



Neutral Citation Number: [2020] EWHC 3782 (Fam)

Case No: FD19P00298

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2020

Before:

MR DARREN HOWE QC

SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

The Mother	<u>Applicant</u>
- and -	
(1) The Father	<u>Respondent</u>
(2) The Children	
(By their Children's Guardian)	

L (Children) (Domestic Abuse: Stranding/Abandonment) (Continuing Risk of Emotional Harm)

Mr Brian Jubb (instructed by **Dawson Cornwell Solicitors**) for the **Applicant**
The **1st Respondent** appeared in person
Mr Christopher Osborne (of **CAFCASS Legal**) for the **Children**

Hearing dates: 19 and 20 November 2020

Approved 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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MR DARREN HOWE QC:

The Application

1. The court is concerned with the welfare of a sibling group of children. To preserve their anonymity, I shall refer to them as ‘the children’ and alter other information from this judgment that might lead to their identification. The application before the Court is that of the Mother who applied, under the Inherent Jurisdiction of the High Court, for an order that the children be returned to England and Wales from a foreign jurisdiction that I will refer to as Country B. A complicating feature of the case was, at the time the Mother made her application, she was also in Country B with the children having, she alleged, been abandoned there by the Father. The mother’s application was heard by His Honour Judge Rogers, sitting as a Deputy High Court Judge. A judgment determining the disputed facts between the parents was given on 7 February 2020.
2. The proceedings were listed before me for the final welfare hearing, primarily to resolve arrangements for the children following their return to this jurisdiction. However, a number of other issues arose that required determination. As a result, I reserved judgment following the hearing of the evidence. Given the number of issues considered, this judgment is unexpectedly lengthy.

A Summary of the Relevant Background

3. The children were born in England and hold UK citizenship. The Father was born in Country B, but now has UK citizenship. During the relationship, the mother had permission to remain in the United Kingdom by reason of her marriage to the Father but she is a citizen of a third country, Country C. In 2016, the family visited Country B for the purposes of a holiday and to visit both the paternal and maternal grandparents who reside there. During the trip there were a number of disputes between the parents. The Father returned to England without the Mother and children but, on the finding of Judge Rogers, brought with him the travel and identity documents that the Mother and children needed to leave Country B and re-enter the United Kingdom.
4. As a result, the Mother and the children were left stranded in Country B. Although they were able to stay with relatives, the children had no access to formal education. The Mother and children were reliant on the generosity of family to meet their needs. They had entered Country B on a 90-day visa. That visa was extended on one occasion, but thereafter the Mother and children were over-stayers. As explained by the Children’s Guardian when she gave her oral evidence, the children were “stuck. Stranded and not able to access school, health or social opportunities. This was the children’s lived experience and the context within which they were raised”. The Guardian described the impact on the Mother and children as considerable. The children were just 4 years old, 2 years old and 16 months old when they were abandoned by their father in Country B. In his judgment, Judge Rogers described the impact on the Mother and children of the abandonment in the following way:

“I am satisfied, as will be plain from my findings, that the mother's continued presence in Country B is against her will and has been caused by the

circumstances I have described and brought about, in part, if not in whole, by the father. Her freedom of movement as an overstayer is now limited. She is not, I find, “literally a prisoner in her own home”, as perhaps her father had sought to suggest, but on her own evidence, which I accept, she really does not go out; she is in fear of apprehension. Her circle is very limited to the immediate family in the flat, which although spacious is plainly overcrowded, but neither she nor the children have any real sense of social integration.

The children are not in full-time education; they are not receiving proper tutoring, merely informal assistance from their mother. They have no access to proper healthcare. Although that is not an issue since their health is good, it remains, nevertheless, an important deficit. There is no real element of social interaction. There is no evidence of frequently going out and visiting and participation in activities, and there is no evidence and I find little financial stability for the mother or the children. They are, I suspect and I find on the evidence, highly dependent upon charitable help from the family. The mother has, I am satisfied, an online and social media profile, but that, if anything, reinforces the point of isolation rather than proving integration.”

5. Although the Mother attempted to obtain a return of the travel documents from the court in Country B, and sought help from the British High Commission, those efforts were unsuccessful and it was not until the children were made wards of this court, and the Father was ordered to take the steps required to secure the return of the children, that the Mother and the 3 children were able to return to England. They arrived back in England on 3 March 2020, almost 4 years after they had left.
6. The order for the return of the children was made following a 5-day hearing in February 2020. The Mother had obtained the services of an English solicitor and, in June 2019, issued her application seeking orders under the Inherent Jurisdiction for the return of the children to England.
7. On 7 February 2020, Judge Rodgers handed down his judgment. He determined the allegations of domestic abuse made against the Father and the dispute concerning how the children came to be stranded in Country B. The Father had filed 2 detailed statements and was represented by counsel at that hearing, as was the Mother. It was the Father’s case that the Mother had chosen to stay in Country B and had then prevented him from having contact with the children. The findings made by the Judge concerning domestic abuse were as follows:

The Mother was subjected to physical, mental and emotional abuse by the Father.

- (i) On one occasion when one child was one month old, the Father pushed the Mother to the floor and hit her with a wire. He sat on her chest and choked her and hit her head on the floor several times. He slapped her face several times at a time when she was suffering from facial paralysis. The Mother became unconscious as a result.
- (ii) When a child was 3-4 months old the Father turned the Mother out of

the house. He shouted at her and dragged her out by her arm.

- (iii) The Father would, at times, slap the Mother on her face.
 - (iv) The Father was controlling of the Mother. He isolated her, made her stay in the house, prevented her from meeting new people and monitored her phone. He told her to keep purdah (seclusion from males who are not immediate relatives) and not to use make-up.
 - (v) The Father and the paternal family members pressurized the Mother not to see her family members when they visited Country B. The Father told the Mother if she visited them, he would strand her with the children in Country B.
8. When addressing more general behaviours, Judge Rodgers found the following:
- (a) "In the most general sense.. he (the Father) sought to take advantage of an imbalance of power in the relationship and to impose his will".
 - (b) "I have found, and I repeat, that I accept that the Father's motivation was to undermine the Mother's position and the consequence, whether deliberate or de facto, was to strand her in Country B in an effective legal and practical limbo. I therefore make that specific finding".
 - (c) "the circumstances in which the Mother and children find themselves, by the actions of the Father, ... have caused harm and almost certainly have acted to their detriment".
9. With regard to the allegation that the Father deliberately stranded his wife and children in Country B, Judge Rogers found:

"I am quite satisfied that the passports, and other relevant visa and travel documentation, were at the time of his departure with the Father and I have no reason to suppose are not either in his possession or certainly under his control. But it goes beyond that and I make a positive finding: I reject his denial. He had every incentive, I find, to retain the documents. His goal in that regard was to create difficulty for her and therefore to isolate her; it made sense. If he had her passport then she would be stuck. If he had the children's passports, although the plans themselves had not yet been formed, there would, in his view, no doubt come a time when he could facilitate their travel to the United Kingdom without the mother, particularly if by then she had had to leave Country B, most probably to go to Country C. His swift departure is also, in my judgment, significant. He said that there were a range of reasons, partly practical, partly financial and partly to avoid himself being stuck in Country B, but overwhelmingly I find his departure was a response to the family breakdown and his desire to isolate and weaken his wife and children's position. It is, I am sorry to say, demonstrative of a selfish outlook. He may have had his own practical and financial reasons, but he appears to have paid little regard to the consequences for the others. It was, in the heightened emotional circumstances of that time, also a punishment for her attempts to rebuild her quality time with her own family."

10. At the conclusion of the fact-finding hearing, Judge Rodgers made orders that secured the return of the children and their mother to this jurisdiction. Since then, there have been a number of case management hearings, at which a non-molestation order was made and a money judgment given due to the Father's failure to pay the costs associated with the return of the children; costs that Judge Rogers had ordered that he meet. Importantly, the children were joined as parties to these proceedings. The children are represented are represented through their children's guardian by Mr Osborne.
11. The Father is unrepresented. He seeks an order that he spends time with the children and does so directly, and in-person, rather than by any indirect means. He also seeks the return of his passport that is retained by the Tipstaff. The Father rejects all the findings made against him by Judge Rodgers. He continues to assert that the Mother chose to remain in Country B, an explanation rejected by Judge Rodgers. He denies stranding the Mother and children and he denies that he was ever a perpetrator of domestic abuse. In his position statement filed for this hearing, he accuses the Guardian of bias against him and says "CAFCASS and the Court have fundamentally failed the children and the father with primarily failing to acknowledge the parental alienation committed by the applicant mother especially since 2016."
12. The Mother is represented by Mr Jubb. She opposes the father's application for direct contact and supports the recommendations made by the Guardian that there be no contact until the Father has completed a domestic abuse prevention course [DAPP]. She opposes the return of the Father's passport as she believes, were he to have it, that he would be likely to attempt the abduction of the children. The Mother now agrees some limited indirect contact by way of letters and cards at a frequency of one letter from the father every 2 months, with the children being encouraged (not required) to reply in the intervening month.

The Arrangements for the Oral Evidence of the Mother

13. Regrettably, although the Father has represented himself since the conclusion of the hearing before Judge Rogers, no advanced planning had taken place for how the Father's cross-examination of the Mother would be conducted without the assistance of legal representation. I raised this with Mr Jubb at the commencement of the case and gave him time to have discussions with his client. I was then informed the Mother was not opposed to the Father asking direct questions of her. I asked the father to outline the issues he wished to raise with the mother so that their relevance to the matters I have to decide could be established. I did not require the Father to set out his questions, as I took the view that requiring him to set out his cross-examination in advance would be putting him at a disadvantage as the same had not been required of the Mother. When the Father described the issues he wanted to raise, Mr Jubb had no objection to those matters being put to his client directly by the father.
14. This was a hearing heard remotely over Microsoft Teams so the Mother and Father were not physically present in the same courtroom. We proceeded on

the basis of the Father putting his questions in English. If what he asked needed to be reframed into a question, I did so before the question was translated into Urdu by the interpreter present to assist the Mother. Although the Father strayed off the list of topics he had provided, his manner was entirely appropriate and the Mother provided clear, and firm, responses. The Father was able to ask relevant follow-up questions without causing upset or distress. Indeed, the Mother only became visibly distressed in response to a question I asked concerning the effect on the children of being unable to leave Country B.

15. It proved to be the case that the taking of the Mother's evidence via the remote hearing platform, and through the interpreter, was enough of a special measure to enable the Mother to give her oral evidence even when being questioned by the Father himself. However, it was far from an ideal situation. Advanced planning for how an unrepresented party is to put his or her case to the alleged victim of their behaviour is always necessary. It will be all the more necessary once the provisions of the Domestic Abuse Bill currently before Parliament come into force and the cross-examination of a victim in circumstances such as these is prohibited.

The Father's Denial of the Findings made against him

16. Following the conclusion of the fact-finding hearing, these proceedings had the benefit of judicial continuity, with 5 case management hearings coming before Ms Justice Russell. As is clear from the orders in the bundle, the Father was informed by the Court that the findings made by His Honour Judge Rodgers would stand, and be the basis from which welfare decisions will be made, unless they were overturned on appeal. In the order of 22 May 2020, the following recitals appear:

“The Father indicated in his position statement and in his oral submissions that he intends to seek permission to appeal the findings that were made by HHJ Rogers in his judgment dated 7 February 2020. The Father was informed that he would have to seek permission to appeal that judgment either from the trial judge or from the Court of Appeal.

The court indicated that unless and until the Father had been given permission to appeal the findings contained within the judgment, it would continue to give directions to progress the welfare enquiry in relation to the children.’

17. A similar recital appears in the order of 3 September 2020:

“The Father indicated that he does not accept the findings made by His Honour Judge Rogers contained in his judgment dated 7 February 2020 and the Court indicated that unless and until the Father had been given permission to appeal the findings contained within the judgment the Court will continue to be bound by those findings and make decisions about the welfare of the children accordingly”.

18. As I have explained above, the Father does not accept the findings made in February. Despite the warnings provided by Ms Justice Russell, the Father has not issued an appeal. He told me that he has not done so as he cannot afford legal representation. Both the statement and position statement he filed for this hearing very much concentrate on his rejection of the findings and his case that the mother has alienated the children from him. In his questioning of the Guardian, and in the questions he raised of the Mother, the Father sought to put his case from the perspective of the findings being wrong. It was necessary to bring the Father back to focus on what he says should happen within the context of the findings having not been appealed or otherwise disturbed. Within that focus, he was told he would be permitted to ask whatever questions he thought necessary of the Guardian, and of the Mother as refined by me. However, the Father regularly strayed into asking questions on matters that were addressed by the fact-finding judgment.
19. The first witness called was the Guardian, as it is her recommendation that is relied upon by the Mother. The Father was largely successful in asking questions rather than making comments. It was clear that he had spent some time preparing his case and his questions.
20. During the Father's questioning of the Guardian, I raised with the parties whether the matters being put by the Father had been addressed at the hearing before HHJ Rogers. The Father was asking about social media postings made by the Mother and told me that he had sent the recordings to the court but they were not expressly addressed, even though the Father was, at that time, represented. The Father raised these social media postings as supportive of his case that the Mother had alienated the children from him. As the evidence continued, the Father raised a number of specific issues that he relied upon as reason to conclude that the findings made against him were wrong.
21. As the Father represented himself, but with the support of a McKenzie friend on the 2nd day of the hearing, I did not expect him to know of the ability of the court to review its own findings, following the principles set out in *Re ZZ and Others* [2014] EWFC 9 and more recently by the Court of Appeal in *Re CDT (A Child: Rehearing)* [2020] EWCA Civ 1316 and *Re T and J (Children)* [2020] EWCA Civ 1344. Prior to the commencement of the hearing, the Father had not made any application for the court to review the findings made by HHJ Rogers. However, the content of the documents he produced gave reasons why he considered the conclusions reached by HHJ Rogers were wrong. I invited representations from the parties to address whether I should, of my own motion, treat the Father as making an application for a review of the findings as explained in the aforementioned authorities.
22. One of the possible outcomes of this hearing is an order that the Father has no contact with the children other than very limited communication via cards and letters. The consequences of the decision I make are potentially grave for the Father's relationship with his children and I took the view that he should not be disadvantaged by being unrepresented and his lack of knowledge that an application could be made by him for this court to review the findings made by

HHJ Rogers if, but only if, this court was satisfied that the requirements imposed by the aforementioned authorities were met.

23. Before treating the Father as having made an application for review, it was necessary to consider what prejudice might be caused to the Mother in the absence of a formal application, on notice, having been made. The Mother was represented before HHJ Rogers by Mr Jubb, who also represented her before me. Due to various connectivity issues and the need for the Mother to collect the children from school, who would then have been in the house and able to hear the proceedings, it was necessary to finish early at the end of the first day. The shorter day resulted in only the evidence of the Guardian being completed. Before we started hearing evidence on the 2nd day of this hearing, I invited representations from all parties. Mr Jubb and Mr Osborne did not object to the court treating the Father as having made an application for the findings of HHJ Rogers to be reviewed and considering whether, or not, stage 1 of the 'test' for such a review was met. Although this was a slightly unusual procedure, the hearing continued with the father advancing his case that the findings made by Judge Rogers should be reviewed, alongside his case that he should be granted direct time with his children within a Child Contact Intervention program [CCIP]. In truth, it was impossible for the Father to separate his views concerning the findings made against him from his case that he should be granted direct time with the children.
24. When the Father gave his oral evidence, I informed him that he could tell me whatever he thought I needed to know to make a decision about his children. I was unconcerned whether what he said could properly be labelled as evidence or argument. The Father had prepared what he wanted to say. He carefully read through his note and answered questions I asked as they arose during the course of his evidence. He was cross-examined by Mr Jubb and Mr Osborne. Although his focus remained on the inaccuracy of the findings and his allegation that the mother had alienated the children, he gave his evidence clearly and forcefully but he politely pressed his points and clearly communicated his desire to have direct contact with his children.
25. At the conclusion of hearing the oral evidence, when the parties made their closing submissions, I invited them to address, in addition to their submissions concerning the appropriate welfare outcome, the following matters:
 - (a) What factual issues were now raised by the Father that were not raised before HHJ Rogers?
 - (b) Whether matters not raised could have been raised before HHJ Rogers?
 - (c) What submissions now made arising from the evidence, old or new, were not made before HHJ Rogers?
 - (d) Whether those submissions could have been made to HHJ Rogers?
 - (e) Whether the matters now relied upon by the Father, taken together, constitute some real reason for revisiting the findings and present a solid ground for challenge to the facts as found by HHJ Rogers?

26. On behalf of the Mother, Mr Jubb made his closing submissions addressing both the Father's deemed application and the child arrangements order sought by the Mother. Unsurprisingly, the Father sought time to formulate his submissions and wanted to present his closing arguments in writing. I granted him 4 days. He provided his document on time and I have also received written submissions on behalf of the Mother and the children.

The Matters relied upon by the Father as Reason for Revisiting the Findings made by HHJ Rogers

27. In his closing submissions, the Father relies on the following matters as reasons for revisiting the findings made by HHJ Rogers:

- (i) The Father asserted that the Mother now admits that she has always had a valid passport in her possession and, therefore, has always been in full control of her travel documents.
- (ii) The Father submits that the Mother now admits that she had a valid visa to enter the UK and this admission demonstrates that mother "wilfully chose not to come back to the UK with the children".
- (iii) The Father argued that the Mother admitted in her oral evidence that he made several attempts of speak to the children and sent gifts to the children but she failed to promote contact between the children and the paternal grandparents which, submits the Father, demonstrates that he had not abandoned them.
- (iv) The Father produced a letter from Reunite as evidence that he sought to engage in medication and submitted this was evidence that he had not abandoned the mother.
- (v) The Father submitted that the Mother's ability to obtain emergency travel documents, when the children were made the subjects of wardship, orders 'as she had their birth certificates' and the details of their British passports demonstrates that she herself stranded the children in Country B and not him.
- (vi) The Father relied on the Mother not challenging the content of 3 'statements' appended to his own recent statement, from persons who had lodged or stayed at the family home prior to the family trip to County B in 2016. The 3 documents, 2 of which contain an acceptable version of a statement of truth, provide descriptions of a happy family home and each of the 3 authors making complementary remarks about the care the Father provided to the children and his efforts with both cooking and cleaning within the home. 2 of the authors state explicitly that they saw or heard no arguments or otherwise negative behaviour by the Father. The Father submits that these statements demonstrate that the findings of domestic abuse are wrong. In his written submissions, the Father does not explain why these witnesses were not relied upon before HHJ Rodgers.
- (vii) More generally the Father submits that matters as set out above demonstrate that the Mother lacks credibility and he specifically relies on her admission that she published material on her Whatsapp status, messages the Father interprets as being disparaging about him.

28. Mr Jubb has provided a response to the matters relied upon by the Father. The Mother's response is as follows:

- (i) The Mother has always accepted that she had a valid Country C passport in her possession and this is described in her statement dated 19 November 2019.
- (ii) The Mother has always accepted that she had a valid visa to enter the UK but that visa was stamped in her expired Country C passport that was removed by the Father when he left Country B.
- (iii) The Mother makes no specific response in her closing submissions to the Father's allegation that he had made several attempts to speak to the children or that the Mother had failed to promote contact with his parents but in her oral evidence, she said that she had tried to call the Father many times and had sent him messages. The same information is contained in the statements that were before Judge Rogers. In her oral evidence, the Mother said she had a very damaged relationship with the Father's parents. She accepted that she did not contact them herself to ask if they wanted to see the children. The Mother said that the paternal grandparents did not contact her asking to see the children. She said she wanted the Father to speak to her but said that he called her just once in 2016 when her Country B visa was about to expire, once in 2017 and once in 2018 but did not call her again after the 2018 phone call.
- (iv) In her oral evidence, the Mother said that she had not been contacted by Reunite so knew nothing of any offer for mediation.
- (v) In her oral evidence, the Mother described, when she had an order of the English court, she was able to get help to obtain travel documents for the children that she had not been able to obtain from the British High Commission before HHJ Rogers made his order.
- (vi) In his response to the Father's written submissions, Mr Jubb submits, as the documents from Father's supporters concern events that occurred prior to the Mother being stranded in Country B, they add nothing to issues before the court but he did not address how they might be relevant to the findings made concerning domestic abuse. When the mother gave her oral evidence, and the Father asked her about the content of the statements from his witnesses, the Mother said she had never discussed the dark side of their relationship with the Father's witnesses and they did not see it. She said if they had seen the Father cooking, it was only because he was being rejecting of the Mother and refusing to eat any food she had cooked.
- (vii) The Mother accepts that she had published information on her Whatsapp status that was critical of men with beards who failed to support their families. She said that it was a message to all men and not just to the Father.

The Legal Principles to be followed in an Application to reopen Findings of Fact

29. The approach to be taken by the Court was summarised by Peter Jackson LJ in CTD (A Child: Rehearing)[2020] EWCA Civ 1316. At paragraph 3, he described the following as being stage 1 of the process:

3. In *Re E (Children: Reopening Findings of Fact)* [2019] EWCA Civ 1447 at [28-34] I sought to set out the proper approach at the first stage. I recalled that there is no strict rule of issue estoppel in children cases, but that a decision to allow past findings to be relitigated must be a reasoned one and that the considerations identified by Hale J in *Re B (Children Act Proceedings: Issue Estoppel)* [1997] Fam 117 at 128 provide a useful framework:

(vi) "(1) The court will wish to balance the underlying considerations of public policy, (a) that there is a public interest in an end to litigation – the resources of the court and everyone involved in these proceedings are already severely stretched and should not be employed in deciding the same matter twice unless there is good reason to do so; (b) that any delay in determining the outcome of the case is likely to be prejudicial to the welfare of the individual child; but (c) that the welfare of any child is unlikely to be served by relying upon determinations of fact which turn out to have been erroneous; and (d) the court's discretion, like the rules of issue estoppel, as pointed out by Lord Upjohn in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 AC 853, 947, "must be applied so as to work justice and not injustice".

(2) The court may well wish to consider the importance of the previous findings in the context of the current proceedings. If they are so important that they are bound to affect the outcome one way or another, the court may be more willing to consider a rehearing than if they are of lesser or peripheral significance.

(3) Above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any different finding from that in the earlier trial. By this I mean something more than the mere fact that different judges might on occasions reach different conclusion upon the same evidence. No doubt we would all be reluctant to allow a matter to be relitigated on that basis alone. The court will want to know (a) whether the previous findings were the result of a full hearing in which the person concerned took part and the evidence was tested in the usual way; (b) if so, whether there is any ground upon which the accuracy of the previous finding could have been attacked at the time, and why therefore there was no appeal at the time; and (c) whether there is any new evidence or information casting doubt upon the accuracy of the original findings."

Hale J observed that there may be other factors to be borne in mind. In *Re E* at [34] I noted that the court will need to be satisfied that the challenged finding has actual or potential legal significance: is it likely to make a significant legal or practical difference to the arrangements that are to be made for these or other children?

4. The decision in *Re B* was taken forward in a number of decisions, of which

three are significant: *Birmingham City Council v H (No. 1)* [2005] EWHC 2885 (Fam) (Charles J); *Birmingham City Council v H (No. 2)* [2006] EWHC 3062 (Fam) (McFarlane J); and *Re ZZ* [2014] EWFC 9; [2015] 1 WLR 95 (Sir James Munby P). These establish that at the first stage the applicant must show that there are solid grounds for believing that a rehearing will result in a different finding. Mere speculation and hope are not enough. I will refer to the latter two decisions again in more detail when considering the third stage. “

Discussion and Decision on Father’s Application to Review the Findings

30. I have described above the findings made by Judge Rogers and the reliance placed on those findings by the Guardian in her recommendations. The findings made against the Father have real significance to the arrangements that might be made for him to have a direct relationship with his children. However, there has to be ‘solid grounds’ for a challenge to the determinations made by Judge Rogers and I have reached a very clear conclusion that the Father has raised nothing that can properly be characterised as a solid ground for revisiting the conclusions on the facts reached in February. I have come to this conclusion for the following reasons:

(a) I accept the submission made by Mr Jubb that the Mother, her statement dated February 2019, disclosed that she had her Country C passport in her possession. This was considered by Judge Rogers in his judgment. He recites parts of a transcript of a recording made by the mother of one of the father’s telephone calls to her. I will set out the extract quoted by HHJ Rogers in full:

“MALE [that is, of course, the father]: No visa possible, there isn't any visa; I have tried. Can't come now, and now even your visa is about to expire.

FEMALE: So, how can I come over there?

MALE: So your [Country B] visa is about to end, you will have to go to [Country C].

FEMALE: As you wish, wherever you say, I will go there. However, how could I

go? I have children with me without Mahram (a lawful male adult companion) then you say not to go anywhere without Mahram. How would I go?

MALE: You should have thought at that time.

FEMALE: That time, ...all this happened all of sudden that at that time...

MALE: Right now, at present I can't bring you to the UK. Neither can I come there, nor I will be able to. Your visa is going to end, therefore, your visa is going to end on the 9th, so you have to go to [Country C] before the 9th. For now you are going to [Country C], still you have to get [Country C] visa for children as well. So, in [Country C], wherever you are going to stay, with your mum or whoever, make arrangements and be prepared before the 9th.

FEMALE: I will think about this and let you know.

MALE: So, what's the second option you have?

FEMALE: Second option. I don't have any...”

Then at C63 a passage again by the male speaker:

“You also know everything, so you should not talk like this. The second thing is that how much money is owed to S.....? So for now I can't leave here to come over. You go to [Country C]. Go to [Country C]... after three months or so, as soon as I get time I will try to come to the UK or [Country B], or wherever I am relocated you come over there.”

Then at the bottom of that page:

“FEMALE: ... one day's permission I had asked for, as a wife. You could not do that for me? You could not fulfil my little wish? I stood by you for so long, four and a half years, five years I stayed with you there.

MALE: I stood with you for four years.

FEMALE: Yes, you did. Don't say that, ok. I also was there. Now after so many years I came here, so I made a request to leave me just for one day - problem will be solved, yes, many people requested.

MALE: ... I am going to the UK, but all your family...

FEMALE: So, right when the situation was going on, listen to me, when that sort of circumstances were going on, during all this, everyone came and asked you to leave her for one day and let her meet the parents for once let her see them, and I had also told you the same.

Finally, very much towards the end of the passage at 67, the conversation is about to end and the male asks: “...where is [F]?”

“FEMALE: [F]? Everyone sitting in other room watching cartoons. All of them forgotten you. No one misses you.”

Of this exchange, Judge Rogers said:

“...what strikes me as well as the equivocal nature of what the mother is saying is the clear determination, even after that passage of time, of the father suggesting that the solution is that the mother should go to [Country C]. But she makes the point with clarity, and Mr Jubb reinforces that, by saying “Why on earth would she go to [Country C] without her children? It was an unrealistic prospect for her”. The father seems impervious to that. He fears that there is no other solution.”

Although the Father now says the Mother having possession of her passport demonstrates that she was able to travel freely, it is in my judgment clear from the conversation set out above that the Father was aware that the Mother was able to travel to Country C. It is also clear from the conversation that the Father was refusing to assist the Mother's return to England. In my judgment there has been no material change in the evidence before me on this issue to that before HHJ Rogers. Further, I do not accept the Father's submission that the Mother accepting she had a valid UK visa in her expired Country C passport is anything new. Indeed, at paragraph 41 of his judgment, Judge Rogers says “the key question then arises: where were the passports, the relevant passport with the mother's crucial visa and the travel documentation?”. I therefore reject the Father's submission that the Mother's acceptance in her evidence before me, that she had a valid UK visa in an

expired Country passport that was retained by the father, demonstrates that the Mother wilfully chose to remain in Country B with the children.

- (b) It is also clear from his judgment that Judge Rogers knew there had been some communications between the Mother and the Father. As I have set out above, he quoted extensively from a transcript of one such conversation. Judge Rogers also referred to conversations that had occurred between different sides of the family. At paragraph 33 of his judgment he says “all of these problems and these minor tensions led to the various attempts at counselling and mediation which were described, and it appears that both the parents and, perhaps more significantly, the wider families were involved. Again, it is unnecessary to deconstruct the precise detail of exactly when this occurred and what the advice of the sheikh was on any particular occasion. The overall impression I have, and I am satisfied, is that the father was prepared to enter into mediation but that compromise would mean substantively, if not entirely, accepting his terms.” In my judgment the father is quite wrong to describe the Mother as now making admissions on matters that were not known to Judge Rogers. It is clear from my reading of the judgment, and the bundle, that Judge Rogers was well aware of the issues raised by the father and he addressed them in his judgment. These are not new issues that justify a revisiting of the findings made.
- (c) When the Father was giving his oral evidence, he said he had in his possession a letter from Reunite that demonstrated the Mother had refused to engage in mediation. I asked him to produce a copy of that letter. The letter he provided is the same as the letter found at page C310 of the bundle. It is a letter dated 21 August 2019 and it does not record the Mother as having refused to engage in mediation. All the letter records is the Father having contacted Reunite in November 2017 and receiving advice regarding the international movement of children. As set out in the paragraph above, Judge Rogers knew there were attempts to mediate and formed his own view about the father’s approach to that. The letter from Reunite adds nothing and the Father’s initial description of the letter as being evidence of the Mother rejecting his attempt to mediate was inaccurate.
- (d) I do not accept that the Mother’s postings on her Whatsapp status have the relevance that the Father argues they do. It may well be that the Mother published her views in the knowledge that they would be seen by the Father but that does not in any way serve to cast doubt on the reliability of the findings made by HHJ Rogers. On the basis of the findings made, the Mother had cause to complain about the behaviour of the father. That she chose to publish her complaints online where they could be seen by others was, in my judgment, a matter entirely for her and is no indication of dishonesty.
- (e) The father is correct to point out that the contents of documents produced by his witnesses were not challenged by Mr Jubb. The authors of those documents describe seeing a happy home and a committed father. These are witnesses that could have been called at the hearing before HHJ Rogers. The Judge heard evidence and argument over 4 days. The Father was represented and had the opportunity to call evidence. He did not explain in his written closing submissions why these witnesses were not called then. The documents are brief and in no way exclude domestic abuse having occurred out of sight or hearing of the authors of the documents. In my

judgment the evidence contained within them is not a solid ground for challenging the accuracy of the findings.

31. As made clear by Hale J, as she was then, in *Re B (Children Act Proceedings: Issue Estoppel)* [1997] Fam 117, there is a public interest in an end to litigation but that has to be weighed against the harm that would be caused to a child by welfare decisions being made on the basis of erroneous findings. I have carefully considered the arguments raised by the Father but find that all the issues he now raises were before Judge Rogers who provided a careful and well-reasoned judgment. The Father has raised nothing new, save for the 3 documents from his witnesses that do not prove that there was no opportunity for him to perpetrate domestic abuse. The Father's application falls far short of establishing solid grounds for believing that a rehearing will result in different findings. I dismiss his application.

The Competing Proposals concerning Child Arrangements

32. The recommendation of the Guardian is for the Father to attend a DAPP course to address the risk that the abusive behaviours, as found by HHJ Rogers, might be repeated and thereby cause harm to the children. Of the risks occasioned by the findings, the Guardian says, in her report:

"The father continues to dispute the findings of domestic abuse made against him, and does not accept that he stranded the children and their mother in Country B. Findings were made that the father was "controlling" and stranding the mother and children, restricting their ability to free movement and travel, is assessed as an extreme form of such control. The impact of coercive control can result in the most pervasive and long-lasting effects of domestic abuse upon children and the father's actions have had a direct negative impact on the three children's early life experiences.

In the absence of the father accepting the findings I have considered whether the risks posed to the mother and the children of such further abuse can be managed or reduced.

Completing the Safe Contact Indicator (Sturge and Glaser 2000), there was a prevalence of unsafe indicators, including the children's expressed views of contact, (K in particular); the mother's expressed level of fear; the father's denial of the abuse and continued blame and undermining of the mother and the father's lack of regret as to his actions or as to the children's circumstances. The children did not present as frightened or fearful of their father, but [the younger] have no memory of time spent with their father or their family life in the UK. Whilst it could be ordered the children spend time with their father in a supervised environment, this is not assessed as in the children's best interest when the father remains in such denial and holds the mother responsible for the children's situation. Additionally, the father is not able to fund supervised sessions and it is not a realistic long-term proposal when contact could not progress to a supported level of contact or become unsupervised when the risks posed by the father remain unaddressed."

33. In her oral evidence, the Guardian described the Father as holding the Mother responsible for the children remaining in Country B and for his lack of relationship with the children as he alleges that she has alienated them from him. He holds the Mother responsible for his current financial difficulties and the Guardian said the Father also holds the mother responsible for his poor health. It is the Guardian's opinion that the Father's blaming attitude towards the mother is an additional risk factor that needs to be addressed before the children have contact with him.
34. When the Father put his alienation allegation to the Guardian, she did not agree that parental alienation was a feature of this case. She said that serious findings of domestic abuse had been made and there are reasons why children do not see parents other than alienation. She did not agree that the reason the children are not seeing was because of alienation. The Guardian said she had looked at what the children were saying and she did not get the impression that the children were influenced by their mother. She said they were aware of the stranding but not of the domestic abuse. If they were being influenced, it was the Guardian's opinion that the Mother would have shared with them her reports of the Father's violence. The Guardian said that the children did not present with a list of complaints about the Father, as she would expect if they were being coached or influenced by the Mother.
35. In her report, the Guardian described that only the oldest child has any memory of the Father, as the children were so young when they were abandoned in Country B. When he spoke to the Guardian, he said he did not want to see his father and did not wish to speak about him with the Guardian, although he did ask why their father had left them behind. Another told the Guardian that he remembered what his father looked like and remembered his name but did not want to see or speak to him as he had left them at his grandparents house. The Guardian considers in her report why this child might remember this information as he was very young when the Father left him in Country B. The Guardian postulates the possibility of the phone call, that took place in 2018, reinforcing a memory of the Father. When the Guardian spoke to another of the children, she had no memories of his father and did not express a view about seeing him.
36. The Father challenged the Guardian's ability to comment on his relationships with the children as she had not observed any contact and asserted that he had a good relationship with the children prior to their abandonment in Country B. The Guardian accepted that she had not seen the Father with the children but did not accept that the absence of such observation undermined her opinion concerning the risks posed to the children arising from the findings.
37. The Father was critical of the Guardian for failing to make "a single recommendation against the mother". The Guardian said that she had not criticised the Mother as there are no findings against her and no concerns about her care of the children.

38. In response to the Father's suggestion that CAFCASS should make the CCI [Child Contact Interventions] programme available to him immediately, the Guardian said the overall picture was one of longstanding domestic abuse of various strands over an 8-year period. She said the impact on the children had been considerable and resulted in them being raised outside of the UK, denied education, denied healthcare and the general everyday social interactions of children. She said the recommendation in her report is for him to engage with a DAPP program to address abusive behaviours. It was the Guardian's evidence that the workers at CCI are not experts in the assessment of risk that arise from domestic abuse. The Guardian told me that the CCI program supports a reintroduction of contact but that would be the 2nd stage for re-establishing a relationship between these children and this father. It was the view of the Guardian that the fundamental issue is the history of domestic abuse and it is this that the father must work on. She said the building blocks need to be in place before direct contact should occur.
39. In response to my own questions, the Guardian advised that the DAPP program is a 26-week intervention but it can provide an interim report that could then inform a decision concerning the introduction of indirect contact by telephone or video call. She told me that if the Father did not attend a DAPP course and learn to change his behaviours, the children were at risk of emotional harm as they would receive a confusing narrative as the Father is entirely blaming of the mother and rejecting of the court's findings. She said the children would need an explanation for this period in their lives and any narrative provided by their mother would be undermined by the Father. The Guardian was of the opinion that the Father is undermining of the Mother's parenting and any negative comments made by him would be emotionally harmful and confusing for the children. The Guardian accepted that the risk of physical abuse is addressed by supervision of contact but she did not accept that supervision could protect the Mother's home from being discovered by the Father if he chose to follow her after contact sessions. The Guardian accepted that the risk of abduction could be addressed by court orders and also by the supervision of contact. However, the Guardian observed that private supervision of contact, outside a CCI program, is very expensive and beyond the means of this family, certainly for any extended period of time.
40. When the Mother gave her oral evidence, she entirely adopted the position taken by the Guardian. Prior to the Guardian commencing her oral evidence, there had been no proposal by the Mother, or the Guardian, that the Father have any indirect contact by way of cards and letters. When I asked the Guardian whether written communication would be a beneficial way to restart some safe, and monitored, communication between the Father and his children, the Guardian accepted that it would and the Mother followed suit when she gave her oral evidence.
41. The much of the Mother's oral evidence was occupied by her responding to the father's questions addressing his rejection of the findings made against him. When she was asked why she would not agree to the children spending time with the father unless he had completed a DAPP course, the Mother said

“because he has never accepted his mistakes ... and I do not want to go through the same thing again as he has no idea how difficult it was to go through that... I want him to do these programs as my daughter is just getting used to school and making progress. I do not want her to go back to how she was before”.

42. In her oral evidence, the Mother told me that she was not opposed to the children seeing their Father if he completes the course recommended and she is protected. She said she would not trust him unless he had taken the course and made changes. Tellingly, in my judgment, the mother readily accepted that the father had a good relationship with the children prior to stranding them in Country B in 2016.
43. I have already set out some detail of the Father’s evidence when addressing his application to reopen the findings and it was to that application that the majority of his evidence was relevant. He maintained that the Mother had alienated the children against him. He said the alienation by the Mother was abuse of his children and that this abuse by the Mother should be recognised by the Guardian and by the court. He felt that his rights had been violated throughout the proceedings and he said that the children’s rights to have a relationship with him were being violated by the Mother. He accused the Guardian of saying that alienation only applied to fathers and not to mothers, a statement that was not made by the Guardian in her oral evidence or in her report, but it was a reason the Father relied upon to argue that the Guardian was biased against him.
44. The Father told me he would not attend a DAPP program as he did not accept the findings made against him. When asked about the proposal that he sends letters and cards to the children, he said that a short letter would not be meaningful, that he was looking for direct contact and did not see how he could help the children by sending cards. He told me that requiring him to attend a DAPP program was abuse of him. When asked questions by Mr Osborne, the Father said the Mother had abused him and had abused the children. He said indirect contact serves no purpose and he should be allowed to see the children in a supervised setting at a CCI program. He did not accept that the children need to understand what had happened to them and why they had been left behind in Country B. He did not agree that any professional working with the children should rely on the findings of the court as the findings were wrong and it was his view that the children could be given a vague explanation of what had happened without being told the detail.
45. Throughout his oral evidence the Father refused to accept that there was any way to proceed with his relationship with the children other than his own proposal. I asked him if his pride was more important than his relationship with his children and could he not see some way of addressing the issues raised in the judgment of HHJ Rogers, so the risks that arise as a result of those findings can be addressed. His simple answer was he could not. The Father came across as an intelligent man able to rationalise for himself the consequences that flowed from the findings made and yet he was unwilling to

accept that he may need to adopt a different approach if he wanted to re-establish a relationship with his children.

46. As a result of his own evidence, the Father seeks to present the court with a choice between just 2 options. He urges the Court to make an order that provides for him spending time with his children with the assistance of the CCI program. The Guardian's proposal, supported by the mother, is for the father to accept a referral to a DAPP program and, between now and any interim report from such a program, the Father to have indirect contact by way of letters and cards as I have described above. However, as the Father rejects the Guardian's proposal, including the offer of indirect contact, the Father presents the choice for the Court as being between direct visits as he requests or no contact whatsoever.

The Law

47. As in all applications concerning children under section 8 of the Children Act 1989, it is their welfare that is my paramount consideration. When assessing their welfare, I must consider the matters set out in section 1(3) Children Act 1989 and have regard to section 2A of the Children Act that prescribes "A Court..is ..to.. presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare."
48. Given the findings made by HHJ Rogers, in reaching my decision I must comply with the requirements set out in PD12J of the Family Proceedings Rules 2010:
35. When deciding the issue of child arrangements, the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.
36. In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.
37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –
- (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;

- (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
 - (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
 - (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
 - (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.
38. Where any domestic abuse has occurred but the court, having considered any expert risk assessment and having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –
- (a) whether or not contact should be supervised, and if so, where and by whom;
 - (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
 - (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
 - (d) whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and must give directions to ensure that at the review the court has full information about the operation of the order.
- Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.
39. Where the court does not consider direct contact to be appropriate, it must consider whether it is safe and beneficial for the child to make an order for indirect contact.
40. In its judgment or reasons the court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order which results in the child having future contact with the perpetrator of domestic abuse, the court must always explain, whether by way of reference to the welfare check-list, the factors in paragraphs 36 and 37 or otherwise, why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child.
49. As explained by the Guardian in her oral evidence, there are different strands to the mistreatment of the Mother and children as found by Judge Rogers. The beating with a wire that the Father perpetrated on the Mother when one child was a baby occurred in 2012. Judge Rogers accepted the Mother's evidence of F's use of violence during the relationship by slapping her around the face. I agree with the Guardian's view that the Court must assess the history of

violence as having extended over an 8-year period, although the findings of Judge Rogers have the more serious incidents occurring at the beginning of that period.

50. The risks of the repetition of violence and conflict between the Mother and Father are, in my judgment, different in their nature and easier to manage than the risks that arise from the Father's controlling behaviour and his open hostility towards the Mother. As explained by the Guardian, the children appear to have no memory or knowledge of the violence that took place, so this is not a case where a child's memories and fear of violence within the home are additional features that require interventions. The mother's fears for herself and for the children are, on the findings of Judge Rogers, entirely justified but she says she is supportive of contact if she and the children can be safe.
51. It is the extreme nature of the Father's disregard of the needs of the children, and of the Mother, by abandoning them in Country B, and the practical and emotional consequences of it, that is much more difficult to address. In his judgment, Judge Rogers found:

"What I do find, and is abundantly clear, is whatever the precise state of play in the marriage, and whatever discord there was between the married couple, those were amplified and actively exacerbated by the contrasting views of the wider families. This has been described as a "family feud". That is dramatic language but is broadly accurate. It was not strictly a feud so much as a clash of social mores; some of it was cultural, some of it was religious with very different interpretations of Islamic tenets. It is no part of my task to form a value judgment on such matters, or crudely characterise either side as in the right or in the wrong. What, however, is clear is that there were very different interpretations of the dynamics of a married couple's relationship and, in particular, the authority of the husband.

The father's family, and he himself increasingly probably polarised by the dispute, advocated a firm line on a wife's obedience ..."

52. In my judgment, it matters not why the Father believes that he is to be obeyed and the Mother is to be controlled. It is the effect on the children, directly and via the effect on the mother, that any arrangements made for the children must protect against until such time the risk presented by this history is assessed as having reduced to a level that can be managed. There was no hint of remorse by the Father, in his written or oral evidence, for the harm caused to the children by his stranding of them. Indeed, in his oral evidence he accused the mother of torturing him. He does not accept that he has done anything wrong. He blames the Mother entirely for his lack of contact with the children. What was clear from his evidence is that he believes himself to be right and the Mother to be entirely wrong. It is within this context that I must apply the provisions of PD12J and consider the guidance given by the authorities relied upon by the Father.

53. The Father relies on the decision of the Court of Appeal in *Re K (Children)* [2016] EWCA Civ 99, and particularly the exposition of the law as set out by King LJ at paragraphs 31 to 36:

31. Ms Villarosa makes her submissions against the well-established first principle in relation to contact, namely that contact is almost always in the interests of a child.

32. The President recently reiterated this fundamental premise in *Q v Q* [2015] EWCA Civ 991:

"19. The first are the principles which I sought to distil in *Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521, [2011] 2 FLR 912, para 47, as follows:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the recorder, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The recorder has a positive duty to attempt to promote contact. The recorder must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the recorder has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'

33. In *Q v Q* The President set out all the attempts which had been made to establish contact in that case saying:

"5. The present impasse is not for want of enormous efforts by Judge Brasse, who down the years has invited appropriate assistance from a variety of professionals."

34. In *Re M (children)* [2013] EWCA Civ 1147 Lady Justice Macur had considered contact against the backdrop of domestic violence saying: "A child's continuing relationship with a non-residential parent is highly desirable and contact should not be denied unless the child's welfare

demands it. Domestic violence is not, in itself, a bar to direct contact, but must be assessed in the circumstances as a whole..."

35. Ms Villarosa refers the court also to *Re M (a child)* 25 November 2015 another (separate) judgment of Lady Justice Macur. In that case following a finding of fact hearing, the recorder had made findings of physical and verbal violence including in front of the child in question. The father had refused to go on a DVPP despite the recorder seeking to persuade him during the course of the hearing that such a course was a potential way forward. The recorder made an order for indirect contact only.

36. In allowing the father's appeal Macur LJ said:

"This court has made clear on numerous occasions that an order refusing a child's contact to his or her non residential parent is extreme. The starting point should be that the welfare of the child requires ongoing and meaningful contact with both parents. This principle should only be displaced for compelling reasons on the clearest of evidence and only then when all reasonable avenues of promoting safe contact, both physically and emotionally for the child, have been considered and rejected.

In my view, there was no opportunity available or taken, in the hearing on 28 April, to investigate necessary and/or possible concurrent strategies to promote direct contact. The recorder was not bound to accept the Cafcass recommendation that unless and until the father had satisfactorily embarked and participated in a DVPP course there should be no consideration of direct contact. In fact, he demonstrated no desire to challenge the Cafcass officer as to the need for other intervention and, by what appear to be closed questions, supported a restricted view of the resolution to the problem."

54. The Father also relies on a further decision of King LJ in *Re S (A Child) [2015] EWCA Civ 689*. There are 2 points of importance that arise from this decision on the facts of the case before me. Firstly, "the fact that there will have to be long term supervision of contact is not in itself a reason to refuse face to face contact" [paragraph 26] and secondly, "before a court concludes that a child may not see its absent parent as a consequence of that child or its caring parent being 'disturbed' there must be direct evidence before the court as to the nature and anticipated extent of such disturbance. Such evidence must be sufficient for the judge to make findings and, thereafter, for him or her to set out why that evidence leads him to conclude there should be no direct contact" [paragraph 29].

55. The 3rd authority relied on by the Father is *Re M (Children) [2013] EWCA Civ 1147*. A circuit judge had made findings that the father had committed very serious acts of violence against the mother and, once she had fled, had taken steps to locate her. Within the context of those findings, and the refusal by the Circuit Judge to order direct contact, Macur LJ said, at paragraph 18:

"Realistically, accepting the judge's primary findings, this father will not enjoy an unfettered relationship with his sons, if at all, for a considerable time

to come. That said, it is unfortunate to regard a father's aspiration for a less restricted contact regime to be destructive of the implementation of a heavily circumscribed regime if the acknowledged benefits of contact for these children can be achieved whilst assuring the mother's safety and emotional stability.”

56. At paragraph 24, a paragraph relied upon by the Father, Macur LJ said “there is no question but that an order that there should be no contact between a child and his non-residential parent is draconian. In this case, the order dated 17 May 2013 can only be lawful within the meaning of Art 8(2) of the Convention if the order for no direct contact is necessary in a democratic society for the protection of the right of the mother, and consequently the minor children in her care, to grow up free from harm. In order to reach that conclusion, the court must consider and discard all reasonable and available avenues which may otherwise promote the boys rights to respect for family life, including, if in the interests of promoting their welfare during minority, contact with their discredited father.”

57. The Father relies on this authority because the father in that case had attended a number of courses aimed at addressing his violent behaviour but, despite those programmes, the Circuit Judge had found:

“In oral evidence he was "minimising his behaviour, attributing blame to the victim of his violence, denying what she said she had suffered.....there have been few if any lasting benefits of all the courses of therapy that [the father] has undertaken...He failed to satisfy me that he had learned anything from his engagement with the assessments and therapy save what he needed to say in order to attain his goal. He failed to persuade me that he had let go of his old beliefs and ways, failed to persuade me that he was not going to destabilise the family by continuing his violent, threatening, minimising behaviours, upsetting the children and harming them emotionally....he will continue to display these negative behaviours which will destabilise the children's home and security, which are provided by their mother.”

58. The Father says he does not accept the findings made by HHJ Rogers and will not attend a DAPP program that requires him to recognise their accuracy. In his submissions he makes a comparison between himself and the father in Re M, relying on the father in Re M being successful on appeal in circumstances where attendance at programs had not change his position on the allegations made by the mother. I interpret his position as raising the question: why should he attend a program that will not change his views when the Court of Appeal in Re M required arrangements to be made for direct contact despite that father not changing his views?

59. In my judgment, the Father failed to recognise in his submissions that the decision in Re M was not to direct that supervised contact took place. The appeal in Re M was allowed on the basis that the Circuit Judge had not adequately investigated what arrangements might be put in place to protect the children, and the mother, from risks that arose from the findings she had made. The case was remitted back to the Circuit Judge to undertake that further analysis.

60. The Father argues that all avenues have not been investigated for his reintroduction to the children, as he has not been offered the CCI program.

Discussion and Welfare Decision

61. I am reminded by the terms of PD12J to assess the Father's application for contact through the prism of the welfare checklist and apply each of the factors listed with reference to the domestic abuse that has occurred.

(a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).

62. I have set out above, the views expressed by the older children about seeing their father. Given their age, their expressed wishes are informative, and to be taken into account, but not decisive. They have said that they do not want to see or speak to their father as he "had left them" but they did not express significantly negative views of the father. I agree with the opinion of the Guardian that the absence of strong negative views being expressed by the children, and one saying she loves her father, indicates that the mother has not sought to influence them. One of the key indicators of the possible alienation of a child by the parent with whom they are living is the expression by the child of very strong negative views against the non-resident parent. An alienated child will often see the resident parent as all good and the non-resident parent as all bad, because the resident parent gives negative information to the child to manipulate the child's feelings about the non-resident parent, with the intention of encouraging the child to reject any contact. That is not what the Guardian found when she met with the children.

63. I also agree that the children appearing to have no knowledge of the domestic abuse found by HHJ Rogers indicates the Mother has not shared that information with them. The children have not seen the Father for some 4 years. The mother has had every opportunity to manipulate them but, in my judgment, there is no evidence that she has done so and I reject the Father's submission that the mother has, and continues, to alienate the children from him.

(b) The physical, emotional and educational needs of the children

64. All the needs of the children were ignored by the Father when he abandoned them in Country B. They now have some involvement with the Local Authority in the area where they live as the Mother has no access to public funds and the Local Authority is providing financial support. However, there are no concerns held concerning the parenting they are receiving from their mother. The accommodation where they are living is multi-occupancy and temporary so this lack of stability raises the possibility of further changes of address that might then interrupt their schooling.

65. As with all children, they have the physical and emotional need to be protected from exposure to violence and conflict. I agree with the Guardian that the children need an understanding of why they were left by their father and they need to be protected from the emotional harm that would be caused by the care of their primary attachment figure being undermined by their father.
66. However, it is also in their long-term best interests to have a direct relationship with their father. The benefits of children having a safe and loving relationship with both of their parents are well understood but those benefits have to be balanced against any risk of harm that contact would cause.

(c) The likely effect of any change of circumstances

67. It would be a change of circumstances for the children to have any contact, direct or indirect, with their father. Given the passage of time they would, in my judgment, need to be prepared for any direct contact with their father and reassured by their mother. As she explained in her oral evidence, she is not opposed to the Father seeing the children if he undertakes the program recommended and the risk of the same abusive behaviours being repeated is removed. It is difficult to envisage how the Mother could provide the reassurance the children would require before any direct contact without significant support and guidance, given the blaming attitude towards her currently displayed by the Father.
68. The Father sending cards and letters to the children is a strategy that could assist the children with the change of circumstance that his reintroduction would be. If he was to send them pleasant communications that indicate his love for them and his interest in their wellbeing, without undermining the mother or seeking to identify where they are living, moving to a next step of telephone or video calls would be much less of a change, as would be a 3rd step to direct meetings. Unfortunately, in his oral evidence, the Father refused to accept indirect contact by way of written correspondence as appropriate. This rejection demonstrates the Father's inability to put himself in the position of the children and think how they might be feeling. They are questioning why he left them behind. They have not seen him for 4 years. The Guardian says in her report "stranding of children can leave them with feelings of abandonment and the children may need to make sense of their experiences". In such circumstances, the Father's belief that he can walk back into the lives of his children without providing a truthful explanation for what has occurred is entirely unrealistic. Of course, any explanation has to be age appropriate but it also has to be honest.
69. It was clear from the Father's evidence that he thought a CCI program to be the answer to all of the issues presented in this case. I disagree. CAF/CASS describe CCI as "short-term interventions of supervised contact. They are designed to help adults and children establish safe and beneficial contact when this is difficult to do on their own. CCIs should be a learning opportunity for parents with input from the Separated Parenting Information Programme (SPIP) and

Behaviour Modelling Training (Getting it Right for Children) applied in the context of child contact.”

70. A referral to a CCI is made when a Family Court Advisor or a Guardian makes an assessment that a child should be spending time with a parent but is not doing so. CAFCASS describes CCIs as being effective in cases where:

- parental conflict is intractable and needs positive practical reframing
- contact has lapsed and needs support to re-establish
- there are risk issues which need to be further assessed.

71. The focus of a CCI is said to be to provide a positive contact experience for the child. In her report, the Guardian explains “In requesting a referral to a CCI program, he does recognize his relationship would need to be gradually re-built with the children as L and M particularly will have no direct memories of or relationship with their father. For a CCI to be recommended, it is necessary for any outstanding risks to have been addressed and for there to be a safe plan as to how contact can progress upon completion of the intervention. As discussed, I am not of the view that is the case. I recommend the father would need to engage fully with a DAPP, after which, if successfully completed, consideration would be given to whether a CCI would assist with re-establishing the children’s relationships with their father. Unfortunately, the Father has not yet reached a level of acceptance and taken responsibility for his behaviour and how it has impacted upon the children and the Mother, for a referral for a DAPP to be indicated.”

72. Having heard the Father’s evidence, I do not share the Guardian’s assessment that the Father agrees that his relationship with the children needs to be gradually rebuilt. His rejection of indirect correspondence, as explained to him during the hearing, is in my judgment indicative of his view that the children need no such preparation. I formed the opinion that the Father invites the Court to endorse a CCI program, not because it is truly required, but because he sees the Court as unlikely to support an introduction of direct contact without some form of safeguard for the children.

73. In her oral evidence, as I have already described, the Guardian said the workers at a CCI are not experts at assessing the risk posed by the father in the context of the findings made by the Court. In her oral evidence, the Guardian told me a DAPP addresses the risks arising from the domestic abuse as found by the court and will also assist the Father to develop more beneficial relationships. It was the Guardian’s evidence that, in the absence of the successful completion of a DAPP, contact could not ‘move on’ so it would be wrong to start a CCI. The Guardian explained that a CCI was a short-term intervention to get contact started but if the contact could not develop due to unresolved risk issues it was, in the view of the Guardian, inappropriate for a CCI to commence.

74. In my judgment a CCI, as an intervention to assist children with a change in circumstances, is extremely useful in appropriate cases. However, I accept the evidence of the Guardian that, on the facts of this case, a CCI is not appropriate

until such time as a further assessment has concluded that the risks arising from the findings of the Court can be managed and there is agreement, or the court decides, that direct contact would be in the children's best interests and should be commenced. In my judgment, a CCI is to be used once the Court has decided that direct contact should take place and is not an alternative to an intervention aimed at reducing the risk posed by an abusive parent.

(d) The children's age, sex, background and any characteristics that the court considers relevant

75. I have set out the needs of the children above. The particular characteristics that arise on the circumstances of this case, that require special attention over and above those of any child, is the need to achieve stability. The Mother was, on the finding of Judge Rogers, deliberately isolated by the actions of the Father when living in England before 2016. As described by the Guardian in her report, the Mother has no family in England and has not made contact with previous acquaintances for fear that the Father would then discover her location. The sources of support to the Mother are extremely limited. When the Guardian spoke to the children, one spoke of making friends but the impact of the Covid-19 pandemic has restricted the ability of the Mother and children to make community connections via the children's school as the Mother and children arrived in England just as 'lock-down; was imposed in March 2020. The children have missed a considerable amount of school and the Guardian describes the need for them to settle into school as a priority. It is also the opinion of the Guardian that 2 of the children may require some additional support to settle within the structure of formal education.

76. As the Mother and children are living in temporary accommodation, there continues to be a risk that their accommodation will change and, flowing from that, there is still a real risk of sudden changes of school. This lack of stability of the children, when seen in the context of the 4 years they were stranded in Country B does, in my judgment, increase the need for the court to be satisfied that any changes in circumstances for the children will not threaten the development of stability that is still very much in a fledgling stage.

(e) Any harm the children have suffered or are at risk of suffering

77. HHJ Rogers found the children to have suffered interruption to their education, restrictions to their ability to socialise, emotional harm as a consequence of being abandoned by their father and the distress and confusion that resulted from that. In my judgment, they can only have been aware of the distress caused to the mother by her inability to return them to their home in England but it appears, on my assessment of the evidence, the mother has done a remarkable job of shielding the children from knowledge of the domestic abuse perpetrated by the father in the home.

78. I agree that close professional supervision of contact, when combined with court orders and the continuation of the port alert, can be adequate protection from the risk of exposure to conflict between the parents and from a risk of

abduction, subject to my concern about the current location of the children's passports that I address later in this judgment.

79. If careful practical arrangements are made, the ability of the father to follow the mother home after contact visits can be reduced to a degree that makes that risk manageable. However, a clear risk of harm arises from the Father's failure to accept that his actions have caused emotional harm. His blaming attitude towards the Mother risks causing further harm as he is, in my assessment of him, highly unlikely to promote a positive image of the mother to the children. There is a significant risk that he will seek to enforce his own narrative with the children, will tell them that he has done nothing wrong and that it is the mother who is at fault. I accept the evidence of the Guardian that once a comment is made to a child, it cannot be taken back and the damage is done.

80. I have to balance the harm that direct contact might cause to the children against the harm caused by them being denied of a relationship with their Father. In my judgment, it will be a loss for these children not to have direct experience of their Father. They would benefit from the love and guidance that he could give them. They would be enriched by knowing the paternal side of the Family and the advice and experience that I am sure would be available to them from exposure to that side of their family. I take the view that it is important that children be given the opportunity to form their own views of the parent they do not live with, however flawed the parent may be, and not be reliant on the reports of others but all these benefits of contact can only occur if the advantages to the children of direct contact outweigh the disadvantages.

81. In *Re A (Children)* [2019] EWCA Civ 74, Lord Justice Moylan described "the core feature of the concept of stranding or abandonment is the exploitation or the attempted exploitation by one spouse of the other's vulnerability or weakness to seek to ensure that they are not able to come to or return to the UK". In my judgment, the Father's exploitation of the vulnerability of the mother led to the Father disregarding completely the most basic needs of his children and him doing so for an astonishingly long period of time. That abdication of his responsibility as a father, when taken with his blaming attitude toward the mother, leads me to conclude that until the Father has recognised the harm that he has caused to the children and demonstrated that he understands the importance of not undermining the mother when in the presence of the children, there is a significant risk of emotional harm being caused to the children were the Father to have direct contact with them.

(f) How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs

82. The mother is meeting the physical and emotional needs of the children and I am satisfied that she will continue to do so. I also accept her evidence that she would not oppose the father having contact with the children if she and the children would be safe. She was frank enough to say that she was not optimistic that the Father would make the changes necessary but I did not interpret this part of her evidence as demonstrating any unreasonable hostility to the father.

Indeed, the mother's concerns about the Father are entirely reasonable when seen in the light of the findings made by Judge Rogers.

83. I have described above my conclusion that the Father has demonstrated no willingness to reflect on his past behaviours or any ability to keep his inaccurate and untruthful views about the Mother hidden. However, I recognise that the Father is in the midst of what he sees to be a court battle with the Mother and may, misguidedly, believe that were he to consider alternative ways of approaching a reintroduction to his children, that might undermine the strength of the main thrust of his case. I also have firmly in mind the warning given by Macur LJ in *Re M* that I must not regard the Father's "aspiration for a less restricted contact regime to be destructive of the implementation of a heavily circumscribed regime if the acknowledged benefits of contact for these children can be achieved whilst assuring the mother's safety and emotional stability".
84. I must look at the totality of evidence before me and form a view of how the Father is likely to behave. In my judgment, even the imposition of professional supervision is unlikely to protect the children from suffering emotional harm if they have direct contact with their father. I do not accept that he will keep his opinions about the mother to himself. Requiring the children to attend for direct contact with the Father will, in my judgment, place them at a direct risk of emotional harm as the Father is very likely to seek to persuade them that he is right and the Mother is wrong. His abandonment of the children demonstrates his willingness to take extremely harmful action to impose his will. I have heard nothing that reassures me that he will not again put his own wishes before the needs of his children.
85. I do not agree with the view expressed by the Guardian that contact cannot commence without an exit plan from supervision. If I was satisfied that supervised contact could be safe enough, I would not hesitate to investigate the availability of resources for the supervision of contact even if the need for supervision was likely to continue for the foreseeable future.
86. During her oral evidence, I asked the Guardian if she knew of a resource willing to work with a parent who remained in denial of findings made by a court and was, within that context, willing to undertake work and assessment addressing the capability of the parent to behave appropriately during contact visits. It is not at all unusual for parents to continue to deny allegations made against them and to continue their denials even after a court has made findings. It is within my experience of public law cases, where findings have been made against a parent that they have injured a child, possible for a risk assessment to be undertaken without an admission by a parent being a precondition for success. It seems to me possible for a parent to recognise that he has caused harm to his children even though he cannot bring himself to admit it openly. It might then be possible for a parent to modify his behaviour sufficiently for the risks posed by direct contact to reduce to a manageable level.

87. In her oral evidence, the guardian said she was not aware of any program addressing domestic abuse issues that works with a parent in denial. She said that the Father's blaming of the mother produced an added layer of complexity. She said a 'considerable piece of work was required to address the Father's thinking around the findings'.

(g) The range of powers available to the Court

88. It may be, with the passage of time, the Father will accept that he has caused harm to his children and is able to demonstrate that his open hostility towards the mother has reduced so as to enable him to communicate with the children without undermining her. The decision I have reached is based on the Father as he presents now. The Mother accepts the Father had a good relationship with the children prior to the events of 2016 and, were he to present differently in the future, for example after having completed an intervention that addresses the abusive behaviours that Judge Rogers found him to have committed and an intervention that modifies the views about the mother that he expressed before me, a different assessment of the risks and benefits of contact may be made.

89. As I have set out above, paragraph 37 of PD12J requires me to consider, amongst other things:

- whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse

90. In her report, the Guardian records "Throughout the interview and during a previous telephone call with the father, he did not enquire of the children or their well-being but expressed his wish to see them". In his oral evidence his focus was on what he said was the injustice of his situation and, as I have described, he was unable to show empathy for his children's circumstances. Although I did not form the impression that the Father pursued contact to continue a form of domestic abuse against the mother, his lack of attention to the needs of the children and his unwillingness to reflect has led me to conclude that he is motivated more by the need to win the fight than he is by a desire to communicate with his children. His rejection of written indirect contact is, in my judgment, an example of this.

91. I have expressed my conclusions concerning the likely behaviour of the father during contact and his failure to appreciate the effect of the domestic abuse found against him. Paragraph 36 of PD12J requires "the court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other

parent". For the reasons given in this judgment, I am not satisfied that the emotional safety of the children, or of the mother, can be secured.

92. I have carefully considered if the risk of emotional harm to the children is sufficiently great to outweigh the benefits of contact but I have reached the conclusion that the Father is so determined to present the Mother as the wrongdoer that no form of supervision could adequately guard against that risk. I accept the evidence of the Guardian that the consequences of such behaviour on these children outweighs the benefits. They are achieving some stability but still have some way to go and the introduction of the Father at this time risks undermining that process and causing them not just confusion but also distress if the Father seeks, as I find likely, to undermine the Mother, upon whom they rely to meet all of their needs. The risk is not just of temporary disruption that will then pass as the children get accustomed to the arrangements, as described by King LJ in *Re S*, but of a continuing and long-term risk of repeated occasions of emotional harm and until such time that the Father's attitudes have been shown to have changed, the likelihood of emotional harm during contact visits will remain.

93. Therefore, I dismiss the Father's application for direct contact.

94. I have carefully considered whether I should make the order for indirect contact that was agreed by both the mother and the Guardian as being a starting point for the Father's reintroduction to the children. The solicitors acting for the Mother agreed to act as a receipt address for these communications should the Father decide to accept this method of communicating with his children. In his oral evidence, the Father said he would not accept indirect contact but, in his closing written submissions, he says he would, but only if the court 'promises' to make an order for a CCI. I do not offer that promise.

95. I have reached the conclusion that the Father must demonstrate change before there can be any telephone contact, videocall contact or direct contact. He can attempt to demonstrate these changes by reflecting on his past behaviours and attending a DAPP program. It was the evidence of the Guardian that until the Father is able to accept some of his past behaviours as found by Judge Rogers, he will not be accepted onto a DAPP program. There is no other program available to CAFCASS that can work with the Father. The work required is not simply assessment. The Father needs to change his attitudes towards the Mother and demonstrate that he recognises the harm his previous behaviours have caused so that they are not repeated. There is no intervention put before the Court as a suitable alternative to a DAPP program.

96. In his closing submissions on behalf of the children, Mr Osborne describes the Guardian's request to the Father to reconsider his position and to take the first steps along a path described by the Guardian that could lead to his reintroduction to the children. I hope the Father will reflect and take advantage of the way ahead as proposed; a process that I agree is required.

Passport Issues

The Father's Passport

97. On 30 August 2019, HHJ Rogers ordered the Father to deliver his British passport to the Tipstaff to comply with a passport order that had been made by Cohen J on 29 July 2019. The passport has been held by the Tipstaff since that time. The Father applies for the return of his passport. That application is not opposed by the Guardian on the basis that the current port alert, if remaining in place, provides sufficient protection for the children against a risk of abduction. The mother opposes the return of the passport.
98. The circumstances in which a passport order should be made, or continued, were recently considered by Cobb J in *Re P (Discharge of Passport Order)* [2020] EWHC 3009. Cobb J, referring in particular to *B v B (Injunction: Restraint on Leaving Jurisdiction)* [1997] 2 FLR 148, described "a Tipstaff passport order is a useful tool in the judicial armoury", particularly in circumstances where:
- (i) a court needs to take urgent action to try to prevent a parent from removing a child out of the country
 - (ii) where there is an assessed risk that a foreign parent may misuse a period of contact in England in order to remove a child overseas;
 - (iii) where (as here) the court wishes to ensure the attendance of a person at a court hearing within the jurisdiction, and there is a risk that, absent such an order, the person may flee the country before doing so; and
 - (iv) where without such an order the execution of an interlocutory order may be stymied
99. However, given the interference with personal freedoms brought about by the making of such orders, Cobb J said "a passport order is a potent order, with significant implications, whose use should be tightly controlled":
- v) A passport order should only ever be made for a finite period of time
 - vi) A passport order should not be made where the sole purpose is to coerce the respondent into action of a particular kind, and
 - vii) a passport order would be unlikely to endure beyond the conclusion of the proceedings in which it has been made, and orders for the indefinite holding of passports are likely to be usual and probably only made in extreme cases. Cobb J expressed the view that it is incumbent on the court to keep the need to deprive a person of their passport under careful review and to ensure the order is in place no longer than necessary to achieve a legitimate desired protection or outcome.
100. Cobb J concluded by stating that the removal of an individual's passport, even on a temporary basis from an adult or child, is a very significant incursion into the individual's freedom and personal autonomy. It is never an order that

can be made lightly and should rarely, if ever, be more than a very temporary measure.

101. The passport order made in these proceedings was made at a time when the children, and the mother, were out of the jurisdiction and to prevent the Father from leaving the jurisdiction at a time when there was an application before the Court to compel the Father to take the steps necessary to secure the return of the children to this jurisdiction. That aim has now been achieved, with the children resident in this jurisdiction for nearly 9 months.
102. The mother opposes the return of the passport as she fears the father will seek to abduct the children and remove them from her care. Were it not for 1 matter, I would not be persuaded that the Mother's fear was sufficiently made out on the evidence to justify the retention of the Father's passport. I have heard no evidence of any attempt made by the Father to locate the mother and children. Indeed, one of the concerns of the Guardian that I set out above is that the Father showed little interest in them.
103. However, the findings made by HHJ Rogers and my conclusions about the Father's failure to recognise both his need to make changes to his behaviours and attitudes, and his inability to recognise the needs of his children, do demonstrate that the Father is capable of taking extreme actions to impose his will and give rise to a fear that the Father may be capable of an attempted abduction in response to the failure of his application for contact. If the Father had returned the children's passports, that Judge Rogers found that he had removed, it might be that the risk of an attempted abduction was not so great as to justify the continued seizure of his own passport.
104. However, as Judge Rogers found that the father had possession or control of the children's passports, I am not prepared to order the release of his own passport until the children's passports that are under his control are surrendered to the Court or some other reliable evidence is provided to demonstrate that they are no longer available to the Father or valid for travel.
105. He is, by reason of my decision, to have no direct contact in the immediate future. I have not been made aware of any evidence to suggest that he has in the past crossed borders illegally or covertly but he has in the past been a frequent traveller and Judge Rogers had doubts about the Father's reliability when describing the Father's employment. It is not clear what ties he has to England that would act as a safeguard to a risk of abduction. I have to balance any risk of abduction against the Father's entitlement to travel as he wishes, and to have his identity documentation in his own possession. I recognise that the removal of an individual's passport is a significant interference with their personal freedom.
106. If the father was successful in removing the children from this jurisdiction, there is a very real risk that the mother would find it extremely difficult to locate them or secure their return. The Father was, on the finding of Judge Rogers, adept at ignoring the pleas of the mother to help secure the return of

the children from Country B. In my judgment, while the father retains control of original copies of the children's passports, a port alert alone is not adequate to protect the children from the risk of abduction. At the case management hearing to be listed following the delivery of this judgment, I will hear further submissions concerning the location of the travel papers removed by the Father and what steps can be taken to ensure they can no longer be used to travel with the children.

The Mother's Wish to Obtain New Passports for the Children

107. At the hearing on 19 November, the Mother made an application for an order permitting her to obtain passports for the children without requiring the Father's consent. Mr Jubb put this to the Father when he gave his oral evidence. His initial response was that he did not oppose the children obtaining new passports so he was content to provide his agreement. On behalf of the Mother, Mr Jubb submits the Father's agreement cannot be relied upon and he seeks an order granting the Mother permission to obtain passports irrespective of whether, or not, the father consents and also invites the court to include a recital to that order recording that the previous passports cannot be returned to the Passport Office as they were retained by the Father and have not, thus far, been returned to the Mother.

108. When he gave his oral evidence, the Father changed his position and agreed to the Court making an order to enable the Mother to obtain passports for the children without the need for the Father to sign the form. I accept, were the Father to be part of the process for a passport application, there is a risk that the children's home address would be discovered by him and that would expose the Mother and Children to a risk of harm. Russell J made a non-molestation order that lasts until March 2021 and that provides some protection but, a greater degree of protection is provided by the location of the Mother's home remaining confidential. Therefore, I grant the order she seeks.

Conclusions

109. An order refusing direct contact between children and a parent should only be made where there is a clear risk of harm to the children that cannot adequately be managed and that risk of harm outweighs the benefits of contact. I have concluded that until such time as the Father has engaged in an intervention to address his past abusive behaviours and his current attitudes towards the mother that he expresses so forcefully, direct contact between the Father and the children, or even contact by way of telephone or video calls, would not be safe for them. In my judgment the benefits of direct contact are outweighed by the harm I find is likely to occur.

110. The Guardian has provided a pathway that might lead to a reintroduction of the children to the Father but the Court cannot force him to take steps down the path that has been recommended.

111. This judgment is being handed down in writing. I will list a further hearing in 7 days, once the Father has had the opportunity to consider the content and will, at that hearing, hear further submissions concerning the form of order to be made concerning indirect contact, if the Father decides to engage with those arrangements.
112. That is my judgment.