IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2022] EWHC 3557 (Fam)

No. FD20P00870

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 8 March 2022

Before:

DEXTER DIAS QC

(Sitting as a Deputy High Court Judge)

(**In Private)**

B E T W E E N :

PT — Applicant

- and -

(1) CW
(2-3) THE CHILDREN
(through their Children's Guardian) — Respondents

REPORTING RESTRICTIONS AND ANONYMISATION APPLY

MR A LAING (instructed by Beck Fitzgerald) appeared on behalf of the Applicant.

THE FIRST RESPONDENT appeared In Person.

MR J NIVEN-PHILLIPS (Solicitor, of CAFCASS Legal Services) appeared on behalf of the Second and Third Respondents, through their Children's Guardian.

J U D G M E N T

(**via Cloud Video Platform**)

DEXTER DIAS QC :
(sitting as a Deputy High Court Judge)

1 This is the judgment of the court.

2 I subdivide it into 11 sections, as set out in the table below, to explain the court's reasoning. I have circulated the structure in advance with the necessary anonymisation scheme to safeguard the right to private and family life of parties under Art. 8 European Convention on Human Rights ("ECHR"). I conclude with a letter from the court to the children to explain why I have reached the decision I have.

(1) Introduction

3 Two children, two sisters, live in Spain. I shall call them "child L" and "child Q". This does not do the remotest justice to their names. Although they currently live in Spain, they did not always do so. They were born in England and lived for the first part of their life in England. L is now 13 and Q is 10.

4 They are delightful, intelligent and multi-talented children. They have a passion for singing, music and playing the piano. They enjoy all kinds of sport and L, in particular, has a real talent in rugby. They are different temperamentally: while L is rather shy and timid, her younger sister, Q, is outspoken and confident. They have settled in a beautiful and peaceful part of Southern Spain with their mother, and all three of them love it. But this court must decide whether to order the summary return of the children to the United Kingdom. This is against the very strong wishes of them all.

5 The parties in this matter are as follows: the applicant father is Mr PT. He lives in England and he is a teacher. He has been represented by Mr Laing of counsel. The respondent mother is Ms CW. Although she presently lives in Spain, she had previously lived in England and had a relationship with Mr PT. She is of Caribbean heritage. She appeared in Person.

6 The two children are party to proceedings. They appeared through their children's guardian, Ms Allison Baker of the CAFCASS High Court Team. Ms Baker has been represented by Mr Niven-Phillips of CAFCASS Legal.

7 The children are living near to the Sierra Nevada mountains. They go to a Spanish School where English is taught as a foreign language. They have no blood relations on their father's side in Spain, nor do they have any relations on their mother's side in Spain. So, in terms of a family network there is not one person locally save for their mother. But the world is hyper-connected. They stay in touch with relatives in England through various IT and social media platforms.

8 What happened is that in the summer of 2017, the family travelled to Southern Spain. They have had a property there since 2014 which they used as a holiday home. I emphasise that precisely what then happened is in dispute between the parents, and this court today is not making findings of fact about the detail of what happened in the breakdown of the relationship between the mother and the father. The upshot of it was that the children continued to stay in Spain with their mother. She made a complaint about the father to the Spanish authorities. He was arrested. Nothing ultimately has come of that, but this was the fissure, the division of this family, with Mr PT returning to England, and Ms CW remaining in Spain with the children.

9 This court has previously found that they are in Spain because Ms CW wrongfully retained them there. Their father did not consent to their not returning to England. Indeed, Mr PT has spent years since that wrongful retention in 2017, and a very considerable amount of money, fighting through the Spanish courts to get his children back.

10 In September 2020 there was a major turning point. The Spanish Court set aside all the previous Spanish orders in the case and decided it was the United Kingdom that had jurisdiction, more accurately England and Wales. At this point, of course, it was now well over a year since the wrongful retention in 2017. So, the most obvious channel for a return, The Hague Convention 1980, was not open to Mr PT due to the Convention limitation period, but there was another route: the inherent jurisdiction of the Courts of England and Wales. That ancient power, dating back as we shall see as far as legal annals extend, offered Mr PT a potential mechanism. That jurisdiction is inherent because it is not granted by Parliament or, indeed any Statute, but inheres to the Court. In other words, it is an attribute or quality that belongs to the Court, or is attached to it, intrinsically and inseparably. That said, whether the Court does grant Mr PT the relief he seeks, the summary return of his two daughters from Spain to England, this judgment must decide.

11 The application before the Court is therefore a summary return application exclusively made under, and invoking, the Court's inherent jurisdiction. In the headline case of *In the matter of NY (A Child)* [2019] UKSC 49, Lord Wilson explained at paragraph 44 when it would be appropriate to invoke the inherent jurisdiction. His Lordship stated it should be resorted to:

> ". . . for reasons of urgency, of complexity or of the need for particular judicial expertise in the determination of a cross-border issues."

12 In the present case, the father applied under the inherent jurisdiction because he claims this case is exceptional and has unusual prevailing facts. There is a claim of wrongful retention; it has endured over four years, and indeed three years from the point of his filing the application form. It is now almost four and a half years. Reverting to Lord Wilson's rubric, the application needed to be dealt with urgently because of the alleged and continuing harm to the children. It was complex due to the unusual factual background. It required particular

cross-border judicial expertise for the reason of the existence of complex concurrent Spanish criminal and civil proceedings.

Background

13 To understand why this claim has been brought, and why it has been made in the way it has, one must examine the background facts. The mother and father started a relationship in 2007. They lived in England, and in 2008, having started to live together the child L was born. In 2011, Q was born. The children were wrongfully retained in Spain around 26 September 2017 or, as a previous court found, in the alternative from 31 October 2017. Since then, there have been years of Spanish civil and criminal litigation, plus an application by Mr PT under the 1980 Hague Convention, to secure the return of the children. On 25 September 2020, there was the turning point mentioned - at the High Court of Granada. That Court held that the previous Spanish orders had been made without jurisdiction, and it set them all aside. In late December 2020, before the expiration of the Brexit transition period, Mr PT applied to this Court for the children's return.

14 On 21 July 2021, this court found that it had jurisdiction on the basis of Article 10(b) Brussels IIA which, of course, deals with jurisdiction in respect of abducted children. In September and November 2021 respectively, the parties filed their statements. On 24 January 2022 the children's guardian represented the children having been joined to the proceedings by a Court order dated 27 August 2021.

15 The guardian is Ms Baker, and she recommends the children's summary return. L, who is 13, has expressed very strong views to the contrary. As such, her solicitor took steps to evaluate whether she was competent to instruct him directly. L's guardian and solicitor spent one and a half hours together on Tuesday, 1 February 2022. The guardian and the solicitor reached the unanimous conclusion that she did not sufficiently understand the proceedings to be competent. They then communicated that to L.

16 Ms CW has, in breach of the confidentiality of these proceedings, released part of the documentation to Mr PT's brother. That brother has now provided the Court with what he describes as “a voluntary deposition” running to 21 pages. It states that Ms CW gave him 148 pages of documents that had been presented to the court. This brother, I emphasise, is not a witness in these proceedings. There was no application for him to become one. His statement was filed without permission and I have ignored it.

(2) The Procedural History

17 There is a long and tortuous litigation history in this case. I do not pretend to detail every move in this byzantine frenzied chess match between Ms CW and Mr PT, bitterly played out across two jurisdictions.

Spanish proceedings

18 It seems that in the late summer of 2017, the relationship irretrievably broke down. On 27 September 2017, a separation order was granted to Ms CW by a court of first instance at Huesca in Spain. On 1 December 2017, Mr PT's representative requested the separation order be stayed. On 2 January 2018, ICACU UK accepted a 1980 Hague Convention application from Mr PT, first received on 14 December 2017, and forwarded it to the equivalent authority in Spain. On 7 July 2018, the Spanish State Attorney issued a report on “the non-liability of filing a lawsuit”, in other words, Mr PT's 1980 Hague Convention application, which then proceeded no further it appears.

19 On 17 January 2019, criminal charges were brought against Mr PT. On 14 June 2019, there was a criminal hearing into Ms CW's allegations against Mr PT in respect of domestic abuse and maltreatment of this family. On 25 June 2019, Mr PT was absolved of Ms CW's allegations. On 25 September 2019, the Huesca Court delivered a judgment declaring that the children were habitually resident in Spain from 31 October 2017. It made a series of further orders:

(i) About parental rights to both children;

(ii) Custody was awarded to Ms CW;

(iii) There was contact with Mr PT which was supervised visits on two days a month for six months;

(iv) Maintenance from Mr PT to Ms CW; and

(v) Ms CW and the children should reside in the Spanish property.

20 A month later, on 25 October 2019, Mr PT appealed the Huesca Court's judgment. On 3 February 2020, the Appeal Court dismissed Ms CW's appeal against the judgment and upheld the 25 June 2019 judgment. On 3 September 2020, the Court received a new claim from Ms CW which extended to 117 pages and made allegations of breaches of various orders. On 25 September 2020, Mr PT's appeal against the Huesca Court's 25 September 2017 judgment was allowed. The Appeal Court found that the children were not habitually resident in Spain on 31 October 2017; so, in fact it was the Court in this jurisdiction – England and Wales – which had jurisdiction. The Spanish orders were set aside.

21 On 21 September 2020, Mr PT initiated proceedings against Ms CW in respect of the abusive treatment of the daughters and the fact that he said she had denied him access to them. On 29 October 2020, the Spanish Supreme Court dismissed Ms CW's appeal against the 3 February 2020 judgment. On 12 February 2021, there was a successful appeal of the breach of order claim.

UK proceedings

22 I then turn to the proceedings in this jurisdiction. On 29 December 2020, in the aftermath of 25 September 2020 judgment in Spain setting aside the previous Spanish orders, Mr PT filed a C66 application in the United Kingdom. It was issued and sealed on 31 December 2020. It was framed thus:

> "The applicant asks the Court to order the return of these children to England and Wales under its inherent jurisdiction in respect of which the applicant relies on *In the matter of NY (A Child)* [2019] UKSC 49, paragraph 44, and the urgency and complexity of and, in particular, judicial expertise is required."

For the present purposes, it is the applicant's case that:

(i) The children were wrongfully retained by the respondent in Spain in and around late summer/autumn 2017;

(ii) The Spanish Court repeatedly failed properly to consider whether it had jurisdiction to make the orders it did in respect of the

children, with those orders in October 2020 set aside on appeal by the Spanish Appellate Court for want of jurisdiction;

(iii) Meanwhile, the children's relationship with the applicant was actively and significantly weakened by the respondent;

(iv) The children have suffered, and continue to suffer, in the respondent's care;

(v) The court should order the children's return to England and Wales.

23 On 24 March 2021, the case came before Damian Garrido QC, sitting as a Deputy High Court Judge. Ms CW did not attend, not having had notice. A directions' hearing was listed for 16 April. On 16 April the case came before Arbuthnot J and various directions were made, including directions for the filing of witness statements. The purpose was to case-manage this matter to a two day hearing on 21 July 2021 when jurisdiction would be determined. On that date, the case came before Mr Rees QC, sitting as a Deputy High Court Judge. Ms CW did not attend. The Court gave an extemporary judgment determining that she had been served. The court was satisfied that the children were habitually resident in England before their wrongful retention on or about 26 September 2017 or, in the alternative, 31 October 2017. It was declared in the court order at paragraph 8:

> "The Court has jurisdiction as to matters of parental responsibility in respect of the children, by virtue of Article 10 of Council Regulation EC 2201/2003 of 27 November 2003."

Further, in respect of contact, the order stated at paragraph 10:

> "The respondent mother is ordered to make the children available for fortnightly video contact via Skype/WhatsApp video with the applicant father on alternative Saturdays for up to one hour, the first of such sessions to take place on 31 July 2021 at such times to be agreed in writing between the parties or via their solicitors."

A directions hearing was listed for 20 September 2021 in preparation for the final hearing which was for the first open date after 25 October 2021.

24 On 27 August 2021, Mr David Lock QC, sitting as a Deputy High Court Judge, without a hearing, ordered that the children be made parties to proceedings. The matter was listed in front of the same Judge on 23 September 2021. Ms CW, again, did not appear. She later sent an email stating she had internet difficulties. At the hearing further case management orders were made, including that by 4 p.m. on 14 January 2022 CAFCASS should file its welfare report about the children. Further spending time arrangements were made for contact between Mr PT and the children by video. The case was set down for a three-day final hearing between 9 and 11 February 2022, and that is how this case came before me.

(3) Issues

25 At the outset of the hearing on 9 February 2022, the Court sought to identify the issues in front of it. The parties agreed the court's formulation, which sought to clarify and simplify matters:

Issue 1: The question of the summary return order. There were two sub-questions which were taken from Lord Wilson's speech in the case of *NY*. Therefore:

(a) should the welfare inquiry be in accordance with the welfare checklist and, if so, to what extent?

(b) should there be an inquiry into the domestic violence and abuse allegations made by Ms CW against Mr PT and, if so, to what extent?

Issue 2: If a summary return order is granted, what further directions should there be?

(a) When should the children return to the United Kingdom? Immediately, knowing the court decision, or in the summer after the end of the academic school year?

(b) Who should the children live with on UK return (if ordered)? Should it be Ms CW on an interim basis, the CAFCASS recommendation, or with Mr PT having at least shared care, as was Mr PT's case.

(c) What contact arrangements should there be?

(d) Should the Court grant a prohibited steps order to prevent Ms CW removing the children from Spain before the return, and from England and Wales after the return?

(e) Should the court order that the children's passports be lodged for safekeeping with CAFCASS or with Mr PT's solicitors under the Family Law Act 1986 section 37.

Issue 3: If there is not to be summary return, what contact should Mr PT have? However, as the trial proceeded the position simplified further. It was agreed there should be a welfare inquiry with oral evidence from Mr PT, Ms CW and Ms Baker, the CAFCASS officer. All parties agreed there should be no inquiry into the historic domestic violence and abuse allegations. The reason for this stance should be explained at this stage.

26 Mr PT submitted that a summary return would not put the children at risk from Mr PT himself, and therefore the domestic abuse allegations did not need to be determined. Ms CW agreed that the allegations did not need determining for the court to be able to decide the question of the summary return order. Ms Baker said that Ms CW had refused to engage in her proposal that she completes a domestic abuse information gathering questionnaire that Ms Baker had emailed to assist her on 8 December 2021. Therefore, Ms Baker, having considered the entirety of the material before her, concluded that she, Ms Baker, could make a recommendation to the Court about summary return without need for a fact finding hearing to determine the disputed allegations of domestic abuse. That was because she did not understand that Ms CW's position was that the children should *not* have a relationship with their father on the basis of any risk that he might pose to them. That was not Ms CW's position – and that would principally be the purpose of the fact-finding hearing, welfare.

27 What was also clarified was that if, in principle, the court ordered summary return that should not occur immediately but after the end of the school year which, in Spain is at the end of June/beginning of July. Also, if it was a return to England and Wales, the children should live exclusively with their mother in the interim until the court made a welfare

determination, but the children should have direct contact with their father, including overnight staying contact. There would be no need for supervision. The court should grant a prohibited steps order to prevent Ms CW removing the children from Spain prior to any return to the United Kingdom, and from moving them from the United Kingdom after their return without the written consent of Mr PT, or the order of the court, and the children's passports should be lodged with Mr PT's solicitors because CAFCASS is not able to accommodate that.

28 Therefore, the only issue that remained contested was the issue of the summary return. On this the stance of the parties is as follows. Mr PT makes the application and he is supported by the children's guardian. Mr PT's case, in a nutshell, is that the children being in Spain is inflicting damage on his relationship with them, and that, in turn, is going to cause damage to the children. That broad analysis is echoed with nuanced differences, that I shall come to, by Ms Baker.

29 Ms CW strenuously opposes the application. She says the children should stay in Spain; return would be very harmful to them. They have settled in Spain now and are happy there, and do not wish to return. Furthermore, a return would seriously impact their mother, who is their primary caregiver, and that would not be in their best interests. Ms CT put it, I must say with admirable succinctness, in her closing submissions to this court, which she provided – as did all parties – in writing. She wrote:

> "CAFCASS must consider that maybe not all their international cases merit uprooting children to return to the United Kingdom. Must they always seek a return?"

And her answer to that is: "It is not necessary to uproot the children and turn their lives upside down."

(4) Law

30 As I have indicated, this court has determined that jurisdiction is retained by England and Wales. That by virtue of an order made by Mr Rees QC, sitting as a Deputy High Court Judge, on 21 July 2021. The decision of the court relied upon Article 10 of the Council Regulation EC2201/2003 of 27 November 2003. Why was it that decision was made? It is because Article 10 provides as follows:

> "Jurisdiction in cases of child abduction.
>
> In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and . . ."

There are two bases for the jurisdiction of the home court to be displaced. The first basis is:

> "(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention . . ."

In this case exactly the opposite is the position. Mr PT has constantly and forcefully voiced his objections to the wrongful retention. The second basis is as follows:

> "(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment . . ."

I pause to observe that that is the case: the children have been in Spain for over four years, but at least one of the following conditions must be met. The four conditions are set out at (i) to (iv). None of these conditions have been met. The result is that the United Kingdom retains jurisdiction to determine questions about the welfare of the children, and issues around the parental responsibility and child arrangements.

31 The application before the court, as I have indicated, is not under The Hague Convention 1980. That Convention itself explicitly addresses the impact of its Articles. Article 18 provides:

> "The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time."

Therefore, the court may still make a specific issue order directing the other parent to return the child, or order the return of the child to the inherent jurisdiction, if it is in the interests of the child to do so (*In the Matter of KL (Abduction: Habitual Residence: Inherent Jurisdiction)* [2013] UKSC 75). Therefore, the inherent jurisdiction may properly be used where the circumstances of the case are outside the scope of The Hague Convention 1980.

32 There are several cardinal principles that govern how the court should invoke that jurisdiction. I will identify those principles very shortly, but let me say something about what inherent jurisdiction is for. The inherent jurisdiction arises from the Crown's innate power and corresponding responsibility to protect its subjects. It is both coercive and protective in nature. This power is exercisable, but not exclusively, by the Court. It is wielded on behalf of the Sovereign. The precise origins of this jurisdiction will, perhaps, always be lost in the historical mists. But **Blackstone** states that aspects of this wider inherent jurisdiction were "exercised as early as the annals of our law extend". See Sir William Blackstone for **Blackstone Commentaries** 286. Since, at least, the reign of Charles II, the jurisdiction to protect the interests of children was part of the practice of the Court of Chancery. Then, its successor, the Chancery Division of the High Court, before being transferred to the Family Division in 197 (see Sir James Munby extra-judicially "Wither the inherent jurisdiction?" CPPA Lecture, 10 December 2020). In *re (SA) (a minor) (Wardship: Court's Duty)* [1984] WLR 156, Lord Scarman explained the court's inherent duty in respect of children as follows:

> "Its duty is to act in the way best suited in its judgment to serve the true interest and welfare of the ward. In exercising wardship jurisdiction, the court is a true family court. Its paramount concern is the welfare of the ward. It will therefore sometimes be the duty of the court to look beyond the submissions of the parties in its endeavour to do what it judges to be necessary." (pp.158-59).

33 In this case I drew great assistance from two decisions. They shape and inform how a court should approach the question of the summary return order under the inherent jurisdiction. *Re J (Custody Right: Jurisdiction)* [2005] UKHL 40 and, as I have indicated: *In the matter of NY (A Child)* [2019] UKSC 49. Overall, the law that governs this question is well established. It can be distilled into the following eight principles. I will detail each of them, before I return to *Re J* and *NY,* in a little more detail.

(i) **Paramountcy**. I want to make it clear that the paramountcy principle informs everything that this court does in respect of this application. The welfare of L and Q is the court's paramount consideration, which means nothing supplants it.

(ii) **The test**. The test is the best welfare interests of the child.

(iii) **The focus of the welfare question**. The issue is not to do with the range of options about who the children should live with, or the levels of contact or long term arrangements for them. It is much more tightly focused. It is simply this: is summary return in the best welfare interests of the child. But this issue can be further refined with a codicil to the issue that the summary return is because the court in the receiving jurisdiction is best placed to make decisions about the best arrangements for the child's short-term, medium-term and long-term future (*In the matter of KL* in the Supreme Court). To answer that question there must necessarily be a welfare analysis.

(iv) The finding of wrongful retention does not mean that there must be automatic return. There must be a welfare evaluation to decide whether the return is in the welfare interests of the child. I will come to the intensity of that welfare scrutiny shortly.

(v) The application here, under the inherent jurisdiction, is a route to determining the issue of summary return.

(vi) Whether the welfare analysis were under a specific issue order for the purposes of section 8 of the Children Act 1989 or the inherent jurisdiction the principles are the same.

(vii) The function of the exercise of the inherent jurisdiction is to promote and safeguard the welfare of the children. This is clear from the historical origins of the inherent jurisdiction as I have demonstrated.

(viii) Whilst *In the matter of NY* involved the court considering an outward return order, Mostyn J in *Re N* [2020] EWFC 35 concluded that the principles set out in *NY* apply equally to applications for an inward return order, as is sought by Mr PT here.

34 Having, in short order, identified the eight key principles, I turn to the two cases previously mentioned. First, *Re J.* Lady Hale considered a number of important variables between paragraphs 33 and 41. She stated:

> "The court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of merits." [26]

The analysis involves the swift, realistic and unsentimental assessment of the best interests of the child leading in proper cases to the prompt return of the child to his or her own country, but not the sacrifice of the child's welfare to some other principle of law ([27], [41] and [31]).

> ". . . 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 away from his or her home country. On the other hand, summary return may very well be in the best interests of the individual child." [28]

At [32] Lady Hale stated:

> "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".

35 I would add here that this should not be taken to import Hague Convention principles by analogy into an inherent jurisdiction case. Hague Convention does not apply, period. At [33] Lady Hale stated:

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

Then at [34]:

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

And at [38]:

> "Hence our law does not start from any *a priori* assumptions about what is best for any individual child. It looks at the child and weighs a number of factors in the balance, now set out in the well-known

> 'check-list' in section 1(3) of the Children Act 1989; these include his own wishes and feelings, his physical, emotional and educational needs and the relative capacities of the adults around him to meet those needs, the effect of change, his own characteristics and background, including his ethnicity, culture and religion, and any harm he has suffered or risks suffering in the future. There is nothing in those principles which prevents a court from giving great weight to the culture in which a child has been brought up when deciding how and where he will fare best in the future . . .”

And [40]:

> “The effect of the decision upon the child's primary carer must also be relevant, although again not decisive . . . The courts are understandably reluctant to allow a primary carer to profit from her own wrong by refusing to return with her child if the child is ordered to return . . .”

I pause to observe that return should not be ordered or sanctioned as any kind of punishment for the wrongfully retaining parent. That has nothing to do with the invoking of the inherent jurisdiction. At [41]:

> “These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. But they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here. Our concept of child welfare is quite capable of taking cultural and religious factors into account in deciding how a child should be brought up. It also gives great weight to the child's need for a meaningful relationship with both his parents . . .”

That is the case of *Re J*.

36 I now turn briefly to the case of *NY.* At [49] of his judgment, Lord Wilson stated in respect of an application for summary return that:

> “. . . the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3) [Children Act 1989] 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.”

Lord Wilson gave invaluable guidance between [55] and [64]:

> “55. I respectfully suggest, however, that, before making a summary order under the inherent jurisdiction . . . the Court of Appeal . . . “

– which was the court making the decision:

> “. . . should have given . . . at least some consideration to eight further, linked, questions.”

I propose to examine the position in respect of each of Lord Wilson's questions after I set them down.

> "56. First, the court . . . should have considered whether the evidence before it was sufficiently up to date to enable it then to make the summary order . . ."

In this case, the court has the benefit of up to date evidence from the parties, both written and oral.

> "57. Second, the court should have considered whether the judge had made, or whether it could make, findings sufficient to justify the summary order. . ."

The child in that case had retained habitual residence in Israel.

> ". . . did there need to be inquiry into the child's habitual residence at the relevant date, which, in the absence of an application, was in this case the date of the proposed order?"

37 A previous incarnation of this court has decided on jurisdiction. I propose to make findings of fact about the nature and extent of the harm that attends both options before the court. Put shortly: to remain or to return?

> "58 . . . the court should have considered whether . . . an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act and, if so, how extensive that inquiry should be . . . It might in particular have considered that the third of those aspects, namely 'the likely effect on [the child] of any change in [her] circumstances', merited inquiry."

This court has conducted a substantial inquiry into the welfare implications of both options for these two children:

> "59. Fourth, the court should have considered whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by the mother of domestic abuse and, if so, how extensive that inquiry should be . . ."

All parties agree that historic allegations of domestic abuse and violence should not be explored for the purposes of this summary return application:

> "60. Fifth, the court should have considered whether, without identification in evidence of any arrangements for the child in Israel, in particular of where she and the mother would live . . . [should take place]."

The issue of potential living arrangements in the United Kingdom were addressed in evidence before me.

> "61. Sixth, the court should have considered [the need for] oral evidence [and whether it] should be given by the parties and, if so, upon what aspects and to what extent."

This court determined there should be oral evidence provided by three crucial witnesses, Mr PT, Ms CW and the children's guardian, Ms Baker.

> "62. Seventh, . . . a CAFCASS officer should be directed to prepare a report and, if so, upon what aspects and to what extent. It is noteworthy that in the *L* case discussed in para 43 above, a CAFCASS report had been prepared. It had been designed to ascertain the boy's wishes and feelings and so was apparently made as if pursuant to section 1(3)(a) of the 1989 Act: see para 14 of Baroness Hale's judgment. In her careful weighing, in paras 34 to 37 of her judgment, of the welfare considerations which militated both in favour of, and against, the boy's return to Texas, Baroness Hale relied to a significant extent upon the content of the CAFCASS report."

This court had the benefit of a full and helpful report from the CAFCASS officer, Ms Baker. She also spoke to it and gave evidence about it.

> "63. Eighth, the court should have considered whether it needed to compare the relative abilities of the Rabbinical Court in Jerusalem . . ."

– that was a case involving Israel as the other jurisdiction.

> ". . . and the Family Court in London to reach a swift resolution of the substantive issues between the parents in relation to the child . . ."

38 I proceed on the basis that Spain is a jurisdiction with an effective court system and, in particular, in relation to welfare. Also, however, I proceed on the basis that this court is seised with jurisdiction as determined by courts both in Spain and also England and Wales, thus this court can make decisions about the welfare of the children.

(5) Evidence

39 In terms of sources of evidence there was an electronic bundle extending to 293 pages, numerous further written documents and position statements. I read them all. Having said that, I have indicated I did not read the unsolicited document provided by Mr PT's brother. Certain of the critical documents I had to re-read. The court received evidence from three witnesses, Ms Baker, Mr PT and Ms CW. I intend to weave Ms Baker's evidence into the rest of the judgment. I pause to observe that she is a very experienced CAFCASS officer and part of the CAFCASS High Court Team. She provided a comprehensive 25 page report of the highest quality, and I found it immensely helpful. It was balanced, insightful and realistic. I judge that, at all times, she had the welfare of these two children at the forefront of her mind. I was able to draw great assistance from Ms Baker and the court is indebted to her for her hard professional work.

Mr PT

40 I turn to the evidence of Mr PT. He is by profession a teacher. He filed a statement dated 12 November 2021 along with a 104 pages of exhibits, these included contact notes, correspondence between the parties and documents from the Spanish proceedings. In his statement he emphasised that he was deeply, deeply concerned about the impact of the children living in Spain. He provided a history of the children when they were in this country and stated that they had friends and were doing well here. Ms CW, he says, has a volatile nature and she was not always consistent in her mood and behaviour. On 8 May 2015, for example, she, in an unprovoked way, attacked him and in doing so injured child L,

who was then required to be treated medically. An ambulance came, and the head injury was attended to, but the child suffered following this attack. I emphasise that this court is not making any findings of fact about that incident.

41 Mr PT complains:

> "On the eve of our separation in 2017 Ms CW described me as 'nothing more than a sperm donor' to suggest that I was of no importance to our children. In her statement she describes me as a 'biological father'. Ms CW pathologically refuses to accept that I might be important to the children."

He rejected entirely the suggestion that the two of them had planned to live in Spain permanently. After the separation and Ms CW's wrongful retention of the children in Spain, she made sure, he says, there was no opportunity for the girls to see him. Not only had the children been prevented from communications with their father, they have also been denied communications or contact with their extended family. Now, their only contact has been via internet with their grandfather, who is 86, who has also been fed the false narrative as Mr PT puts it. The girls stated they had no friends in the small rural school in Spain, and were being hit by other students.

42 Ms CW was in debt and was unable to pay for the house they were living in, and within a year she received legal documentation about the threat of eviction. She began to ask Mr PT for money. In fact €35,000 was needed to keep a roof over the children's head. Ms CW has been unemployed in Spain. She has received an agreed amount of child maintenance since the separation, and Mr PT has paid it despite her denying access to the children. He then documented in detail the very real difficulties he has had having any contact with the children. On 28 July 2021, for example, his solicitor wrote to Ms CW to provide him with a copy of the court order dated a week earlier on 21 July, and explained to her that the order of the court required her to make the children available for fortnightly video contact. Ms CW wrote back to the solicitor saying:

> "There are many ways your client can communicate with the children and one of those ways is putting ink to paper."

Mr PW provided photos from 20 February 2019 when the children were allowed to see him at school. He said:

> "They were happy in my presence as can be seen on these photos."

I have looked at them and, indeed, the children do appear happy with him. They equally were happy in the video of the February 2019 meeting that I saw. He asserts that mother's behaviour is negatively impacting the children educationally, socially, psychologically and emotionally.

43 Mr PT was asked questions on behalf of Ms CW by the court. That was because questions were committed to writing and, I am bound to say , Ms CW scrupulously complied with the court's request that she itemised the questions that she wished Mr PT to be asked. The court reviewed the questions and they were completely appropriate. She wanted the court to ask the questions for her and the court was happy to do that. The court has a duty to level the playing field where there is an unrepresented court user, and I judge Ms CW was highly emotional and not in an adequate state to ask questions.

44 Her first question was this:

"Do you like Spain?"

Mr PT said he did like Spain. She then asked:

"Did you relocate your family to Spain?"

He said: "No", he had a holiday home in Spain but it was not a permanent relocation and Ms CW also knew that. She asked whether it was for a better lifestyle, and he said:

"No, we went to Spain many times because we had bought a holiday home there."

One of the reasons they bought it was because of skiing. He has been a skier all his life, but it is regrettable the children have not had the chance to enjoy that. The next question:

"Have you changed your views now on the children learning different languages?"

He said:

"I always thought it's a good thing for the children to learn different languages, and I think they can do better educationally in their own country and language."

If they came here, he could help the children with teaching and support, and in respect of child L he could help her make up for lost time and damage that has been inflicted upon her educationally. He was asked:

"How certain are you if they were to return to the United Kingdom that L will not repeat a year and will successfully integrate quickly and socially into school?"

He said he is much more confident about that than leaving her in Spain. It was in Spain that she was "back-yeared" as he put it – put back a year. The school she attended is a small school and is not well resourced, and you cannot compare those schools to the schools in the UK. He was asked:

"Have you considered the ramifications this may have on the children's relationship with you if they are forced to come back?"

He says he believes that if the children are restored to the United Kingdom there will be better outcomes than if they are to remain in Spain. He was asked:

"We have a house here, is there any reason why returning to the United Kingdom to live in a flat in London would benefit the children?"

He said:

"Well, you live in a cave house. These houses go back into the rock".

The accommodation "wouldn't compare" to an apartment in Surrey, and the children would be within an hour and half of where he works. He was asked:

> "If we were to return to the United Kingdom, may I ask who is going to fund this return?"

and he said he is happy to pay for the children returning if necessary. He was asked if they were to return had he considered that may be Ms CW would not want to live in London with the children? He said he has thought about that. He has tried to be child focused and that is why he wants to move to Surrey where their friends are from when they lived in that area previously, but he thinks that Ms CW would actually want to live in London as that is where her friends and relatives are.

45 Lastly, Mr PT was asked if they were to remain in Spain:

> "Would you accept that €300 monthly child maintenance is not currently reasonable?"

He said that the court determined what was to be paid. He has always paid it, even when he was unemployed, and even though he had no access to the children for four years. The children have been led to believe that he does not pay Ms CW enough money. In Ms CW's first statement she stated that she was "independent" and he was financially indifferent to them. Ms CW is a great mother in many ways, but she has not had finance for 13 years and the children are suffering because of that, but he has tried to make sure they were okay, and he has kept fighting for them.

46 He was briefly asked questions on behalf of the children's guardian. He said that his interactions with the girls, when he does have a chance to see them, is always fabulous so he would be very optimistic that if they came back to the UK they will again have the happy-go-lucky relationships like they had before. They will miss some things about Spain, but they have missed some things about England. He would pay for Ms CW to fly to England, and he would pay the relocation costs. His second statement, at paragraph 29, was put to him and he said:

> "I am prepared to provide some help to Ms CW to finance a deposit for a home especially if Ms CW has no resources of her own."

He confirmed in his evidence that he would be willing to try to help, and he would do what he could to, as he put it, "facilitate their return and settle them".

47 The court's assessment of Mr PT is as follows. I found him to be a calm and measured witness. He was very keen to impress upon the court his commitment to the children. I did not find that in doubt. He has fought relentlessly for years through the courts to establish a relationship with his daughters. I found that he was genuine in wishing to support his children if they were returned to the UK. That gave the court confidence that he would do his utmost to ease transition and he would support Ms CW and the children financially to the extent that he was able during what would be a challenging transitional period. He would also work to re-establish his relationship with his daughters once they were here, if – I emphasise "if" – the court were to order that. I find that the commitment of Mr PT to his daughters would help reduce emotional challenge of any return to the United Kingdom, but that is only one of many important and competing factors.

48 I turn to the evidence of Ms CW. There are two statements in the bundle, one dated 7 September 2021, which is in the form of a letter or email to the court, and also a statement of

30 September, which is signed at page 135 of the bundle. She also sent a series of further documents. She continued to correspond with the court after the conclusion of evidence and sought to produce further evidence. The court told her, and shared its communication with the other parties, that the evidence was closed at the end of the hearing. The court directed written submissions and it was not prepared to reopen the case because it would require a reconvening of the court and further evidence, which was not proportionate.

49 There were allegations that she made of serious domestic violence and abuse but, by the agreement among all parties, they were not to be determined at this hearing for the purpose of this application. She asked the court whether she could give evidence in private. By that she meant that only the Judge and the court clerk could witness her evidence. She was informed that was not possible. However, the court directed that Mr PT switch off his camera so that she could not see him although he could see her. Most importantly, counsel who represented him and counsel who represented the children could see her as she was giving evidence. That was, in my judgment, the right balance to strike in granting participation directions and ensuring also Mr PT's Article 6 rights. Under Practice Direction 3AA, in my judgment, those participation directions would assist the quality of Ms CW's evidence, and the court therefore made the necessary reasonable adjustments.

50 When she gave supplementary evidence-in-chief, she said:

> "My children are doing well here. They've made so many friends including children from England. They go to the beaches, etc. They're learning two languages, Spanish and French. They are doing well in school. The children are really happy here. The property is a farmhouse. The back is built into the hills and mountains, but not the rest. Most ex-pats when they come here look for 'cave houses' as they call them, because they keep the heat in during winter and you are comfortable. The children's lives should not be disrupted for the benefit of Mr PT. This should be about what the children want."

51 She does not accept the children lack sufficient competence to make a contribution to the decision about their future. Their views should be considered. Regarding child L's Spanish, it is true that she had to repeat Year 3 because she had insufficient knowledge of the language. But Ms CW says that she is now fluent in Spanish, and is also learning French and English. Child Q's teacher says that her Spanish is excellent. She speaks the proper Andalusian Spanish, and it is better than the "natives", her classmates, as Ms CW put it. The girls have integrated so well, although child L is a bit reserved. Living in England again would be difficult for her. Finally, she has made friends here in Spain and for her to have to leave Spain and start all over again, and may be to repeat another year, is to have a detrimental "yo-yo" effect upon her.

52 When Ms CW was asked questions on behalf of Mr PT it was pointed out to her that in the last court order, dated 23 September 2021 (B96) there was a confidentiality warning that the names of the children and parties are not to be publicly disclosed without the court's permission. The court documents, however, were given by Ms CW to Mr PT's brother. Ms CW says she did not notice the warning. She had read paragraph 14 of the court order about CAFCASS and had complied in respect of that but had not noticed the confidentiality warning. She said it was "very silly of me" to share 130-odd pages with this person. She did not know whether she could share them or not, and just to get him off her back, as he was constantly contacting her, she gave them to him. This is despite, she felt Mr PT's brother was somebody she "could not trust". She did not know how he knew about the hearing starting again this week. As to the CAFCASS report, she said this at first:

> "I read parts of the CAFCASS report to the children . . . [note children plural]. . . yesterday after they returned from school".

She then said they, that is the children, plural, are not happy with the report. She said she left the CAFCASS report on the dining room table, and she does not know how much the children read. She felt it should not be a problem for the children to read their parts of the report. When she was challenged about the inappropriateness of this behaviour, she changed her evidence and said it was only child Q to whom *she* read the relevant parts of the report to, and it was the part that had her name, and that L was up in her room. Then she said that she, Ms CW, read part of the report and then child Q took the report and read a bit of it herself, and child Q was not upset.

53 Ms CW was asked about whether she thought the children had lost anything by being in Spain, and she said at first: "No, they did not". She was pressed on it and then she said:

> "I have to put up my hands and say I could have done more."

She was asked: how harmful do you think the loss of the relationship between the children and Mr PT was? Her answer was this:

> "I don't think I can answer that. I don't believe . . ."

and then her answer trailed off. At this point she was not answering the question and the court asked her again whether she felt the loss of the relationship between Mr PT and the children was harmful or whether it was not. She paused a very long time, and then she said:

> "My children are strong and forgive me if I don't see any problem in them not having their father around."

Then she paused and answered again and said, "Yes". In other words, she was at that point saying, "yes, it was harmful". However, she said it, in my judgment, with great reluctance and it lacked conviction. When she was asked what it was that she said "yes" to, she said that she did not know how it was harmful or what damage that it caused. Then she said she did not think that it had been harmful to the children not to have a relationship with Mr PT, and then she said that it is possible that it could be harmful because they cannot communicate with him what they are doing tomorrow, and it would also be nice for them to share with him their homework as well as what their interests are. She did not agree with the guardian's account of the possible long-term harm. She claimed that she did not cut Mr PT out of their lives; it was the reverse, he cut them out of his life.

54 Looking at page 135 of Ms CW's statement, in the section about outcomes she seeks, those outcomes are all financial; they are not about the resumption of the relationship at all between Mr PT and the children. Asked whether the children's attitudes towards him had hardened significantly during the past four years she said: "No". She was asked:

> "Do you accept that you have very little understanding of the emotional impact of the loss of the relationship on the children?"

and she said:

> "I do not understand the emotional impact on the children."

When pressed about the court order of 21 July 2021 that there must be fortnightly video calls with Mr PT, she claimed that she had problems with her internet during that period and

she did not get a court order. Then she changed her evidence and said she did get it, but it was on her mobile phone. She contacted Mr PT's solicitor, Mr Robert Hush, on 28 July. At B177 it is documented that:

> "As I have indicated, one way for Mr PT to communicate with the children was to put ink to paper."

Implausibly, she said that she thinks that she did not breach the court order for video contact. Then she said if she missed the video meetings, she apologises. She was asked about child L's birthday last October, and when she was asked if she would let Mr PT speak to his daughter and it did not happen, she said she was not asked about it.

55 Ms CW has not been employed in Spain since 2017. She has rented out her property. She started very late in 2017, but it was not always let out. She said it was a weekly rental. She was then pressed about what the weekly rent was and she had never actually had anybody staying for a whole week, instead she would charge €25 to €35 for a night. She used to receive benefits at the beginning, but she does not now. So, she and the children live on money from Mr PT, and Mr PT's parents, and she has no other real income. She would seek to work in the United Kingdom if she returned and would see what benefits she was entitled to. She denied that she had been threatened with eviction, and said:

> "Look, I own the property outright."

Then she was asked:

> "Is it right that you asked Mr PT to urgently borrow €35,000 on 1 June 2018?"

Her answer was simply not credible. She said:

> "I don't remember if I did".

There were legal proceedings taken against her in respect of the property, but she said they had concluded and the girls are not at risk of eviction. Her Spanish still is particularly modest. If they did return to England she does not know where they would live, but it would not be in London. She would like somewhere quiet, "like here in Spain", with clean air and nature.

56 My assessment of Ms CW is as follows: regrettably, in several critical respects she gave very unsatisfactory evidence, and as I reached the conclusion that what she said was not true I bear in mind the case of *Lucas* - just because somebody is not telling the truth about one thing it does not mean they are lying about everything. As Charles J graphically put it, if you are lying about point A, it does not mean you are lying point B or, indeed, about everything. But the approach to her evidence gives this court little confidence that in future she would comply with court orders. It is clear in the past she has breached them and done what she wishes.

57 In terms of sharing the CAFCASS report, Ms CW did not tell the truth about what actually happened with the report and the children. As I have indicated in my summation of her evidence, she gave numerous different versions of what happened. Her evidence was shifting as she saw the implications of what she had done. The CAFCASS report includes information that is deeply distressing and disturbing to the children. It evidences Ms CW's deep hostility and condemnatory views of Mr PT. This is something the children should not read. Whether they actually read those specific parts is not recorded. She took the risk and

the way in which she handled the report created the possibility that that did happen. I find from this episode that she has a poor grasp of protecting the children from proceedings and adult issues and material. The court has great concern that this approach will continue should the children stay in Spain. But, again, I emphasise that that is not the only issue. She does not accept the court decision that the children were wrongfully retained by her. She has little insight or grasp of the emotional harm that has been caused to the children by the deterioration of their relationship with Mr PT. She showed no insight into the harm that this loss of relationship has produced. Indeed, on several occasions, as I have indicated, she actually said that she did not think it was harmful. When she eventually grudgingly conceded that there was emotional harm, she could not explain what it was except in the most superficial sense, and what she said was confined to surface matters, like not sharing the children's plans and activities.

58 Ms CW has no, or little, insight into the central importance of the children having a relationship with Mr PT, and unquestionably the major reason for that is the fact that her relationship with him has been seriously damaged. That total lack of insight was confirmed by her rejection of the guardian's analysis of the long term effects of the harm of the loss of the relationship. Her attitude is perfectly encapsulated by her repeatedly calling Mr PT the "biological father", and the fact, which I accept from Mr PT, that when they broke up she mocked him, denigrated him by designating him "purely a sperm donor". It is entirely unsurprising that, as the CAFCASS report evidences graphically, her daughters now mirror her views about the irrelevance of their father, and her negative attitudes towards him. She has not shielded her children from her negative views. In her court evidence, she listed the outcomes from proceedings she sought. These are principally financial; not once did she mention resumption or the improvement of the relationship between Mr PT and the children. Eventually, under cross-examination she accepted that she did not understand the emotional harm caused to the children. But even when she did accept it, it was hesitating and unconvincing. The fact is that her belief is that, aside from relatively minor matters and the provision of finances, the loss of the relationship has not been harmful to her "strong" daughters. This creates the risk, the very real spectre in this case, that without significant changes, the emotional harm to the children will continue, intensify, and become so entrenched that it will become ineradicable with lifelong damaging consequences to both children. Her evidence about the breach of court orders was deeply unsatisfactory, and that amounted, in my judgment, to another evasion and untruth which is contradicted by the contemporaneous documentary evidence. She implausibly claimed that she did not breach the court order about video contact; she evidently did and she continued to obstruct contact. Indeed, she has only facilitated four video calls since the court order of September.

59 In terms of Ms CW's finances, her evidence about that was also unsatisfactory. It shifted in respect of the rental income. Her evidence about not remembering the €35,000 she requested from Mr PT was false. It is something it is impossible to have forgotten. Again, I emphasise that by the principle in the case of *Lucas*, I do not reject everything she says because of it, but it was an obvious evasion or untruth.

CAFCASS report

60 I turn to the CAFCASS report. The basis of the report is as follows: Ms Baker met with Ms CW via a Microsoft Teams video call, on 29 November 2021 and 30 November. She also met her briefly after each of her meetings with the children. She met first child Q, the younger child, on 29 November 2021, and held a "substantive", which means "substantial" meeting, with her on 12 January 2022, and that was again via Microsoft. She met briefly with child L on 12 January 2022, and held a longer meeting with her on 13 January, again

by Teams. She requested and received a welfare report on both children from their Spanish schools.

61 There is no trace on the international computer for Mr PT. Ms CW's PNC check shows that she was cautioned for battery in May 2015, for hitting

> "a six year old child [that is child L] with a lamp during a domestic dispute".

This is the incident I have already mentioned. The notes of the incident detail that there was an argument between her and Mr PT being triggered by the fact that she had given up her job in London and had full-time responsibility for the children. She was isolated from family and friends. I pause to observe the significance of isolation, and in the absence of receiving support from Mr PT she felt trapped by her situation. On the night of the incident, he had interrupted the children's bedtime routine, using a computer in their bedroom, and putting on a lamp which, according to the police, appeared to be a "tipping point" for Ms CW who:

> ". . . did not mean to hit her daughter, however she pulled back in anger which then contacted with her daughter's head when her daughter was standing behind her."

62 During Ms Baker's meeting on 30 November with Ms CW, she agreed to Ms Baker's request to bring the children to England in December so Ms Baker could meet them directly, and for Ms Baker to facilitate the reintroduction to their father during their visit, and Ms Baker to visit Spain, and for video call arrangements (paternal contact) to start again from 4 December 2021. Due to the outbreak of Omicron, and other reasons due to children's examinations, the visit to the United Kingdom did not happen. The children last saw their father in person in Spain on 11 September 2020. The order dated 21 July 2021 for video contact to take place between them did not come to fruition until 4 December 2021. Ms Baker writes that Ms CW has yet to confirm the reason for this delay. I now deal with the academic levels and progress of the children. What is documented is that at an educational level, which is normal, the girls – that is both of them – are at a level which is normal and adequate for their age, despite the language difficulties at the beginning. They have achieved a noticeable improvement. The secondary school to which child L was transferred in September 2021 was asked about her progress. The school provided a verbal summary, stating she is making progress there. Although she is very shy, she is integrating more. She has daily hour-long Spanish lessons to assist language needs. I pause to observe if that is so it does not seem likely that her Spanish is fluent as Ms CW claims.

63 Ms Baker's conclusions were as follows: that the court should order the children's summary return to the United Kingdom before the end of August 2022, that is, of course, before the new school year starts in England and Wales. There should be an interim child arrangements order made for the children to live with Ms CW on their return to the United Kingdom. There may be need for proceedings to continue past the current final hearing, that is until 12 February 2022, to consider arrangements for the implementation of the return order and any directions for the subsequent termination of the arrangements for the children when they come back to England and Wales.

(6) Submissions

64 The court received detailed written submissions from all parties. That was because time was short, but also, and as importantly, Ms CW became very upset during proceedings, and I felt it fairer to her to give her a chance to reduce her strong opinions to writing. Since she was

unrepresented, removing from her the stress of having to make submissions in front of the court about this deeply personal matter would, I judged, enhance her effective participation.

Mr PT submissions

65 Mr PT's position was simple. As CAFCASS concludes, these children should be returned to England. It was fundamentally important that the court should recognise the emotional harm which these girls had to suffer because of the poisoning of their relationship with him by Ms CW. This is what would otherwise be a classic case of parental alienation, but one that has been stretched out both temporally and geographically in litigation sprawling across two countries. That is illustrated by Ms CW's own position that, as is at D263 in the documents: "The children neither need nor want their father in their lives." This is a case, sadly, where the children call their father by his first name, and see no role for him in their future, and that is deeply damaging to them, and something the court should stop. The mechanism for doing that summary return, and for the court which is properly seised with the jurisdiction for making decisions about these children, because they were habitually resident here before their wrongful retention in Spain, to make the appropriate orders. This court is best placed to do so.

Ms CW submissions

66 Ms CW submits that she did not abduct the children as is alleged and, indeed, as the court has found. She says that Mr PT has harassed her through proceedings in both jurisdictions. Her evidence includes the fact that she has experienced domestic abuse in both the United Kingdom and in Spain, though for the purposes of this hearing she has not sought for there to be findings of fact about it. However, she says that his ulterior motive is not the welfare of the children at all, instead it is to control her and the children. She says that the children neither need nor want their father in their lives, and she puts it this way: "The young ladies have strongly requested not to be returned to the United Kingdom". Her reasons are that:

> "They have built a life here in Spain. They do not feel they have missed out on the supportive relationship with friends and family. The families in the UK were always two to four hours away and were only seen to visit once a year, even though they were in the same jurisdiction."

Then she continued:

> "Using the family network as a force to return the children to the UK would be socially inept and this should not be the premise for a return."

She says that with modern IT the children have the benefit of speaking more frequently with their families than when they were living in the UK, and they are happy in Spain; they feel safe, they feel secure, and they love their environment. They both share sleepovers, study and play-dates with friends. They have achieved a lot more in education than in the previous jurisdiction.

67 Ms CW says flights between the United Kingdom and Spain take two hours, so Mr PT could have regular contact with the girls should he wish. Indeed, she asserts in her closing submissions, without evidence, that the United Kingdom has more holidays than Spain and these short breaks can be enjoyed by the father coming to Spain. The girls have, as she puts it, "churned out" brilliant grades every term. They have made many friends and love it. They enjoy riding, skiing, climbing, walking, camping, roller skating and horse riding; they

speak Spanish "fluently". She says although a network of relatives is important, does that provide a good enough reason to return to the United Kingdom? The children have not suffered or lost touch with any family members whilst they have been in Spain. The children say they do not want to come back. The children have secure accommodation, and it does not make economic sense to move out of property that is owned to property that is rented. She did a comparison in her evidence of the cost of living on a monthly budget in both Spain and the United Kingdom, and the difference is significant, she says. In the United Kingdom it would be £36,492 annually, in Spain it would be £19,986, and therefore the difference and the saving by staying in Spain every year is £16,505, a very significant amount.

Children's Guardian submissions

68 The CAFCASS conclusion is that the children's views were:

> ". . . devoid of balance, heavily mirroring mother's written and oral narrative in relation to their father; he effectively being redundant in their lives, save for financial contributions."

Therefore, return is necessary to "further both their development and their ability to form relationships with others, and to know themselves." CAFCASS is concerned that if the emotional harm is not resolved that will impact their sense of identity and will carry forward corrosively into their childhood. Without doubt the children have taken cues from the mother, and with both children confirming that she speaks to them about adult issues. This supports the longstanding concerns expressed by Mr PT about them, and how Ms CW has alienated the children against him. It is clear, Ms Baker concludes, that Ms CW has:

> "a very strong, clear bias against their father [Mr PT]"

and it is for those reasons that the submission on behalf of the children through their guardian is that the children should come back to this country.

(7) Findings of Fact

69 I now turn to the findings of fact made on the evidence before me. I make four of them.

70 **Fact (i): Past harm.** That is harm caused by the damage to the children's relationship with Mr PT. The comments the children have made to Ms Baker speak chillingly to the harm that has been caused to them. Child Q struck Ms Baker as being articulate, intelligent and confident. She displayed a degree of maturity when speaking about some aspects of her life, but she lacked balance when speaking about other aspects. She said:

> "I don't really look at him as a father. He hasn't really done anything for me, even when I was young he hasn't really been there for me, and the same now. And he hasn't really made me love him as much as I love my mum, as she's always spent time with me and taken care of me."

Child Q confirmed knowing about these proceedings, and that her mother "has to put out statements", who she said had told her what had happened and that she (child Q) is:

> "happy about this, to know all that is going on, that I am a part of this."

Ms Baker varied her questions to child Q, asking if Ms CW had shared anything positive about Mr PT with her. Child Q said:

> "I don't know. I really don't know. I don't really hear much about him anymore, and I'm really happy about this. Most times she really tells me about what's happened in court. The only good thing is he really likes mum's cooking."

She said he did not really care about her, he just ignored her, and would say "okay" to everything that she said. So, child Q was asked by Ms Baker if she would like to write a letter to the Judge, and she did, and she said this: "Dear Judge", and then she gave her father's name, which was his first name.

> "He could help me by paying for some things like college and things I really need, like school supplies, clothing. My mum already helps me a lot. She cooks and cleans, and she pays for a lot of things – my school, clothing, bills, everything and this is why I'm still here, because my mum has been getting lots of support, so I don't really know what I could ask her."

Then she added:

> "I just want him to pay for things. I really don't need him in my life."

Then she said:

> "These are the only things he could do for me that my mum can't do for me now."

She said that the three people in her life, that is herself, her sister, and her mother, was enough for her, and nothing else was needed. Ms Baker concluded that Q's rejection of the father now appears to have even surpassed the strength and vehemence of her sister's rejection of Mr PT.

71 I turn to child L. She told Ms Baker: "I call him . . ." and then she gave his first name.

> "I call him something else whenever I speak with him in the house. He was never a father. I don't call him 'dad'. I never really see him as a dad. He was never there for me and my sister."

This, of course, is very similar to the characterisation of her sister. She also was invited to write a letter to the court, and she said this:

> "Dear Judge,
>
> Hello, this is L, the oldest daughter. I would like to say how I truly feel about what is happening. I would like to say that I am happy with life right now. I'm happy with everything that's happening. I'm enjoying every single moment. I love mum. I love my sister. I'm extremely happy and grateful to have them in life right now. I honestly feel like, I just think, basically what I'm trying to say is that I don't want him . . ."

And she gave the father's first name.

> ". . . in life. I'm very happy right now with him not being there. It doesn't make a difference with him not being there when he wasn't really there anyway, and I think it's much better if he's not here, and if it stays with how it is right now."

Of the contacts with father in Spain she said that they were: "forced to see him". They hated all of it but they just "acted", and she said:

> "Whenever mum mentions his name she breaks down and gets upset."

And:

> "Whenever we do for some reason we always get upset, and I have no idea. We feel down and unhappy about it, so we prefer not to mention it so we can stay positive and happy."

When asked to relate how her mother would describe her father, she said:

> "Irresponsible, disgusting and controlling."

72 The CAFCASS assessment notes that there was a forensic psychological report dated 26 February 2019, that was three years ago. Ms Baker points out that the children's negative views of Mr PT are essentially the same, and the damage to their relationship has thereby been seemingly cemented. The children's views were mostly devoid of balance, heavily mirroring their mother's characterisations of Mr PT and the fact that, in effect, he was redundant in their lives save for his financial contribution. Ms Baker continued:

> "Parts of the narrative mirrored mother's, particularly in terms of their father's very limited worth in their lives. Without doubt the children have taken cues from their mother."

And, therefore, the conclusion of the CAFCASS assessment is as follows: that Ms CW has failed to protect the children from her negative feelings about Mr PT. She has failed to enable or support any relationship between the children and him, and she has failed to assist the children to hold a balanced view of their father. It is deeply concerning how uniformly negative the views of the children are about the father. There is no evidence of Ms CW working to provide the children with balance, or to support the children's relationship with Mr PT. Instead, the children are closely mirroring the very views that Ms CW expressed in her evidence to the court. This, I am bound to say, is likely to have a serious impact on the life of each child. As Ms Baker put it:

> "The children are harmed, not simply by not having a full relationship with their father but, worse than this, by holding him in contempt. This harms their sense of identity and will carry forward corrosively into adulthood."

73 About that finding by Ms Baker, it is, of course, part of the common knowledge of these courts what Macdonald J in *Re P (Sexual Abuse - Finding of Fact Hearing)* [2019] EWFC 27 at [1] called the "institutional memory" of the courts. He said that this institutional memory:

> ". . . may be defined as the collective knowledge and learned experience of a group."

Therefore, it strikes me that what Ms Baker concludes is part of that institutional collective knowledge, that if the relationship remains on a poor, attenuated and impoverished basis that it currently rests on, this is likely to have serious implications and consequences for these children as they move through the rest of their minority and into adulthood. Thus I find that there has been previous emotional harm caused to child L and child Q by Ms CW's failures to support their relationship with Mr PT, and to give them balance, and to impress upon them the importance of having such a relationship. But, Ms CW was never going to do that because she simply does not believe it, and yet, as Ms Baker put it succinctly:

> "The children need a relationship with both their parents to further both their development and their ability to form relationships with others that are balanced, and to know themselves."

74 **Fact (ii): The harm caused by not being able to speak their first language.** Child L told Ms Baker that she was very self-conscious when she spoke in Spanish with her friends, and she remarked:

> "I get very upset because I can't say what I really want to say to my friends in class."

Child L knew that Q would also:

> "like to finally talk to people in English."

L had told her mother she wished she could:

> "just go back to England and make more friends in English."

This was because L's difficulties with the Spanish language had caused her stress and occasionally left her feeling lonely. She had also been held back a year because her Spanish was not good enough. Child Q went to Spain when she was that much younger, and she is more outgoing, so the impact linguistically on her may be less, but I find that there has been harm caused educationally to child L by being educated in a language that is not her first. There has also been an adverse impact on both children because they are not able to communicate with others outside the home in the way that they would want. This inhibits their ability to express themselves, and thus flourish educationally and to develop their social relationships as they would be able to otherwise if they could speak freely in their first language. Certainly, for child L it has left a feeling at times of being isolated and lonely. I find this to be an identifiable harm caused by the wrongful retention in Spain.

75 **Fact (iii): Future harm caused by return.** I do find that there will be a challenging transition back to the United Kingdom should the court order it. There will be upset at leaving what has been their home since 2017, and their schools, and the friends that they have made in Spain. As Ms Baker put it:

> "The children have lived in Spain for a significant period of time. They may therefore struggle emotionally at least with readjusting to life in England."

And that might be for the immediate medium term at least Ms Baker felt. But, as she put it:

> "With proper planning the children would be able to successfully reintegrate into life in the UK".

They have now lived for over four years in Spain, but the impact of this uprooting can be mitigated in the judgment of Ms Baker by the fact that they are both familiar with, and have retained links with this country, where Ms CW has a substantial support network which, itself, would be beneficial to the children. Ms Baker is concerned if they do not return to this jurisdiction that it is unlikely there is any realistic prospect of the children being able to develop a meaningful relationship with their father, or address negative feelings about him which, to the extent that they are not a true reflection of their true experience of him, need to be addressed. Therefore, the court finds that the impact of the return to the United Kingdom, should it happen, will be one that is manageable for the children.

76 There will need to be a period of adjustment. But there will be compensations, such as being closer to other members of the extended family, being able to speak English and communicate with friends in English, attending an English school, and being educated in their first language. As child L said, she would be "happy to be able to speak in my language again, and to talk and enjoy my sentences again." It is quite clear that she has considerable distress and anxiety about speaking Spanish, about how she formulates her sentences, about whether she would get it wrong and whether she would be understood. Undoubtedly, she misses speaking with people in English except, of course, within their home of three.

77 There will be a chance for a carefully regulated and measured re-establishing of the relationship with Mr PT. I do not find that the harm of a return to the United Kingdom would be so severe that it would cause lasting permanent damage to the children. It is something they would certainly have to adapt to, and is something I am completely confident they could adjust to and then move on from quickly. Certainly, if there was the right messaging and support from both their parents. Further, it would be essential for the educational disruption to be minimised. The return, if it happens, should be after the conclusion of the school year so the children could start in new schools at the beginning of an academic year when there are many new pupils arriving at the school.

78 **Fact (iv): Future harm caused by remaining in Spain.** Ms Baker stated: "Both children confirmed that Ms CW speaks to them about adult issues. This supports the longstanding concerns expressed by Mr PT about alienation. When they live in a different jurisdiction and the opportunities for direct contact are limited, it would require substantial ongoing commitment from Ms CW to promote the relationship with their father. My inquiries to date do not give cause for optimism that she would be sufficiently willing or able to assist the children in re-evaluating their views of Mr PT. The physical distance between the children and their father is, itself, likely to increase the children's sense that he is redundant and irrelevant to their lives and limit the prospect of them regaining a balanced account of their parents. The children and their mother are isolated in Spain and returning to the UK would increase the available sources of support, primarily from their wider family, especially in the event of an emergency or heightened need. Each children's educational prospects in England may well be comparable to those afforded to them in Spain. However, L's learning here is likely to be accelerated simply as a consequence of her being able to resume learning in her primary language and she is subsequently likely to have a greater prospect of catching up to her correct academic year group.

79 Therefore, it strikes me that the role of Ms CW in the harm that has been caused to the children is critical, but I sound a note of caution. Mr PT contends that this harm has been intentionally and deliberately inflicted by Ms CW in an underhand and systematic way.

However, I am not persuaded that this has been deliberate, in the sense that it was directed at damaging the relationship between the children and their father. I think it is much more nuanced than that. It is likely that Ms CW has been deeply scarred by the previous relationship with Mr PT. She has found it impossible to conceal her views and attitude as a result of that scarring relationship from these children. She does not consider that Mr PT's absence from their lives has done them harm. She said to the court in terms: "Forgive me if I don't see any problems in regard to the children not having the applicant around. I don't believe it has done any harm." She did not see a loss of the relationship between Mr PT and the children had any real consequence beyond areas which are completely trivial like the girls telling him what they were going to be doing next week, and maybe him being able to assist the girls occasionally with homework. That was the sum of it in her conception.

80 It transpired during her evidence that at least one of the children, and in all probability both, had read parts of the guardian's confidential report. When Ms CW was asked whether she had shared court papers with anyone aside from Mr PT's brother, her answer was: "No, just the children." She then backtracked. At best it amounted to her admitting that her youngest child had had part of the report read to her, or she had read, and the full report was left out on the dining room table so the children could read it. Even on the best of Ms CW's case on this point, the children had that opportunity to read the report. It is also apparent that she shared private and embargoed confidential information in court proceedings with Mr PT's brother without the permission of the court. It was a stark and flagrant breach of the rules of this court. There was much private material about these proceedings and thus the life of these children. Once more I am compelled to observe that I found Ms CW's evidence on these topics deeply unsatisfactory and inconsistent.

81 I conclude that her conduct was part of the picture of her lack of insight into the wellbeing of the children. That stretched from her wrongfully retaining them in Spain in the first place, to her failure to prevent their relationship with their father degrading, to her not seeing any value in that relationship, to her not complying with court orders or remote video contact, to her not understanding that the showing of a confidential report about such a sensitive issue could be harmful to a developing child. This strongly indicates that Ms CW has insufficient understanding of how to create and enforce age-appropriate boundaries, and strengthens the court's concern that Ms CW's views about Mr PT have been inculcated into the children because Ms CW simply does not believe it is inappropriate to do so. What is particularly troubling is her lack of insight into the harm her daughters have suffered. This has not occurred, of course, in a vacuum. Ms CW had the reports on the Spanish proceedings and, in particular, she had the report of Ms Baker, the children's guardian, which emphasised unmistakably the harm the deteriorated relationship with Mr PT had caused the children. Ms CW either did not accept it or could not find it in herself to accept it as it was contrary to her entrenched self-narrative. I am satisfied that in her oral evidence she demonstrated a lack of acknowledgement of her role in causing the rift between Mr PT and the children, and evidenced a near complete lack of insight into the harm the children have been caused as a result of that lost relationship.

82 I find that Ms CW's stance towards foster greater contact between the children and Mr PT to be essentially strategic. It has been motivated by a desire to appear to the court to be reasonable, rather than any true desire for the children to have a better relationship with Mr PT. I reach that conclusion because in evidence Ms CW herself makes it clear that she sees little in value at all in the children's relationship with their father. She has no insight into the harm; she has minimised it or she does not accept it. I also find that, should the children stay in Spain, her relationship between the children and Mr PT will not be repaired. I have no confidence that the sudden change of heart at the door of the court about contact will continue once the spotlight of these proceedings has moved on. My unmistakable conclusion

is that Ms CW does not believe that Mr PT's participation in the children's lives is important or valuable.

(8) Welfare Checklist

83 Section 1(3) of the Children Act 1989 sets out various factors that the court shall have regard to in assessing the welfare of a child. I now consider them, as relevant.

84 **Factor (a): the ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding).** I can deal with this briefly. The expressed view of both children is that they do not want to return to the United Kingdom. That picture, perhaps inevitably, was more nuanced than that when one considers what they say about the difficulties with language and friends. When one considers the detail of the answers they gave to Ms Baker, and the various other comments, including their letters to the court which I have dealt with in section "(7): Findings of Fact", and I do not repeat them here.

85 In summary, about their wishes and feelings, Mr Niven-Phillips on behalf of Ms Baker put it well:

> "Should the court make an order requiring their return to the United Kingdom, this will clearly be contrary to their express wishes, and to the extent that this is done to facilitate a relationship with their father, that is a relationship that they say they find no value in."

This is an accurate summation.

86 **Factor (b): physical, emotional and educational needs.** In terms of physical needs, as Ms Baker put it:

> "Inevitably, the children have integrated into life in Spain where their physical needs are being met in the care of Ms CW. "

There was some suggestion by Mr PT that Ms CW lived with the girls in inadequate accommodation, in a "cave". However, a few further facts cast new light upon this. This is a farmhouse, part of which is built into the hills, that is the "cave" part. They are known as "cave houses". The advantage of them is they stay warm in winter and cool in summer. It has six bedrooms. I find nothing adverse to the welfare of the children in their accommodation in Spain. However, Ms CW is living on a very tight budget. She is dependent on the maintenance contributions of Mr PT and his father, who lives in [the north of England]. His father is well into his 80s. Ms CW provided what, I am afraid, was very contradictory and unclear evidence about the income she received to supplement these maintenance payments. She has never worked in Spain. She has received some rental, but the evidence about this is sketchy, and what is clear is that it is no longer happening. She was in what was obviously a very distressing financial situation and there was a dispute over the property. She had to ask Mr PT for a very significant sum of money, €35,000. He says the children could have become homeless if he had not given it to her. He thus sent her funds. On another occasion, Ms CW accepts in her written submission that she did actually ask him to pay money for clothes for the children. What this illustrates is that far from being financially secure, Ms CW lives a financially precarious life, entirely dependent on others, and therefore the children too, in terms of their financial security, are highly dependent on Mr PT and his father. Should the children be returned to England, there is no evidence to suggest that their physical needs would not be met, albeit the court must recognise that the cost of living in the United Kingdom is higher than in Spain. It may require a greater maintenance payment from Mr PT. To that end he has said that the matter should be referred

to the Child Maintenance Service in the UK. I am bound to observe that his record of paying for the children's maintenance has been impeccable, notwithstanding the fact that he has had his access to them severely limited and, as he puts it, he has “not missed one payment”. That is not disputed. He has accommodation in the UK. He intends to get accommodation where he can have the girls over for staying contact in due course.

87 In terms of education needs, Ms CW raised concerns in her evidence about the impact on the children's education if they had to return to the UK. She asserts that the children have been flourishing educationally in Spain, and states that the school is one where the staff go out of their way to create and make a family atmosphere which is supportive and caring. The fact is that the children are having to speak a language which is not their first language. Indeed, child L started secondary school a year late because she was made to repeat a year in primary school because of her language deficit, and she is still getting daily assistance with her Spanish. Any return to the UK has been agreed to take place following the end of the Spanish academic year, thus the disruption will be reduced, but the question remains whether they would flourish better educationally in England or Spain.

88 It is clear from what the children told Ms Baker that their lack of confidence and fluency in Spanish has, at least to some extent, restricted their ability to express themselves. They express relief if they are able to speak English freely rather than their English being confined to an English language class. This lack of confidence about the language they are habitually speaking is bound to have some impact on their educational attainment. It is hard to conceive how it would not. I accept the submission of the children's guardian that the children's educational needs will ultimately be better met in England, where they will be able to speak constantly in the language in which they are naturally fluent and have full confidence in.

89 **Factor (c): the likely effect on him of any change of circumstances**. Ms CW told the court that return would be “highly disruptive” to the children. When pressed in cross-examination both Mr PT ultimately, and the children's guardian, conceded that return of the children would have a detrimental impact on the children. The guardian said that the change would be “somewhat challenging”. This must, in my judgment, undoubtedly be the case. The children have been in Spain, albeit wrongly retained, for well over four years. They have substantially settled there – not, I emphasise, without problems as I have detailed in this judgment thus far. But, it strikes me there exist obvious mitigating measures if there were a return. They will be returning to a country they both know and have expressed a wish to visit. They will be returning to the UK in the care of their mother who is familiar with the UK and did live here. They will be returning to a situation where they will be able to access better family support networks, and if there is a delay in implementing any order until after the school year ends that will mean there is time to plan both educationally and in terms of accommodation.

90 **Factor (d): age, sex, background and any characteristics which the court considers relevant.** Both children are nationals of the United Kingdom, not Spain. There is some evidence from Mr PT that they have been picked on and hit at school in Spain. There is a reference to their being singled out because of their “looks”, which may be a reference to their ethnicity. They are, of course, dual heritage, white Caribbean, and it is understandable how they would stand out, at least to some extent, in rural Spain. There is no evidence that the children have any characteristics that would make them particularly vulnerable to a return to the UK. Equally, the children were born in England and were brought up for the first formative part of their lives here. Although they have been in Spain since 2017, they have lived in England as follows: child L – approximately nine years; child Q – approximately six years. It is not surprising then that they are fluent in English and it is their

mother tongue, and the tongue of their mother who has limited Spanish, and thus they must regularly speak English at home. Ms CW does not have the facility with the language to help them develop their Spanish – in reality, it is probably the other way around. The fact is they have grown up most of their lives in England, and that is highly significant.

91 **Factor (e): any harm which the child has suffered or is at risk of suffering**. Relevant historical and future harms are the subject of the findings of fact that the court has made, therefore I merely list them for the sake of completeness. I evaluate them further shortly in the Discussion section that follows. The children have suffered emotional harm from the serious damaged relationship with their father. The children will continue to suffer emotional harm should they remain in Spain and the lack of a meaningful relationship with their father. If the children return to the UK they will suffer distress and disruption from being removed from their home in Spain for the last four years, but it will be manageable and not permanent.

92 **Factor (f): how capable each of the parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the needs**. I have found that Ms CW has not been able to meet the children's need to have a meaningful and appropriate relationship with their father. Instead, the children held tremendously negative views about Mr PT and consider him to have no place in their life. If they did not see him again, they are at a place where they believe it would be no real detriment to their life and their future, and that is chilling evidence of just how serious the damage in this case is.

(9) Discussion

93 I pause to review the totality of evidence, globally and holistically. Using Lady Hale's invaluable questions in *Re J* I evaluate the case systematically.

94 **(i) the degree of connection with both countries**. The habitual residence of the children was England before they were wrongly retained by Ms CW in Spain. In the following years they have more or less settled in Spain, however, there have been problems with that process. They see, however, their lives as being in Spain. Nevertheless, they are isolated from the rest of both sides of their family. They have no familial support networks whatsoever in Spain. The children's connection to Spain is, therefore, somewhat artificial and contrived. They are isolated and cut off from the entirety of both sides of their kinship groups, save for social media and remote contact. I judge that such contact is a poor substitute for face-to-face contact and spending meaningful time together with their blood relations. Thus, I do not place as much weight on the degree of settling in Spain as I would if there were solid support systems in Spain; there are not. But I am prepared to accept that the children are more or less happy with their lives in that country. I qualified that because of the language difficulty, and especially those that child L has experienced. They do like Spain and the outdoor life, and this is in contrast to the home in Surrey that father proposes they move to. Surrey, I accept, is not the Sierra Nevada, but it has compensations of its own, not least ready access to London and the West End where the girls would like to go shopping, according to Ms CW. But the fact they have lived in Spain for more than four years is not, and cannot be, the end of the matter.

95 There are some cracks in the unrelentingly rosy picture that Ms CW paints about Spain. In particular, the ability of the children to speak Spanish is not as good as she suggests. They have made progress, as indicated by their school report, but they are not fluent. They are not able to express themselves as they wish, and that comes from the girls themselves, and that must restrict their ability to join in socially. Child Q makes the point that she does not really, as she put it “have friends in her school” and some pupils are very rude about the way that

she looks, and also because she is English. The “looks” may be a reference to her ethnicity and, as indicated, in rural Spain there are likely to be far fewer children with their particular heritage being white English and Caribbean. If they were to move to London and its immediate surrounds, they are likely to have much richer experience of multi-culturalism.

96 Child L also has said that at times she feels lonely at school. Mr PT has said that the children have reported to him that they have been hit by other children, and that is likely to be because of the ways in which they are different and stand out. It strikes me that none of those factors should be underestimated and will affect everyday life for these children. I do not place too much emphasis on it, but it is something the court should not ignore.

97 **(ii) Religion and culture, nationality and ethnicity**. The children are nationals of the United Kingdom and not Spain. They have been brought up in British culture. They are of dual white British and British Caribbean heritage. That said, I accept they have been introduced to the culture of Spain. Their return to Britain would not be to an alien culture, however, but one in which they have been brought up.

98 **(iii) Wishes and feelings**. Ms CW is absolutely right to remind the court of the United Nations Convention on the Rights of the Child, 1989. Article 12 provides:

> “(Respect for the views of the child) Every child has the right to express their views feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.”

I make it plain that I do just that. I have little doubt an order for return is contrary to the expressed views of the children. The strength of their views is clear in Ms Baker's report. I do take their views into account, but these views, I have no hesitation in concluding, have not been formed in a sanitised vacuum. The negative views of Ms CW towards Mr PT and a return to the United Kingdom cannot, indeed, fail to affect these children, consequently their views mirror their mother's views very closely, and I have made findings of fact about this. They love their mother, and their loyalty towards her is touching and affecting. It is understandably very strong. The three of them, in effect, are a closely bonded unit, but they are on their own without another single relation close to them in Spain. They are wholly dependent upon their mother; their mother is entirely dependent, financially, on Mr PT and his father. Her influence on them is significant and unbroken. It cannot have done anything other than massively influence their thoughts about their father and also any return to England. This is a very important factor. It means that I am bound to place less weight on the views of the children because they have not been formed independently; they bear the stamp and hallmark of Ms CW.

99 On the other hand, that does not mean these views are worthless, but I make allowance for this unquestionable maternal influence. I must make it plain that I do not judge that Ms CW embarked upon a deliberate and malicious campaign of traducing Mr PT in the eyes of his children. What is more likely to have happened is that, as this court sees so often, the conflict in a relationship has left very deep scars that spill over. What was evident when Ms CW gave evidence was that she sees the world through the prism of the pain of those scars, therefore it is not a vituperative attack on Mr PT she is engaged in – it is not so much “deliberate” as was put in Mr PT's closing submissions. She has not, in my judgment, poured vitriol into the ears of the children with calculated deliberation. Instead, it is much more complex and also more serious on another level, because she cannot, in my judgment, help herself. She sees this as the reality of life, and this, with deep regret and in a most damaging way, has become the reality of the world view of these two bright and talented children.

100 However, I have great concerns that it goes further. Should the children remain in Spain and separated from their father by distance and the intervening sea, I see no realistic prospect of any of this sorry state of affairs changing for the better. Ms CW fundamentally lacks insight, and she cannot acknowledge the harm the children have suffered. She lacks the tools to prevent its repetition and prolongation, nor has she the desire to do so. Once proceedings move on I have little doubt that her ideations will reassert themselves and then a chain of consequence will continue to shape and misshape the views of these two children harmfully.

101 The question remains, however, whether this undoubted harm is outweighed by the harm of return to the United Kingdom against the children's wishes with the impact on them that that wrench will have, not only on them but on their mother who is dead set against it. Put simply, what is the best thing to do for these children? Is that emotional wrench inflicted by return a price worth paying? I can be under no illusions. It will be the children who have to pay it, and Ms CW, their primary carer, will be unhappy at the prospect. I am bound to say I take these matters very, very seriously.

102 **(iv) Language/education**. I am prepared to accept from Ms CW that the school in Spain does support the children and create a family atmosphere. But there are also good schools in the United Kingdom, and there is not sufficient information before me in the summary proceedings about whether the schools in Spain are better or worse objectively than those in the United Kingdom, but there is a very significant difference. English is the children's first language – they are fluent in it, they are comfortable in it whilst their Spanish is developing, they do not have sufficient confidence in Spanish to express themselves as they wish, and that limits the quality of their social interaction and, indeed, must place a limit on their academic aspirations and attainment. I have dealt with this already.

103 **(v) Accommodation.** The children have a home in Spain, and Ms CW points out that they would be moving from owned property to rental property. I do not regard this as a very significant factor. The house in Spain can be sold, if necessary, in due course, or it may be possible to rent it out, but I emphasise I have no evidence or analysis about any of this. Those possibilities though undoubtedly remain. The key point is that there will be several months before the return if the court orders it, so appropriate arrangements can be made. This return, if it is ordered is summary, but it is not instantaneous for the reasons of the necessity of careful planning.

104 **(vi) Proceedings.** There is no indication the Spanish legal system will not be able to make welfare decisions as can readily as can this country. There is great respect in this country for the Spanish Courts and the principle of international comity applies. The Spanish Courts have ruled that it is the UK Courts that have jurisdiction. Furthermore, it is, in my judgment, better for the various conflicts between Ms CW and Mr PT about with whom the children should live, or what proportions of time they should spend with each of the parents, the level of contact, its nature, the need for supervision, should all be determined by a court in England and Wales where the children were habitually resident before wrongful removal, and which retains jurisdiction under Article 10 of the Council Regulation previously mentioned.

105 I note that the previous court orders in Spain have been set aside by the higher Spanish Court, thus there would have to be fresh proceedings in Spain to determine any of these matters. Proceedings in England have advanced. It is proposed, should there be a summary return in the summer after the school year finishes, that proceedings are timetabled to a welfare hearing as soon as possible after the children's return, after, of course, a settling in and adjustment period.

106 **(vii) Impact upon Ms CW**. I proceed on the basis that Ms CW does not want to return to the UK, but also if the children had to return she would as well. I conclude that the return would negatively impact Ms CW, but there is no evidence that this impact would impair her ability to care for the children. Indeed, there is no doubt that in Spain she has done her utmost at all points for the children in her conception of it. Of course, the major problem has been her attitude towards their relationship with Mr PT.

107 There is no infallible formula for making these judgments. Mere mathematics will tell you little – eight factors for versus seven factors against tells you nothing. This decision is about judgment, weight, evaluation and appreciation. The court must do its best.

108 I take the oppositional views of the children very seriously, but they cannot be determinative. There are wider welfare factors than wishes and feelings, important though they are. I do not disregard the negative impact on their mother, but that, too, cannot be determinative on the evidence in front of me. I aggregate, as accurately as I can, all the factors in favour of remaining in Spain, and I weigh them carefully against the emotional harm I have found to be very likely to continue to be inflicted on these children from the continuing impairment of the relationship with their father. All this is likely to be replicated and reproduced because of the real isolation of the children, and the attitude of Ms CW, with nothing to normalise Mr PT's relationship with his daughters, and nothing to counterbalance Ms CW's fiercely hostile attitude and views towards Mr PT, whom she deprecates, and relegates to a mere "biological father", "a sperm donor". It is unsurprising that the children refer to Mr PT by his first name, and not as "dad" or "daddy".

109 Overall, I judge that this deep-seated, ongoing emotional harm will impact and shape their future life adversely. It will negatively impact their relationships with others throughout their lives, and it significantly outweighs the factors in favour of staying in Spain. I judge that once proceedings end, the situation is very likely to revert to how it was, and the children's relationship with Mr PT will continue to be stifled. Ms CW has not facilitated contact adequately between Mr PT and his daughters, even though the court has ordered such contact. That bodes ill for the future. Here, Ms CW's own priorities have overridden a duty to the court and the welfare of her children. She lacks acknowledgement of harm and she lacks insight. She has a deeply entrenched harmful narrative. She lacks the ability to maintain age appropriate boundaries to protect the children, and has, in a completely unjustifiable way shared private court documents with another person, and that was a person who, in her own words, she "did not trust". I have found her evidence unhelpful and unsatisfactory in places, and I have found at times that she has been evasive with the court. She has been inconsistent in critical parts of her evidence, and she has offered answers that are, frankly, implausible.

110 I am concerned about Ms CW's presentation. She sees Mr PT's relationship with his daughters as being valueless and the children have absorbed and internalised this characterisation, and then freely expressed the same view, and this is deeply damaging to their futures. This court has an opportunity to protect them from that harmful future; it should not turn away. It cannot ignore that reality. I judge this court must intervene for the welfare of these two children. Having their father in closer proximity to them in the same country will promote more regular and normalised contact between the girls and Mr PT. This cannot be done between the United Kingdom and the Iberian Peninsula. It is fanciful to imagine it could be, particularly with Ms CW's views. Mr PT must, once more, become a normal and consistent part of these children's life. That is for their benefit now and in their future. I have no doubt about that fundamental point. The fact that I conclude it simply will not happen at an international remove points very strongly to what the court must do to stop that recurring.

111 Proximity is not an end in itself. The children's guardian provided the court with very helpful evidence that any attempt to meet the children's emotional and psychological need for a relationship with their father would be "a huge, huge challenge, and less of a challenge if they are in the same country." Ms Baker gave evidence first, and before Ms CW revealed in her testimony how entrenched and harmful her views about the value of the relationship was, more accurately, the lack of value. All this is brought vividly into relief when one considers that by the end of the hearing Ms CW considered that she had no objections to the children, if returned, having substantial and even overnight staying contact with their father, and yet under her watch the relationship has all but withered and died. To this I add the fact that it would be, on balance, educationally better for the children to go to school in England, where they can speak their first language, and they will also have their families nearer to them.

112 I have also found that Mr PT's commitment to the children, undaunted despite years of frustrating and financially depleting struggle through the courts, will reduce the difficulty of this plunging transition back to life in the UK. I make it clear that the return is not in accordance with Hague Convention principles. It is not to punish Ms CW's wrongful retention. It is to do what the inherent jurisdiction is for, to promote the welfare of the children.

(10) Disposal

113 Therefore, in the very particular circumstances of this complex case, which I have considered at great length, having reserved judgment, the court grants the application for summary return so the courts in this country, in which the children were habitually resident, can make the important arrangements for their future on the best possible information. This country is the natural and most appropriate place for proceedings to be conducted. Indeed, the initial Spanish judgment that the children were habitually resident in Spain has been set aside by the highest Spanish Court. The children will be returning to a country and a culture they have been brought up in, and which is not alien to them at all. That is, in my judgment, unquestionably in the best interests of both L and Q, whose welfare is this court's paramount consideration.

(11) Letter to Child L and Child Q

114 As part of the CAFCASS welfare inquiry, Ms Baker very imaginatively, but appropriately, invited the children to write a letter to the Judge. I have cited part of their missives. I t is right, as a matter of record, and in the interests of transparency, for the court to document its reply to the children. I hope Ms Baker will be good enough to pass it on to them. In part, it says:

> "Dear L & Q,
>
> As the Judge in your case, I have been brought in as a completely independent person who has a lot of experience of cases coming before the court.
>
> Nothing is more important to me than to decide what is the best thing for both of you. I must tell you that I have taken what you say and what you wish for very, very seriously. You are both intelligent girls with a tremendous future ahead of you.
>
> Whilst I have listened very carefully, it would be wrong for a court simply to follow what a child wants if it did not think that it was in the

child's best interests. That is the position I reached in each of your cases. I have thought long and hard about what is best. That thinking has left me in no doubt that it is best that you both come back to England and for the English courts to make decisions about who you should live with and what contact you should have with each of your parents.

I hope that once you are back in England, you will find it much easier to say whatever it is you want to say to friends and teachers, and anyone else without having to think too hard about how to say it. English comes naturally to you and is your first language; you will be able to speak it all the time. I hope that will help.

But the most important reason I decided you should come back to England is because of your father. What these courts know is that it is usually much, much better for children to have both their parents in their life. I felt that if you stayed in Spain that would prove to be too difficult. Your relationship with your father would not get any better. So one way to look at the return to England, which I know you did not want, is to see it as a fresh start. You will have other members of your family in the UK much nearer to you and I hope you will benefit having them all in the same country.

I am sure you have made friends in Spain and will miss them, and they you. I am also confident that both of you will know very well how to use social media to keep in touch.

Everything I have read tells me that you both have very bright futures, and I wish you well."

115 That concludes the court's letter to the children. I direct parties to agree an order to reflect the terms of the court's decision.

116 That is my judgment.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge