Neutral Citation Number: [2021] EWHC 2024 (Fam)

Case No: RM21P00129

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

H	**Applicant**
- and -	
R	**Respondent**

- -
- -

Mr David Merrigan (instructed by **Milner Elledge Solicitors**) for the **Applicant**
Miss Ayesha Hasan (instructed by **Archbolds Solicitors**) for the **Respondent**

Hearing dates: 14 July 2021

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.00am on 22 July 2021.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with two questions in respect of S, born on 27 July 2008 and now rising 13 years of age. First, is S habitually resident in the jurisdiction of England and Wales? Second, if S is habitually resident in the jurisdiction of England and Wales, should this court make an order under its inherent jurisdiction requiring S to be returned to the jurisdiction of England and Wales from the jurisdiction of Pakistan?

2. The applicant for the latter order is the mother of S, H, represented at this hearing by Mr David Merrigan of counsel. The mother contends that S is habitually resident in the jurisdiction of England and Wales. The mother further contends that it is S's best interests for an order to be made under the inherent jurisdiction warding S and requiring S to be returned to this jurisdiction. The father of S is R, represented at this hearing by Miss Ayesha Hasan of counsel. The father contends that, having gone to Pakistan in October 2020 for the purposes of completing his secondary education, S is now habitually resident in Pakistan and that, accordingly, this court does not have jurisdiction with respect to make the orders sought by the mother. If this court does have jurisdiction, the father contends that it is not in S's best interests for a return order to be made.

3. There are separate proceedings ongoing in the Family Court sitting at Romford in respect of S's two young siblings, U, born on 27 October 2010 and aged 10 years and T, born on 3 August 2016 and now aged 4 years.

4. In determining this matter, I have had the benefit of reading the contents of the trial bundle and have had the assistance of comprehensive written and oral submissions from counsel. Neither party sought to suggest that the court should hear oral evidence in respect of the issues before it.

BACKGROUND

5. The background to this matter can be stated relatively shortly. The parties married on the 5 of December 2007 in the United Kingdom. The father is now aged 39 and the mother is 32 years of age. The mother alleges that the marriage was characterised by domestic abuse on the part of the father. The father disputes the allegations of domestic abuse made by the mother. The CFA conducted by the London Borough of Redbridge records the mother reporting incidents of domestic abuse in December 2019, January 2020 and March 2020.

6. In 2016 the family came to the attention of Essex County Council Children's Social Care. The CFA conducted in April 2021 by the London Borough of Redbridge records as follows:

> "In October 2016 a referral was made to Essex Children's Social Care after S disclosed to school that he had been 'pushed' to the floor and 'kicked' by his mother, [H]. S would have been about 8 at this time, U about 2 and T about 3 months old. It is reported that S was seen to have a 'carpet burn' type

> of injury. It is reported that when the parents were spoken to they advised that S had thrown himself to the floor causing the mark."

7. It is not disputed between the parties that, in October 2020, the mother decided to travel to Pakistan in order to undergo elective surgery. With the consent of the father, the mother left the jurisdiction of England and Wales with S and T. U remained at home with his father in England. I pause to note that the mother appears later to have given a false account of the circumstances by which S came to leave England and travel to Pakistan in October 2020 when the mother spoke to social workers for the purposes of the Children and Family Assessment in April 2021. The mother told the Gender Violence Advocate that the father had taken S to Pakistan for two weeks and had not returned him to her care. This was untrue.

8. In November 2020, the father travelled to Pakistan with U after the paternal grandfather became gravely ill. The father spent a month in Pakistan before returning to England with U on 10 December 2020. S remained in Pakistan, as did the mother and T. The mother returned to the United Kingdom from Pakistan on 1 February 2021. The parents separated on 8 February 2021. S remained in Pakistan. There is a dispute between the parties as to why he did so.

9. The father contends that the parents had a discussion regarding S's education and agreed that it would be beneficial to S to remain in Pakistan to pursue his education. The mother concedes in her second statement that this discussion took place, although she contends she was against the idea. The father contends that, within this context, the mother informed the education authority in this jurisdiction that S would be continuing his education in Pakistan and informed the Child Benefit Agency that she was no longer entitled to claim benefits in relation to S. The court has before it an email from the mother to the relevant education department in this jurisdiction that states as follows:

> "In response to your letter regarding S. My husband and myself have decided to send S to [named] school RWP on trial basis. Rather than him being out of standard education. The school S is attending is one of the largest private school networks in the word which is also internationally known for its excellence. If he doesn't settle, we will bring him back to the UK. But at the moment this is the best decision for him and his future."

10. Within this context, the father points to the fact that a private school was chosen for S and S enrolled in that school one month *before* the mother left Pakistan on 1 February 2021. S initially engaged in online learning with the context of the global COVID-19 pandemic and commenced in person classes in January 2021 before online learning had to recommence in February 2021. He has remained in education in Pakistan since that date.

11. Against this, the mother now alleges that the father coerced and manipulated her into leaving Pakistan on 1 February 2021 without S. However, the mother also asserts that S remained in Pakistan when she left on 1 February 2021 in order to spend three further days with his paternal grandfather. I pause to observe that, whilst the mother did inform a social worker on 15 February 2021 that S was due to return to the United Kingdom on 3 February 2021, S had by this time already spent some four months with his paternal grandfather and it is unclear what arrangements were put in place, or to be put in place, to enable him to return to the United Kingdom three days after his mother departed

Pakistan on 1 February 2021. The mother alleges that on 25 February 2021 the father made the decision that S would remain in Pakistan and communicated this to the extended family in that jurisdiction.

12. In the foregoing context it is also noteworthy that the mother has now, for the first time, alleged to the Cafcass officer that S was touched inappropriately by one of the paternal family's drivers in Pakistan in January 2021. Notwithstanding this alleged event in January 2021, the mother left S in Pakistan when she returned to the United Kingdom in February 2021 and she made no mention of this allegation when speaking to the social worker on 15 February 2021 for the purposes of the Child and Family Assessment or to the Gender Violence Advocate in April 2021. The mother did not mention this allegation in her first statement to the court nor did she raise the allegation with the father. S has now sent a handwritten note to his father dated 30 June 2021, which is contained in the court bundle, in which he strenuously denies that any such incident took place and expresses concern that his mother is now fabricating allegations.

13. The court also has the benefit of a report from the Cafcass Family Court Adviser detailing S's understanding of the circumstances by which he came to be in Pakistan and his current wishes and feelings with respect to the matters that are now before the court. Within the foregoing context, the following salient points emerge from the report of the FCA:

    i) S had already started to discuss with his parents attending school in Pakistan prior to this departure with his mother in October 2020.

    ii) It is clear that *S's* understanding was that when the mother left Pakistan on 1 February 2021 he would be staying in Pakistan for a significant period of time. S described to the FCA what he described as "a big goodbye" consequent on the fact that the mother informed him that they would not be seeing each other for some time. S recalls that his mother said things like "you are going to be good in school and an educated man" at this goodbye.

    iii) S appeared very familiar with Pakistan and with the house in which he is now living with his paternal aunt and uncle, talking to the FCA about frequent trips back and forth to Pakistan with his mother throughout his childhood.

    iv) S spoke positively about the paternal family, giving the FCA the impression that "S feels secure in his Pakistani heritage and that this is a country and culture in which he feels comfortable". S also spoke positively about spending time with his extended paternal family and his paternal uncle and his wife, who are currently caring for him. S described this as an enduring and positive relationship.

    v) S has settled in his school. S described to the FCA how he attended his current school in 2016 for 11 months and that he remembered some of his classmates from that time. He stated that he enjoys attending [named] school and that he feels that he is making good academic progress. S told the FCA that it is his hope to complete his secondary school education in Pakistan but then return to the United Kingdom for university.

vi) S feels secure in his Pakistani heritage and that this is a country and culture in which he feels comfortable. S describes himself as a Muslim and the recent month of Ramadan was clearly an important event for him.

vii) S does not wish to return to the United Kingdom at this point in time.

14. With respect to S's current immigration position in Pakistan, S has the right to live in Pakistan visa free as he, in concord with the rest of his family, holds an overseas identity card of Pakistan known as the National Identity Card of Overseas Pakistani. This permits S to remain in Pakistan indefinitely.

15. The mother made an application on 1 March 2021 for a prohibited steps order preventing the father from removing U and T from the jurisdiction of England Wales, and an application for a specific issue order requiring the father to return S to the mothers care. On 5 March 2021 District Judge Evans purported to transfer the proceedings to the High Court. The District Judge did not, in fact, have jurisdiction to make such an order. Only a High Court Judge or the Court of Appeal has jurisdiction to transfer a matter to the High Court.

THE LAW

16. The law governing the determination of the issues before the court is well established. Whilst at one point Mr Merrigan appeared to suggest that the test for habitual residence had changed following the departure of the United Kingdom from the European Union he did not pursue that contention. Whilst, for proceedings commenced after 11pm on 30 December 2020, the question of habitual residence no longer falls to be determined within the framework of Art 8 of Council Regulation (EC) 2201/2003, there is nothing to suggest that the *test* for habitual residence, as distinct from the legal framework within that concept subsists, has changed following the departure of the United Kingdom from the EU.

17. For habitual residence to be established the residence of the child must reflect some degree of integration in a social and family environment (*Area of Freedom, Security and Justice)* (C-532/01) [2009] 2 FLR 1 and *Re A (Jurisdiction: Return of Child)* [2014] 1 AC 1). Whether there is some degree of integration by the child in a social and family environment is a question of fact to be determined by the national court, taking into account all the circumstances specific to the individual case. Habitual residence must be established on the basis of all the circumstances specific to the individual case (Case C-523/07 *[2010] Fam 42*). With respect to those circumstances, in *Re A (Area of Freedom, Security and Justice)* and *Mercredi v Chaffe* [2011] 2 FLR 515, the Court of Justice of the European Union identified the following, non-exhaustive, list of circumstances that might be relevant in a given case:

i) Duration, regularity and conditions for the stay in the country in question.

ii) Reasons for the parents move to and the stay in the jurisdiction in question.

iii) The child's nationality.

iv) The place and conditions of attendance at school.

v) The child's linguistic knowledge.

vi) The family and social relationships the child has.

vii) Whether possessions were brought, whether there is a right of abode and whether there are durable ties with the country of residence or intended residence.

18. In a series of decisions, namely *Re KL (A Child)* [2014] 1 FLR 772, *Re L (A Child) (Custody: Habitual Residence) (Reunite International Child Abduction Centre intervening)* [2014] 1 FLR 772, *Re LC (Children) (Reunite International Child Abduction Centre intervening)* [2014] 1 FLR 1486, *Re R (Children) (Reunite International Child Abduction Centre and others intervening)* [2015] 2 FLR 503 and *Re B (A child) (Habitual Residence: Inherent Jurisdiction)* [2016] 1 FLR 561 the Supreme Court has articulated the following principles of general application with respect to the question of habitual residence:

i) It is the child's habitual residence which is in question and hence the child's level of integration in a social and family environment which is under consideration by the court determining the question of habitual residence.

ii) In common with the other rules of jurisdiction, the meaning of habitual residence is shaped in the light of the best interests of the child, in particular on the criterion of proximity. Proximity in this context means the practical connection between the child and the country concerned.

iii) In assessing whether a child has lost a pre-existing habitual residence and gained a new one, the court must also weigh up the degree of connection which the child had with the state in which he resided before the move.

iv) The relevant question is whether a child has achieved some degree of integration in social and family environment. It is not necessary for a child to be fully integrated before becoming habitually resident.

v) It is the stability of a child's residence as opposed to its permanence which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there.

vi) In circumstances where the social and family environment of an infant or young child is shared with those on whom she is dependent, it is necessary to assess the integration of that person or persons (usually the parent or parents) in the social and family environment of the country concerned.

vii) In respect of a pre-school child, the circumstances to be considered will include the geographic and family origins of the parents who effected the move.

viii) The requisite degree of integration can, in certain circumstances, develop quite quickly. It is possible to acquire a new habitual residence in a single day. There is no requirement that the child should have been resident in the country in question for a particular period of time. The deeper the child's integration in the old state, probably the less fast his or her achievement of the requisite degree of

> integration in the new state. Likewise, the greater the amount of adult pre-planning of the move, including pre-arrangements for the child's day-to-day life in the new state, probably the faster his or her achievement of that requisite degree. In circumstances where all of the central members of the child's life in the old state to have moved with him or her, probably the faster his or her achievement of habitual residence. Conversely, were any of the central family members have remained behind and thus represent for the child a continuing link with the old state, probably the less fast his or her achievement of habitual residence.

ix) A child will usually, but not necessarily, have the same habitual residence as the parent(s) who care for her. The younger the child the more likely that proposition but this is not to eclipse the fact that the investigation is child focused.

x) Parental intention is relevant to the assessment, but not determinative. There is no requirement that there be an intention on the part of one or both parents to reside in the country in question permanently or indefinitely. Parental intent is only one factor, along with all other relevant factors, that must be taken into account when determining the issue of habitual residence.

19. In considering the question of habitual residence, it is not necessary for the court to make a searching and microscopic enquiry (*Re B (Minors)(Abduction)(No 1)* [1993] 1 FLR 988).

20. With respect to the question of whether it is in S's best interests for a return order to be made under the inherent jurisdiction where the court does have jurisdiction based on habitual residence, in *Re NY (A Child)* [2019] UKSC 49 the Supreme Court made clear that it remains open for an applicant to apply for a summary return order under the inherent jurisdiction notwithstanding that the same outcome may be capable of being achieved by way of a specific issue order under the Children Act 1989:

> "[44] The instruction in para 1.1 of Practice Direction 12D goes too far. There is no law which precludes the commencement of an application under the inherent jurisdiction unless the issue "cannot" be resolved under the 1989 Act. Some applications, such as for a summary order for the return of a child to a foreign state, can be commenced in the High Court as an application for the exercise of the inherent jurisdiction. But then, if the issue could have been determined under the 1989 Act as, for example, an application for a specific issue order, the policy reasons to which I have referred will need to be addressed. At the first hearing for directions the judge will need to be persuaded that, exceptionally, it was reasonable for the applicant to attempt to invoke the inherent jurisdiction. It may be that, for example, for reasons of urgency, of complexity or of the need for particular judicial expertise in the determination of a cross-border issue, the judge may be persuaded that the attempted invocation of the inherent jurisdiction was reasonable and that the application should proceed. Sometimes, however, she or he will decline to hear the application on the basis that the issue could satisfactorily be determined under the 1989 Act."

21. No one seeks to suggest in this case that the invocation of the inherent jurisdiction as the vehicle by which the mother seeks a summary return order is unreasonable. Where the application is made under the inherent jurisdiction, the question of summary return turns on welfare. The child's best interests are the court's paramount concern when considering an application for return in the exercise of the inherent jurisdiction. In *Re J (Child Returned Abroad: Convention Rights)* [2006] 1 AC 80 the House of Lords made clear that:

> "[22] There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it. Section 1(1) of the 1989 Act, like section 1 of the Guardianship of Infants Act before it, is of general application. This is so even in a case where a friendly foreign state has made orders about the child's future."

And in this context:

> "[30] Nevertheless, it was urged upon us by Mr Setright QC, for the father, that there should be 'a strong presumption' that it is 'highly likely' to be in the best interests of a child subject to unauthorised removal or retention to be returned to his country of habitual residence so that any issues which remain can be decided in the courts there. He argued that this would not mean the application of the Hague Convention principles by analogy, but the results in most cases would be the same.
>
> [31] That approach is open to a number of objections. It would come so close to applying the Hague Convention principles by analogy that it would be indistinguishable from it in practice. It relies upon the Hague Convention concepts of 'habitual residence', 'unauthorised removal', and 'retention'; it then gives no indication of the sort of circumstances in which this 'strong presumption' might be rebutted; but at times Mr Setright appeared to be arguing for the same sort of serious risk to the child which might qualify as a defence under article 13(b) of the Convention. All of these concepts have their difficulties, even in Convention cases…There is no warrant for introducing similar technicalities into the 'swift, realistic and unsentimental assessment of the best interests of the child' in non-Convention cases. Nor is such a presumption capable of taking into account the huge variety of circumstances in which these cases can arise, many of them very far removed from the public perception of kidnapping or abduction.
>
> [32] The most one can say, in my view, is that the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever."

22. In *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80 Baroness Hale observed that:

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

23. In *Re NY (A Child)* Lord Wilson considered that when evaluating the question of welfare in an application under the inherent jurisdiction the court is likely to find it appropriate to consider the first six items in the section 1(3) Children Act 'welfare checklist':

> "[47] Where an application for the same order can be made in two different proceedings and falls to be determined by reference to the same overarching principle of the child's welfare, it would be wrong for the substantive inquiry to be conducted in a significantly different way in each of the proceedings.
>
> [48] Of course, when in each of the proceedings it is considering whether to make a summary order, the court will initially examine whether the child's welfare requires it to conduct the extensive inquiry into certain matters which it would ordinarily conduct. Again, however, it would be wrong for that initial decision to be reached in a significantly different way in each of them.
>
> [49] The mother refers to the list of seven specific aspects of a child's welfare, known as the welfare check-list, to which a court is required by section 1(3) of the 1989 Act to have particular regard. She points out, however, that, by subsections (3) and (4), the check-list expressly applies only to the making of certain orders under the 1989 Act, including a specific issue order, as is confirmed by the seventh specific aspect, namely the range of powers under that Act. The first six specified aspects of a child's welfare are therefore not expressly applicable to the making of an order under the inherent jurisdiction. But their utility in any analysis of a child's welfare has been recognised for nearly 30 years. In its determination of an application under the inherent jurisdiction governed by consideration of a child's welfare, the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3) (see In re S (A Child) (Abduction: Hearing the Child) [2014] EWCA Civ 1557, [2015] Fam 263, at para 22(iv), Ryder LJ); and, if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should conduct an inquiry into any or all of those aspects and, if so, how extensive that inquiry should be."

24. This case involves allegations of domestic violence by the mother against the father. Within the context of this application being brought under the inherent jurisdiction for a summary return order, I note the following observations of Lord Wilson in *Re NY (A Child)* at [50] regarding the manner in which allegations of domestic violence fall to be dealt with in that context:

> "The mother also refers to Practice Direction 12J, which supplements Part 12 of the 2010 Rules and which is entitled "Child Arrangements and Contact Orders: Domestic Abuse and Harm". By para 4, the Practice Direction explains that harm is suffered not only by children who are the direct victims of domestic abuse but also by children who live in a home in which it is

> perpetrated. When disputed allegations of domestic abuse are made, the Practice Direction makes detailed requirements of the court, in particular to consider whether to conduct a fact-finding hearing in relation to them (para 16), whether to direct the preparation of a report by a CAFCASS officer (para 21) and whether to order a child to be made a party and be separately represented (para 24). The mother points out, however, that, by para 1, the Practice Direction applies only to proceedings under the relevant parts of the 1989 Act (which would include an application for a specific issue order) or of the Adoption and Children Act 2002. Therefore it does not expressly apply to the determination of any application under the inherent jurisdiction, including of an application governed by consideration of a child's welfare in which disputed allegations of domestic abuse are made. Nevertheless, as in relation to the welfare check-list, a court which determines such an application is likely to find it helpful to consider the requirements of the Practice Direction; and if it is considering whether to make a summary order, it will initially examine whether, in order sufficiently to identify what the child's welfare requires, it should, in the light of the Practice Direction, conduct an inquiry into the allegations and, if so, how extensive that inquiry should be."

DISCUSSION

25. Having regard to the evidence contained in the court bundle, and to the careful and comprehensive submissions made by Mr Merrigan on behalf of the mother and by Miss Hasan on behalf of the father, I have decided that S is habitually resident in Pakistan and that, accordingly, this court does not have jurisdiction with respect to S (no party having sought to suggest, wisely, that the court should exercise a jurisdiction based on nationality). My reasons for so deciding are as follows.

26. An evaluation of whether S is habitually resident in Pakistan is necessarily informed by the strength of the ties he had to this jurisdiction at the time he went to Pakistan in October 2020 and at which time no party appears to dispute he was habitually resident in England and Wales. A child will take longer to lose habitual residence in a jurisdiction with which he or she is strongly integrated ties as compared to a jurisdiction where his or her integration is more tenuous. Within this context, S was born in the United Kingdom, had spent a considerable amount of time in the United Kingdom and it would appear that he was brought up primarily in this jurisdiction. Whilst S does speak Urdu, his first language is English. S's family life with his parents and his siblings prior to October 2020 had taken place substantially in this jurisdiction. Against this, S was not in school as at October 2020 in consequence of not yet having been given a placement after moving home, had spent considerable periods in Pakistan during the course of his childhood and had a homelife in this jurisdiction that, on the mother's case, was regularly disrupted by domestic abuse. These latter matters, I am satisfied, will have made it easier for S to lose his habitual residence in the United Kingdom once he arrived in Pakistan, particular in the circumstances I now come on to deal with.

27. It is clear that prior to his departure of Pakistan in October 2020, S had durable ties with that jurisdiction. S is a child of Pakistani heritage and a large portion of S's extended family resides in Pakistan. S had, as I have observed, spent considerable periods of time in Pakistan during the course of his childhood on holiday in that jurisdiction, at

times for extended periods. Indeed, S had previously spent eleven months living in Pakistan and attending the school that he now once again attends in that jurisdiction. These matters are in my judgment significant to the question of whether S has some degree of integration in a social and family environment sufficient to result in being habitually resident in Pakistan in circumstances where a child will likely integrate faster into social and family life in a jurisdiction with which he or she has some experience of and durable ties with, as against a jurisdiction that he or she has never visited.

28. With respect to the reasons for the change that took place in October 2020 resulting in S going to and staying in Pakistan. I accept that the initial reason centred on the mother determining that she would seek medical treatment in that jurisdiction. However, it is noteworthy that even before that, S makes clear to the FCA that he had been discussing with his parents the possibility of studying in Pakistan, a position that is itself consistent with accounts S gave to the FCA or earlier racist incidents at the schools he had attended in England. I am likewise satisfied on the evidence before the court that, within that context, the parents reached an agreement that S would remain in Pakistan to pursue his education, subject to that course working out for S and that the reason that the mother left S in Pakistan when she left on 1 February 2021 was because of that agreement.

29. This is consistent with S's understanding of the situation as related to the FCA, S describing to the FCA what he described as "a big goodbye" consequent on the fact that the mother informed him that they would not be seeing each other for some time and recalling that his mother said things like "you are going to be good in school and an educated man" at this goodbye. It is also corroborated by other evidence. The fact of the agreement in this regard is made clear by the email from the mother to the education department that I have set out above and her step in alerting the Child Benefits Agency that she was no longer entitled to claim benefits for S. Whilst I accept that that email makes clear that, "If he doesn't settle, we will bring him back to the UK" the necessary corollary of that position is that if he did settle the parents were agreed that he would remain in Pakistan. For reasons I will come to, I am satisfied that S has settled in Pakistan. Within this context, I am satisfied that it is plain there was an agreement between the parents that S would remain in Pakistan for his secondary education and that is the reason he remained in that jurisdiction when the mother returned to the United Kingdom on 1 February 2021.

30. I am satisfied that the mother's claim that S remained in Pakistan on that date to allow him three further days with his paternal grandmother is entirely inconsistent with the foregoing evidence. I am equally satisfied that that assertion is inconsistent with the fact that S had already spent some four months with his paternal grandfather and that the mother left Pakistan on 1 February without any plans in place as to how or by whom S's return to the United Kingdom would be facilitated on 3 February 2021 as the mother alleges.

31. As a result of this decision, S has now been in the jurisdiction of Pakistan, a place he was already very familiar with, for an uninterrupted period of 9 months. His ambition is to remain in that jurisdiction whilst he completes his secondary education. Within this context, he is living with members of his extended paternal family, whom he already knew, and is cared for by them. He spoke warmly to the FCA of the level of care he is being provided with and of the relationship he has with his paternal aunt and uncle. In his handwritten letters contained in the bundle S describes being well cared

for. He enjoys a comfortable lifestyle in Pakistan in terms of his socio-economic needs. S has immigration clearance that permits him to remain lawfully in Pakistan indefinitely and which confers on him a right of abode.

32. On the evidence before the court, I am not prepared to make a finding that these positives have been overborne by an incident in which S was the subject of a sexually inappropriate behaviour by a driver for the paternal family in January 2021. As I have noted, that allegation was made for the first time to the Cafcass officer that S was touched inappropriately by one of the paternal family's drivers in Pakistan. The mother left S in Pakistan a month after this event was said to have occurred and when she returned to the United Kingdom in February 2021 she made no mention of this allegation when speaking to the social worker on 15 February 2021 for the purposes of the Child and Family Assessment or to the Gender Violence Advocate in April 2021. The mother did not mention this allegation in her first statement to the court nor did she raise the allegation with the father. S has now sent a handwritten note to his father dated 30 June 2021, which is contained in the court bundle, in which he strenuously denies that any such incident took place and expresses concern that his mother is now fabricating allegations. In the foregoing circumstances, there is no basis on which the court could make a finding that this event occurred.

33. In addition to these matters, and pursuant to the parental agreement that I am satisfied was reached in early 2021, S has been in full time education in Pakistan for a number of month, in which he is settled. It is plain from the report of the FCA that S places value on his own personal academic success and that he feels his school in Pakistan meets his educational needs. Whilst I accept that the pandemic has interrupted and delayed S's ability to build sustainable relationships with peers, S clearly places a premium on education *in* Pakistan both for itself and in terms of his preference for school in that jurisdiction and to school in this one and in that context is able to provide balanced and cogent reasons for wishing to continue his education in Pakistan. In my judgment, this also speaks to a degree of integration of S in the social environment of Pakistan.

34. With respect to S's linguistic knowledge, I am satisfied on the evidence that S has made significant progress in speaking Urdu, even as his first language continues to be English. S has made clear, and there is no evidence to gainsay this, that he primarily speaks in English at school, with both parents and to his paternal uncle and wife, but in Urdu to his paternal grandparents. S is clear in himself that he is making progress. Asked by the FCA if he found it difficult to learn Urdu, S was clear that it was "like magic" and that he had always known how to speak in Urdu.

35. Finally, whilst at this stage I am concerned with the question of whether, as a matter of fact, the evidence demonstrates that S has some degree of integration in a social and family environment in Pakistan, I am also mindful of S's strongly expressed wish to remain in Pakistan, to remain in education in Pakistan and, within that context, to remain residing with his paternal aunt and uncle in that jurisdiction. I am satisfied that these clearly expressed wishes and feelings on the part of a nearly 13 year old child, and the strength with which they have been expressed, speak to the extent that S considers himself to be integrated in a social and family environment in Pakistan. In my judgment, a strong desire on the part of a child who is at an age, and of a level of understanding, to express an informed wish to remain in a place is capable of indicating a significant level of integration in the family and social environment of that country.

In short, we tend to want to stay where we feel a part of our family and our wider social situation.

36. I acknowledge Mr Merrigan's submission that if the plan for S was for his education in Pakistan to be for a trial period, the uncertainty inherent in such an arrangement could act to undermine a degree of integration in a family and social environment in that jurisdiction. However, two matters must be set against that submission. First, having regard to the email sent by the mother to the education authority, the arrangement was that if S did not settle his parents would bring him back to the United Kingdom. This was therefore not a trial period in the sense of defined period of time during which success of failure would occur but rather a decision that S would receive his secondary education in Pakistan, with that outcome not being the case only if he was not able to settle in that school. Second, and more importantly, it is now plain, nine months since S arrived in Pakistan, that he has settled into his secondary education in Pakistan and sees that education as his gateway to his personal success.

37. In all the circumstances, and notwithstanding that Mr Merrigan has said all that possibly could be said on behalf of the mother, I am satisfied on the evidence before the court that S demonstrates a degree of integration in a social and family environment in Pakistan sufficient to ground the conclusion that he is, as a matter of fact, habitually resident in Pakistan.

CONCLUSION

38. In conclusion, for the reasons given above, in my judgment S is habitually resident in Pakistan. Accordingly, and as properly conceded by Mr Merrigan on behalf of the mother, the court does not have jurisdiction in respect of S. In the circumstances, I dismiss the mother's application under the inherent jurisdiction.

39. That is my judgment.