longer than had been planned so the father could see the child for four days after we had finished in court.

130. The mother criticised the father for pursuing contact in the UK. She blamed him for wanting four nights in a row with the child, and not wanting him to decompress at home. She provided the contact spreadsheets showing the missed Facetime calls. He had had to cancel direct contact on occasion and she was concerned that the father had many competing priorities. She said she believed the father prioritised his own interests over the child's needs and this posed a risk to the child's emotional and psychological safety.

131. She also complained that the father did not take the child to his art class when he overslept due to the fire alarm going off in the hotel, she said this "also raised concern in [the child] being taken out of bed in the middle of the night with a loud alarm, particularly given [the child's] noise sensitivities". The child expressed concerns about missing the class. This was a surprising complaint. It was hardly the father's fault a fire alarm went off and what was he supposed to do, let the child sleep through it?

132. Her proposals were for contact to only occur in England and Wales. She said, and this was something the parties were agreed on, that the child needed regular and predictable, contact.

133. In relation to proceedings in the United States, she said the father had on-going litigation in relation to the child in the United States and she did not understand why. She said he had failed to discharge this and if he were genuine about his acceptance that the child was to live in England, it would have stopped. The mother also criticised the father for not trying mediation but choosing litigation. She was particularly bitter that the United States court had transferred her entire pension to the father including her pre-marital funds. I noted this was in the context of the father's expenses in the local US courts.

134. In terms of the quality of contact in the United States the mother said she suspected that if the child went to the United States he would spend his time in a property owned by the father's family.

135. As to her own health, the mother explained that she was exhausted, she had been referred for CBT for trauma and suspected PTSD. She put the exhaustion down to the continuing battle with the father. She had had to watch the child suffer when he could have been receiving "community support" for his autism.

136. Overall, my impression of the mother was that there was very little acceptance of responsibility that what she did to the child in going underground may have had an effect on him. There was no insight, empathy or understanding of the pain and suffering that the father had gone through. He described that it was not just him but also S and the paternal grandparents who had suffered. They had no idea where the child was and even if he was safe. The mother's aim in disappearing was to ensure she had a settlement defence. It was a poor reflection on her that she did not even send messages through a third party that the child was well when Covid was an issue and the mother had not been vaccinated.

137. What I took from her evidence, and I accepted Dr Proudman's submissions to this effect, was that she was genuinely frightened that the father would retain the child in the United States and would get him there if he was allowed even a European holiday with the child. This fear was deeply felt and based on her interpretation of past events, including, what she perceived to be the lack of fair treatment she received from a particular Judge at the local US court. Whether her fears were rational or not did not matter, she felt them deeply. Dr Proudman reminded the court that these fears were likely to have an impact on her parenting if they were not taken into account when looking at contact.

138. Ms Best for the father, made a number of fair points about the mother's evidence. First, she observed that the mother's subjective fears were not of such seriousness that they interfered with her parenting ability. Ms Best also made the point, second, that the mother refused to accept that the father agrees that the child now lives with her in England. Third, the mother said that she believed the father was trying to eliminate her from the child's life and she was not able to see any circumstances in which the child could go to the United States. Fourth, she held negative views about the paternal grandparents.

139. Ms Best's final point was what she called in her written submissions the "deafening silence" when the mother was asked whether she would comply with an order for the child to visit the United States. The mother said she would exhaust all legal avenues first. Not exactly a ringing endorsement for future contact abroad.

140. What much of the parties' evidence came down to was a striking lack of trust between the parents. This would not have been helped by these long running proceedings and the combative approach taken. The issues were only narrowed during the hearing. They could have been narrowed before.

141. The present guardian's recommendations were for reduced Facetime contact to make it more reliable, four day contacts, leading up to a visit to Europe for seven days and then a visit to the United States for ten days.

142. Dr Proudman on behalf of the mother argued for no contact outside the jurisdiction and the mother's proposal was for a return to court in two years to look at any future visits abroad.

143. The father wanted visits abroad to start very soon indeed and supported the guardian's proposals wanting eventually half of the holidays.

144. Although I accepted it was unlikely that the father would retain the child in the United States, it was unfortunate that his petition to the local US court included language which would have done nothing except exacerbate the mother's fears. Dr Proudman was right when she said the impression given by the court document was that the father was preparing to argue that any order made by this court was obtained by duress.

145. When I came to consider what is best for the child, I had his wishes and feelings from the guardian which were entirely negative about the father and included his fears of being retained in the United States. As against that, I had the observations of the guardians and others that he was happy to see his father and had a lovely relationship with S. What they saw in contact contradicted what he had told the guardian. I was of the view that his wishes were expressed in the way they were because the mother had been oversharing information with him. He knew his mother's views and wanted to support her.

146. The MIND report was important, not just because it diagnosed the child but it made it clear that his needs would be met by co-parenting. MIND supported an arrangement which would enable the child to enjoy "meaningful and lasting relationships" with both parents and their extended families. MIND considered that both parents had his best interests at heart. The parents should both re-read the MIND report.

147. There was no doubt that although the parents had a different approach to parenting, they could each meet the child's physical, emotional and educational needs. Any difference in approach would have to be managed by better communication on the OurFamilyWizard app. The father in his evidence had committed to working better with the mother to ensure the child had the support he needed. The mother has been impressively pushing the school and professionals to ensure that the child gets any support he needs and the father should get behind her and help as much as he is able to from abroad.

148. If the father were to retain the child in the United States, this would be a catastrophic change in circumstances for the little boy. This is the mother's worst fear. In the same way, the father fears the mother will disappear again with the child. Both need to try and understand and accept the other's fears. Unfortunately there seems to be an inability to see the situation from the other party's perspective.

149. In terms of contact, no party has agreed on a way forward. I accepted that the father had on 13 occasions failed to Facetime contact their son. This would have been upsetting for the child particularly as with his autism spectrum disorder he thrives on predictability and "sameness" (the MIND report).

150. I was urged to reduce Facetime contact to twice a week. I will do so, the father has a number of claims on his time, not least his parents' medical visits and a business which is giving trouble. He should make every effort to make contact twice a week for the child. On top of the twice a week for the father, there should be a weekly contact for either Sor the grandparents, if they wish to take this up. This should be planned in advance with the mother and be reliable. I am not expecting it to be every week but the child's relationship with S is an important one and is likely to endure for the rest of his life. It should be encouraged.

151. As to direct contact, the guardian was suggesting a continuation of four nights and five days before an increase to seven days and then ten. Dr Willemsen suggested a gradual build up. The guardian suggested twice a year and the father four times.

152. In view of what I know of the child and his special characteristics, in my judgment there should be a gradual build-up of contact. The child will know that it will be an extra night each contact. The change of circumstances will be planned, explained and managed with care. Any other approach, including a sudden increase, may cause him emotional harm. There will be one extra night at New Year 2024 bringing it up to five nights then at Easter

2025 it will be six nights. In Summer 2025 it will be seven nights and so on, except that at Easter and Christmas it will remain at a maximum of seven nights. I would expect any Summer holiday to increase gradually up to 14 days over the next three years, so that by the Summer 2028 he will spend 14 days with his father which will enable him to travel to the United States and back.

153. The father explained that he would have S every other Christmas and was arguing that his contact should be Christmas one year and at New Year the following year. The guardian's view was that the child needed the routine of knowing that every year he would be with his mother for Christmas but his father for New Year. I was persuaded that the guardian's view was the correct one based as it was on the child's need for consistency.

154. The mother is concerned about how the child will adapt to the experience of flying. It might be sensible for the father to spend one or more of his contacts taking the child to the airport or taking him on internal flights from 2025. I suspect if he likes trains and does not mind their noise, he may become very interested in aeroplanes. He will be prepared better then for eventual long haul flights to the United States.

155. Both parents are capable of looking after him and can meet his needs. They should each bear in mind that according to MIND the child should be enabled to enjoy "meaningful and lasting relationships" with each of them. The mother must accept that even with better communication, the father will have a slightly different approach to bringing up the child. The father must realise that it is in the child's best interests for him to mirror the mother's routines with the child as much as he is able to in a hotel. That is important for any child being brought up in two different homes but particularly so for this child with his diagnosis.

156. The mother had difficulties in accepting that the father is capable of looking after the child appropriately but all the evidence says he is. I have had to consider the differing submissions in relation to how often contact with the child should be. The father wanted four times a year, the guardian and mother twice. Twice is a very low amount for the child who whatever he might say to the guardian and his mother, enjoys contact with his father and S when she can join in.

157. Having considered the holidays, it seems to me that there should be contact during each long school holiday, in other words, three times a year, at Christmas, Easter and in the Summer. This would give predictability to the child which is what he needs.

158. From all the evidence I have read and heard, the mother is genuinely very frightened that the father will do to her what she did to him, ie unlawfully retain the child. On the one hand, my view of the father was that it was unlikely that he would do that. On the other hand, the US legal expert's evidence was not as clear as it could have been and was not helped by an ambiguous Supreme Court case which might need to be taken into account.

159. Dr Proudman described the US legal expert's evidence memorably as "flip flopping", but where she ended up was that even taking into account the petition submitted to the court by his lawyers, it would be an uphill struggle (my words not hers) for the father to retain the child in the United States and argue duress.

160. In my judgment, as time goes by the likelihood of the father being able to successfully argue this would reduce and the mother should know that. I am trusting that without the involvement of the courts, over time, a modicum of trust may grow between the parents.

161. In terms of timing, any order I make using the wording recommended by the US legal expert has to be registered in the local US court. That will take about two months. There is then an appeal time. Dr Willemsen suggested that "in time" the child could go to the United States. I agree with him.

162. There are a number of approaches the Court could take to the child visiting his family in the United States. The guardian's approach is that it should be done rapidly and once the order is registered inthe local US court, it makes no difference whether the child goes next year or the year after. Ms Cabeza said there was no magic in allowing an appeal period of two years before a visit took place. Another approach is that of the mother, that it should not happen at all. I do not adopt the approach of the mother, as in my view there needs to be regular visits to the United States for the child to experience the other half of his family and the country where he was born.

163. In my judgment, there should be no visit to the United States before some time has passed. This is perhaps an optimistic viewpoint, but the parents have been in proceedings since the child was a few months old. They need to be out of proceedings now to develop more of the co-parenting relationship that MIND recommends as being best for the child. They should be given time for the father to increase his understanding of autism and to show the child that this is the case, for the mother to feel that rather than denying the child has issues, that the father is accepting he has and wants to support her in her life with him. They need above all to develop a working relationship and trust. They have many years of co-parenting in front of them and will need to communicate. They should be given the chance to do this before any visit abroad. This will take time.

164. The mother's subjective fears and anxiety will be present whether the child visits Europe or the United States. Despite these, with the various safeguards in place that have been recommended by the guardian, on balance, I consider it is in the child's best interests that in the summer of 2027 he should go to Europe. He would be old enough to really enjoy Disneyland by then.

165. Having considered the competing arguments, in my judgement, a visit to the United States should happen but not before May or summer 2028. If he were able to go to S's graduation without missing school I would support that otherwise it should be the Summer of that year that he would visit the United States.

166. Any "significant changes to routine or circumstances" should be explained to the child and managed with care. The child will thrive on predictability, continuity and sameness and significant changes should be introduced gradually. The parents need to bear that in mind in their approach to their son when it comes to increasing the father's contact.

167. In the longer term, contact will need to increase. What I have set out is the minimum. As the child gets older, he may well expect increased contact in the United States and this is something the parents will have to discuss in the future.

168. I am conscious that my decision does not accord with the guardian's expert advice that there should be an earlier visit to the United States but I am concerned about the mother's silence and hesitation when she was asked whether she would comply with an order that the child go there. There is more chance of the mother supporting contact abroad if it is when the

child is older. A visit to the United States in 2028 is in the child's best interests. Further annual visits to the United States should follow.

169. In terms of contact, the MDT could not give a specific recommendation but it said that they would support any arrangement that enabled the child "to enjoy meaningful and lasting relationships with both parent, who both appear to have[the child's] best interests at heart, and with their extended families". The parents should reach decisions jointly or mediate where there was disagreement. This would be "essential to [the child's] future wellbeing". Essentially the report was recommending co-parenting, something the parents find difficult. It is not in the child's best interests that he should be involved in further proceedings.

170. In terms of the renewal of the child's American passport, the mother has refused to do this or consent to it. She now knows there is no criminal investigation into the retention of the child in England and Wales being conducted in the United States. I find it is unlikely that the United States embassy would retain the child (and it is very unlikely that the mother would be retained) on a visit there to renew his passport. I understand this is an interference with the mother's parental responsibility, nevertheless I consider it proportionate and necessary to dispense with the mother's consent. The child will need a United States passport in the future and it needs to be renewed later this year or early next. The Port Alert in relation to the child will remain in place for 12 months. This should give some security to the mother. If the mother will not attend the embassy to renew his passport then the father will have to. It is a matter for the mother.

171. In terms of the return of the mother's passport and the discharge of the Port Alert which were imposed to prevent her from going abroad, the father opposes this as he is concerned the mother may well disappear again. I can understand his concerns and note they are the mirror image of the mother's concerns about any possible retention in the United States.

172. The mother seems settled in England, she lives with her mother and I believe her aunt. The child is in school and any disruption would not be in his best interests. My analysis of the mother leads me to conclude that she would not put the child through the constant moves that she did before. He is of an age where he needs to be at school and being socialised, she knows this. I grant the mother's application.

173. Finally, the bond, the father suggests US$5K whilst the guardian suggests £10K which is about $15K. Ms Cabeza for the guardian pointed out that recital 13 in the proposed order where the wording from the US legal expert is set out, allows for the offending party to pay the costs in the United States (in a retention case). Against that, I would observe that the father might not be considered to be the offending party. If the child were to be retained, the mother would need access immediately to a pot of money. She is currently on universal credit.

174. In my judgment, the father should post a bond of the sterling equivalent of US$25K. This should be paid in at least 14 days before any trip abroad and should be returned after the child has got back home. I have picked a larger amount because according to the US legal expert, this is about what a contested Hague application costs in the United States. If the child were to be retained the money could be used by the mother to ensure the child is returned home.

175. I accept the father will have difficulty raising that amount of money, but he will have more time to save this money before the first trip abroad with the child in 2027 plus I cannot see

that a businessman such as he, could not borrow this amount of money for a relatively short time. It is only if he were to retain the child that he would lose the money.

176. I am conscious that there are some further provisions in the guardian's suggested order including in relation to treatment for the child and the father being given notice of this. These and various other provisions have been agreed by the parties.

177. I have found there to be some oversharing occurring. This puts the child in the middle of this fractious relationship. The parties should not do this. It is damaging to the child and will cause him emotional harm if this continues. Appropriately worded undertakings should be given or the matter should be covered by a recital.

178. This is my judgment.