



Neutral Citation Number: [2023] EWHC 1955 (Fam)

Case No: ZW19P01611 and FD22P00551

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Date: 27 July 2023

**Before:**

**Paul Bowen KC (sitting as a Deputy Judge of the High Court)**

-----  
**Between:**

**A Father (F)**

**Applicant**

**- and -**

**A Mother (M)**

**C (a child, through her Children's Guardian)**

**Respondents**

-----  
**Re. C (Parental alienation: permanent removal to Germany)**  
-----

William Tautz (instructed by IKP Solicitors) for the Applicant  
Jason Green (instructed by Philcox Gray Solcitors ) for the Respondent Mother  
Baldip Singh (instructed by CJCH Solicitors) for the Guardian

Hearing dates: 12-14 July 2023  
-----

**APPROVED JUDGMENT**

**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

**Paul Bowen KC (sitting as a Deputy Judge of the High Court):**

1. There are before me two substantive applications for orders under s 8 Children Act 1989 ('the Act') concerning the care and welfare of a 6-year old girl ('C') (d.o.b. autumn 2016); first, by the father ('F') for a child arrangement order for C to live with/spend time with F; second, by C's mother ('M') for a specific issue order granting her permission permanently to remove C to Germany. The Guardian has also very recently filed a Part 25 application on behalf of C for permission to instruct an expert psychologist to assess M and C with a view to identifying the source of C's resistance to contact with F and to make proposals to improve their relationship. This application, if granted, would require an adjournment of the substantive hearing. On 4 July 2023 Theis J ordered that this application be considered at the beginning or the end of the substantive hearing in the discretion of the trial judge. I heard the application at the outset of the hearing, as developed by F (the Guardian no longer supporting it), but adjourned my decision until I had heard all the evidence. I then reserved my judgment on all the applications until today.
2. The parties have been anonymised for reasons of privacy and confidentiality and to allow publication of this judgment.
3. These proceedings have been ongoing since August 2019 and followed a one-year period in which proceedings were pursued by F (from his application in November 2018 until the M's return on 1 October 2019) for C's return from Germany under the Hague Convention 1980. There is an urgent need for a final resolution of this matter.

**The position of the parties, the local authority and the Guardian**

4. M's position is that C should continue to live with her and that she should be permitted permanently to remove C to Germany, where M's family live, and which is consistent with C's wishes. She accepts that some form of contact should continue between C and F once they are settled in Germany and has made detailed proposals to that end which she agrees should be made by way of an order that will be enforceable in Germany. There is an urgent need to resolve her application as C is enrolled in a school in Frankfurt where she is due to start in September 2023. M's family will provide them both with accommodation and support and M will be able to resume her training contract with an international law firm in Frankfurt. Their situation will be in stark contrast to that in which they have been living since their forced return to the UK in 2019, with frequent moves between poorly furnished temporary accommodation and without any childcare support from family or financial support from F.
5. F opposes M's application for permanent removal to Germany. He acknowledges that C wishes to return to Germany but believes that she has been manipulated by M into expressing these wishes and that M is responsible for alienating C from him. He submits the court should either: make a 'live with' order to F, either immediately or on a suspended basis; make an interim care order with a view towards removing C from the mother's care preparatory to C developing a relationship with F; or order an expert psychological assessment.

6. Cardiff County Council Children Services ('the local authority') are not a party to proceedings but have undertaken considerable work with the family following the making of a s 37 order by Arbutnot J on 5 September 2022. The authority supports M's application for C to live with her and to be permitted permanently to remove C to Germany. Unless such a move is permitted C will become further estranged from F and any prospect of a relationship in future will be further harmed. The local authority rejects F's suggestion that C be removed from M's care either to live with F or to a foster carer because this would be 'significantly distressing' for C. The authority does not consider any form of care or supervision order to be necessary.
7. The Guardian now supports M's case that it is in C's best interests to return to Germany, provided provision is made for ongoing contact with F. Only if I decide that it is in C's best interests to remain in the UK does the Guardian propose a psychological assessment. He acknowledges a psychological assessment is not an end in itself. The assessment may conclude that the only prospect of C developing a relationship with F is to permit her to move to Germany; in that event, the assessment will have added nothing to what is known today and serve only to further delay matters. An assessment may conclude that M and C should engage in long-term therapy or that C should be removed from M's care to a 'neutral' setting by way of an interim care order to allow her to develop a relationship with F. The Guardian recognises that these interventions are likely to be lengthy, time-consuming and of speculative benefit and may cause C greater harm.

### **The available proposals**

8. There are three proposals before me from which I must choose the one that is in C's best interests and which is compatible with the Article 8 rights of C, F and M.
  - (1). Proposal 1: return to Germany. M is given permission permanently to remove C to live in Germany, with a court-ordered plan for contact with F. This is M's proposal, supported by the local authority and Guardian.
  - (2). Proposal 2: removal to F's care. C is removed from M's care to live with F, either immediately or on a 'suspended' basis in the event M fails to encourage C to have contact with F. This was F's original proposal but now his 'fall back' in the event I do not order a psychological assessment.
  - (3). Proposal 3: psychological assessment. C continues to live with M in the United Kingdom, with a court-ordered psychological assessment of M and C, which may recommend psychological therapy or the removal of C from M's care by way of an interim care order preparatory to C developing a relationship with F. This is now F's primary proposal which is no longer pursued by the Guardian.
9. I do not need to consider the alternative that C continues to live with M in the United Kingdom without any contact with F, which is the status quo. C is refusing contact with F and there is no realistic prospect of any change without some court-ordered intervention. No-one supports this proposal.
10. Given F's allegation of 'parental alienation' by M I must first determine whether that allegation is made out on the evidence.

## **Summary of my decision**

11. I have concluded that, for the detailed reasons that follow:

- (1). I am not satisfied that there has been ‘parental alienation’ of C by M. It follows that the threshold for making an interim care order under s 38(1)(b) of the Act is not met.
- (2). Proposal 1: It is in C’s best interests to continue to live with M and to grant M’s application for a specific issue order permitting her to permanently relocate to Germany, together with an order for continuing contact with F which will be enforceable through the German courts under Regulation (EC) No 2201/2003 (‘Brussels IIA’), if necessary. A permanent relocation to Germany does not breach F or C’s Article 8 rights to a father-daughter relationship; rather, it promotes those rights. It will also promote the Article 8 rights of C and M to live where they choose and to develop their relationship with C’s maternal relations.
- (3). Proposal 2: A removal of C from M’s care to F’s care would cause C significant harm without any realistic prospect of repairing her relationship with F, is not in C’s best interests and would breach C and M’s Article 8 rights to a mother-daughter relationship.
- (4). Proposal 3: An adjournment for the purposes of a psychological assessment is not in C’s best interests. An assessment is not an end in itself and the interventions that may follow – psychological treatment, separation from M to a neutral space to allow C to build a relationship with F – will (in the case of psychological therapy) be expensive, lengthy and of doubtful benefit and (in the case of separation from M) likely to cause significant harm. Given the time that has already lapsed, the speculative benefits and the risks of harm from any interventions, any further delay in permitting M to relocate to Germany with C for the purposes of a psychological assessment is likely to breach M and C’s Article 8 rights to choose where they live and to enjoy a relationship with C’s maternal relations. I therefore refuse the Guardian’s Part 25 application.

## **Background**

12. F was born in Morocco in 1986 and M was born in Germany in 1994. They moved to the UK in 2010 and 2012, respectively, and met at the end of 2012. They began a relationship and in autumn 2016 their daughter, C, was born in the UK. The relationship was volatile and marked by allegations of abusive conduct by both parties with the involvement of police and local social services. The relationship broke down during a family trip to Morocco in November 2017 to visit C’s paternal family. On 12 November 2017, M returned to Germany with C to live. Her parents and brothers live in Germany. F began a legal training contract with an international law firm and C went to a private nursery. In November 2018 F brought proceedings in the German Courts for C’s return to the United Kingdom under the Hague Convention 1980. M resisted the applications under Articles 13(a) and (b) of the Hague Convention, asserting that F had consented to the removal and a return to the UK would expose C to physical or psychological harm. On 7 February 2019 the Frankfurt Family Court allowed F’s application and ordered C’s return to the UK. M’s appeal to the Higher Regional Court, Frankfurt, was rejected on 1 April 2019.

13. On 24 August 2019 F lodged an application in the West London Family Court for a child arrangement order for C to live with him and his new family (he now has three younger children by a new partner) and, pending that, to spend time with him. In October 2019 M returned to the UK and initially stayed with a family friend in Wales and then moved into private rented accommodation at an undisclosed address in Wales. On 28 January 2020, M lodged her application to permanently remove C from the jurisdiction to Germany.
14. Between 24 and 26 May 2021, Recorder Archer conducted a fact finding hearing to determine cross allegations of abusive behaviour by both parties. On 12 August 21 the Recorder made findings against both parties. The Recorder found two allegations proved against F:
  - (1). First, on 21 January 2016, there was an incident in which the police were called. The police statements record that, on their arrival, M was ‘very upset with tears in her eyes’, claiming that ‘she had called the officers by mistake’. Only after she and F had been separated did she disclose that F had assaulted her by slapping her and grabbing her wrists and had smashed her laptop and had threatened to tell her parents about their marriage. She then said that she did not want F arrested ‘as it would make things worse’ and that she wanted to take back what she had just said. When F was questioned he claimed he had acted ‘in self-defence’ because ‘she hit me first’. The Recorder found there had been ‘an incident of domestic violence’ by F in which F had assaulted M by slapping her and grabbing her wrists and had smashed her laptop.
  - (2). Second, on 21 July 2017, there was a further incident in which the police attended at F and M’s home. M alleged that F broke into the apartment and took M’s documents, including her passport, and her telephone. The police were called and told F to leave. He threw himself against, and broke, a glass window onto their balcony and attempted to jump from the first floor before being restrained by police officers. M was later threatened by F’s friends into withdrawing her statement. Her account was supported by evidence from police officers. One officer described how she found M nervous and fearful when talking about her husband and was worried about his being arrested. The officer ‘genuinely felt the mother was afraid of the father and had felt that speaking out would make the situation worse’. The second officer agreed with his fellow officer’s assessment of M ‘as someone desperate for police help; frightened but protecting the father from trouble’. That officer also thought F had tried to intimidate officers during the episode by talking over them, taking his mobile phone out to film them and asking for their details, before throwing himself against the glass window on the balcony in an attempt to escape. He was restrained and arrested, although the CPS declined to prosecute. F denied the claim that he had taken M’s passport and phone and claimed that the window had broken ‘by accident’ because one of the officers had acted aggressively towards him, perhaps through a racial motivation (the officer was black). The Recorder rejected F’s account, preferring that of M and the officers, and found this allegation proved, save that F had not ‘forced’ his way into the apartment because he had been living there at the time.
15. The Recorder also made findings against M, namely: that on 14 June 2017 M threw water over F and hit him with a plastic bottle; in October 2017 M assaulted F by slapping, kicking and punching him; on unspecified dates in 2017 M sent texts and made calls amounting to harassment of F; on 31 March 2018 M slapped, punched and kicked F and

grabbed his neck; and that M was emotionally and financially abusive of F by unlawfully removing C from the jurisdiction to Germany in 2017 and thereafter refusing F to have contact with C, repeatedly returning to London without her, and repeatedly asking F for money.

16. The Recorder concluded that none of these acts constituted a pattern of coercive and controlling behaviour by either party against another (as each had alleged). The Recorder did find that M had conducted the litigation so as to ‘frustrate and control’ the process and ‘thereby to delay the progress of the father’s application for contact’.
17. The Recorder ordered CAFCASS to produce a s 7 report and made directions for monthly indirect contact, with the father to send cards and the mother sending a photo or video and a written update, through solicitors. On 12 January 2022, CAFCASS produced the first s 7 report which recommended indirect contact between F and C (video contact and cards) followed by supervised contact initially for 1 hour fortnightly at a contact centre. On 23 January 2022 Recorder Archer made orders to that effect, together with an order prohibiting M and F from removing C from England and Wales. There then followed a series of attempts at indirect and direct contact which proved to be largely unsuccessful due to M’s unwillingness to facilitate the necessary arrangements, although video contact between F and C did take place on 4 March and 7 May 2022. In an addendum s 7 Report of 25 April 2022 the CAFCASS officer gave his opinion that ‘the mother’s actions must be of concern to the court’ and confessed himself to be ‘at a loss as to how to realistically move forward in this case’. At a hearing of 28 April 2022 before Recorder Kelly, C was joined as a party to proceedings under FPR r. 16.4 due to the intractable nature of the dispute between F and M. A prohibited steps order was made prohibiting M from speaking to C negatively about F or discussing the court proceedings or any move to Germany with her. A child arrangements order (spend time with) was made in F’s favour for fortnightly supervised video contact and direct supervised contact on a fortnightly basis at a contact centre in Wales.
18. The supervised contact arrangements again proved difficult to put into effect, suspected to be because of M’s unwillingness to co-operate and exacerbated by her decision in June 2022 to move with C to Scotland in breach of the prohibited steps order of 23 January 2022. M insists that this was a misunderstanding, stating that she believed she was permitted to live anywhere within the United Kingdom. Nevertheless, on F’s application for a return order on 19 August 2022 the High Court (Newton J) made C a ward of court and on 25 August ordered M to return C to England and Wales, and allocated the case to a justice of the High Court. The matter came back before Arbuthnot J on 5 September 2022 who made an order under s 37 Children Act 1989 directing Cardiff Council social services authority to consider the exercise of their child protection functions ‘because of concerns that she is suffering significant emotional harm attributable to the mother through being denied a relationship with her father’. The court also refused M’s application (resisted by F) for permission to remove C to Germany on a temporary basis for a holiday.
19. On 14 October 2022 a further child arrangements order was made by HHJ Scarrett (sitting as a s 9(1) DH CJ) requiring M to make C available for direct supervised contact with F on a fortnightly basis at a contact centre in Wales. Arbuthnot J made a further order on 30 November 2022 for supervised contact to develop into direct supervised then unsupervised contact in the community (and again refusing M’s application to remove C to Germany for a holiday after F’s objection). Contact has since proved to be more

successful in the sense that supervised direct contact at a contact centre did take place on 27 October, 11 November, 25 November, 10 December and 19 December 2022 and 13 January and 30 January 2023, while supervised contact in the community took place on 13 February, 23 February, 9 March, 31 March and 14 April 2023. However, these visits have not achieved the breakthrough in the development of C's relationship with F that might have been hoped for, despite M's evident encouragement of C to engage with F, which was a marked change from her earlier attitude. In particular, following a further order of Arbuthnot J on 23 March 2023 that M must remain out of view during contact visits, the quality of contact deteriorated markedly. Despite M's best efforts, C would not leave M for the visits on 31 March and 14 April 2023 so M had to remain in the vicinity. On 4 May and 18 May 2023 attempts were made by the social workers to drive C to the contact session without M. On both occasions C refused to leave at all; on the last occasion, she undid her seatbelt and opened the car door as the car was moving off. C was significantly distressed by the process, as was M. After this the social work team agreed that contact should be terminated. There have been no contact visits since.

### **The evidence of the parties, the Local Authority and the Guardian**

#### ***The Mother ('M')***

20. M has filed a number of statements in the proceedings, four of which are in the bundle provided to me dated 28 April 2022, 24 August 2022, 16 June 2023 and 4 July 2023, which I have read with care. In the first, M explains how and why she has home-schooled C since her forced return to the UK in 2019, describing how C is doing excellently in all her subjects with her favourite subjects maths, German, music and bible studies and is currently following the curriculum a year ahead of her school-age. She then explains, in her second statement, her reasons for moving with C to Scotland in June 2022 due to her inability to find suitable accommodation that she could afford in Wales and her misunderstanding that this was permitted under the terms of the prohibited steps order. Her statement of 16 June 2023 sets out in detail her reasons for wishing to relocate to Germany. Chief among these are the fact M's parents and brothers live there. They will be able to provide M with practical and emotional support. M's father is only 63 and her mother 62 and are both due to retire in 2023 so will have plenty of time to provide support. C's first language is German and she has already developed strong bonds with her maternal grandparents and uncles during the period they lived in Germany between November 2017 and October 2019. C speaks to her grandmother every day and her grandfather and uncles a few times each week. C also speaks to the children of family friends and of M's friends, as well as some of the friends she made in daycare and pre-school in Germany. C greatly misses her family in Germany.
21. A further reason for relocating is that M will be able to return to her previous employment as a transaction lawyer in the debt finance team of an international law firm with an office in Frankfurt. She explains that while in Germany she undertook a training contract with the law firm, who paid her course and exam fees on condition that she remain with the firm on qualification for a specified period, in default of which she would be liable to repay those training costs. In the event, she was unable to finish her training because she was obliged to return to the United Kingdom by the German Courts. M has provided letters from a partner at the law firm who confirms her account and has also provided answers to a number of questions. He explains that M had completed 12 months of her training contract and has another 22 months to complete. He gives a glowing report of her work and explains how her language skills are particularly valued and are not easy to

find. He states that the training contract she has with the law firm only applies to their Frankfurt office and cannot simply be transferred to another office in the UK. M explains that if she is able to return to Germany, her salary will enable her to provide C with their own home (although they will initially live with M's mother), to send her to a private school (C is enrolled to start in Autumn 2023), to have music lessons, extracurricular activities and go on family holidays. These are not available to her while in the UK where M is currently unemployed, spending her time home-schooling C while living in temporary accommodation and without any financial support from F.

22. In her statement of 16 June 2023 M also provides an explanation for her unwillingness to co-operate with earlier contact orders made in January and April 2022, which she says was because C had not wished these contacts to continue. However, she explains how she has co-operated in the orders made since September 2022, encouraging and providing reassurance to C in the successful contacts with F that took place between September 2022 and March 2023. Since the hearing of 23 March 2023, when a direction was given that M should not be present at contact meetings, these have not gone well, as described at ¶19, above.
23. M says that she has not sought to influence C against F. She has not spoken negatively about him to or in front of C; she has tried to answer her questions about returning to Germany in a child friendly way and has followed the advice of the social workers. She has encouraged her to have contact with F, to the point that she has made C upset, and feels that she has forced her to have contact and has not respected C's wishes.
24. Given the difficulties with contact, in her statement of 16 June 2023 M says it is 'very difficult to give firm proposals' for contact with F in the event that she is permitted to return to Germany. However, in her most recent statement of 4 July 2023 (and following a meeting with the Guardian on 30 June 2023) she has made detailed proposals for such contact, including practical proposals such as arrangements for F to stay with a local pastor (at no charge) during contact visits and the practicality of travel to and from Frankfurt. She is also willing to engage in ongoing mediation.
25. M also gave oral evidence in which she adopted these witness statements and was cross-examined by counsel for F and the Guardian. She accepted the findings of Recorder Archer at the fact-finding hearing except for the finding she had refused any contact with C. Until August 2018 she said she sent hundreds of photographs and videos to F and asked him to send some back to her to show to C. F concedes that M sent 'some' photographs and videos during this period. M also accepts that some of the things that C had been recorded as saying about F – that he was 'sick in the head and done crazy things' and that he had hit M - might have been overheard in conversations between M and her family, but she denied having psychologically manipulated C, whether intentionally or unintentionally. She accepted that she had not promoted contact with F in the past, but denied having deliberately obstructed it and said that she had positively encouraged such contact since the local authority had become involved. She denied having moved to Wales to make it as difficult as possible for F to have contact with C; she moved there in 2019 because some family friends lived there with whom M had stayed when she was 14 and she had no other place to stay upon returning to the United Kingdom in October 2019. She had moved to Scotland because she had difficulty finding housing after her tenancy came to an end and had not understood such a move would breach the prohibited steps order. She denied that she had refused to put C in a school; she was home-schooling C because that is best for her given she is a year ahead of her peers. She said F has

provided no maintenance since her return with C in October 2019; she had refused F's offer in January 2023 of £40 per month because it would have made little difference and she would have had to give up her claim to back-payments of maintenance, which run into the thousands of pounds. She denied that she could get a job as a lawyer in the UK; she is a single mother, she has no family to support her and she does not have the funds to undertake further legal training here. She can only complete her legal training if she is able to return to Germany to the international law firm in Frankfurt; her training contract cannot be switched to another office of that firm in the UK. She confirmed that she would continue to encourage C to engage with contact with F if she was permitted to return to Germany and considered her proposals for contact to be feasible, in particular that for F to fly out to Frankfurt would be no more expensive than travelling to Cardiff for contact visits. She has done what she can to change C's mind about F, but thinks C will change her mind if they are permitted to return to Germany.

26. Given the findings of Recorder Archer that M had conducted the litigation so as to 'frustrate and control' the process and had a 'tendency to exaggerate', I have approached M's evidence with considerable caution. But in its most important respects, namely that she now recognises the importance of C building a relationship with F, that she has actively encouraged contact since the local authority became involved and will continue to promote contact if she and C return to Germany, I accept her evidence. That is because it is supported by the testimony of the local authority social workers, AP and JM, who talked of M's 'breakthrough' and a 'significant shift' in her approach to contact (see below, ¶¶34-35, 38, 40) and, more importantly, because it is supported by contemporaneous records of contact visits. The advantages of such contemporaneous documents compared to witness testimony have been repeatedly stressed in the caselaw, helpfully summarized by Warby J in *R (Dutta) v GMC* [2020] Med. L.R. 426 at [39].
27. For example, while M expressed some concerns about the first two supervised contacts at the contact centre on 13 and 29 October 2022, she is described as being 'supportive' at the contact meeting of 11 November 2022, that she 'persuaded' C to rejoin F to show her colouring books on 10 December 2022, speaking in 'soft, encouraging tones' to C; she again persuaded C to rejoin F on 19 December 2022, suggesting that she take her bear and wardrobe to show him, repeatedly telling C that she would stay, that C should join F in the session room and that she can return to her at any time. Similar observations were recorded once the supervised community sessions began; for example, on 31 March 2023 M asked C to speak in English so that F could understand her, and actively encouraged C to join F in the games arcade, supporting her to be with F even though she was concerned this might breach the court order. There are plenty of other examples. These records also show that it was when M was not permitted to accompany C on these contact visits to encourage her that they were least successful.

### ***The Father ('F')***

28. I have seen one statement from the father dated 4 July 2023. C is his eldest child; he has three younger children by his new partner. He opposes M's application to permanently remove C to Germany which, he fears, will mean he 'will never see C again and she will grow up not having had the opportunity to build a relationship with me, her half siblings and the rest of my family' and that this will lead to problems for her in future, both in terms of the loss of her Moroccan identity and a perception that she was rejected by me, her father'. F believes M has gone to great lengths to ensure that he has no relationship or contact with C. He is deeply aggrieved at M's unlawful removal of C to Germany in

2017 which necessitated the lengthy and stressful process of securing her return to the United Kingdom under the Hague Convention. Since her return, he says, M has refused to allow him contact with C, necessitating his application for a child arrangement order, and she has obstructed court ordered contact arrangements at every turn. She moved to Wales and then Scotland for that purpose and has made no attempt to find long term accommodation or employment here in order to frustrate F's attempts to contact C and in order to make it more likely the Court will permit her to return to Germany. He believes M has systematically brain-washed and alienated C so that she now voices an intense resistance to seeing F and constantly talks about going back to Germany and how F is preventing her from doing so, and has repeated this to professionals. He believes M has coached C to say these things. F also doubts whether M has a genuine desire to return to Germany; that she has a poor relationship with her parents (who are divorced), who did not accept C after her birth because F is Moroccan and who have expressed a strong antipathy towards F's ethnic group. F believes M's behaviour has caused C emotional harm. F also believes that the local authority social worker, AP – who supports M and C's return to Germany – is biased in favour of M.

29. In his oral evidence F adopted this evidence and, to a large extent, repeated it. He was questioned, in particular, about F's proposals for contact in Germany which he initially rejected as impractical. However, when I asked if he would engage with those proposals in the event I ordered C's return to Germany, he agreed that he would. That concession was welcome and gives me further confidence that such a move will succeed.
30. I have nevertheless treated F's evidence as to what he believes to be in C's best interests with some caution, for several reasons. F has a tendency to ascribe improper motives to those who disagree with him which leaves me concerned that he is unable to accept opinions as to C's best interests if they differ from his own. His evidence before me that AP was 'biased' against him because of a shared Kurdish/ German heritage with M echoes his complaint that in the incident on 21 July 2017 (above, ¶14(2)) one of the police officers had been racially biased against him. Recorder Archer rejected F's criticism of the police officer. In my judgment the criticism of AP is equally unjustified: see ¶39, below. Furthermore, F's belief that C's expressed wishes to return to Germany are entirely the result of manipulation by M reveals, in my judgment, a rather rigid attitude that compromises his ability to set aside his own perception of what is in C's best interests and to understand what is actually in her best interests. Even if I had accepted F's allegations of parental alienation (which I do not), C's wishes to move to Germany and to resume her relationship with her maternal family have been consistently expressed and accepted by all the relevant professionals and a reasonable parent should recognise that, even if they oppose such a move. Last, F has been inconsistent in his approach in these proceedings which gives me further cause to be concerned that he is unable to put aside his own needs in favour of C's best interests. For example, while he has previously accepted before the local authority social workers AP and JM that it is in C's best interests to remain with M rather than to move to live with F and his family, he abandoned that position at the hearing, reverting to his initial application that C be removed from M's care. Whether that was for tactical reasons or because he had changed his mind was not clear. A further example is that he told C on more than one occasion that he had no objection to her going on holiday to Germany. However, on the two occasions when M subsequently applied for the court's permission to take C to Germany for a holiday F opposed those applications. These are relevant factors to weigh in the balance when I come to conduct the welfare analysis.

### *The local authority*

31. The local authority first became involved following the s 37 order of Arbuthnot J in September 2022. A social worker, AP, was allocated the case for the purposes of completing a s 37 report. An assistant social worker, JM, was appointed on 15 September 2022 to work with M, F and C and to supervise contact meetings between C and F. Another social worker, SM, facilitated ‘Circle of Security’ work with M and F, focussed on attachment, relationships and C’s emotional wellbeing. In addition, JM undertook a number of ‘Wellbeing Visits’ to C and M on 25 January 2023, 9 February 2023, 2 March 2023, 31 March 2023, 14 April 2023 and 18 May 2023 and 15 June 2023. The authority undertook a series of reviews and produced written Care and Support plans dated 21 December 2022, 8 February, 1 March, 26 April and 21 June 2023. Each contact undertaken or supervised by the authority and each Care and Support Plan was documented contemporaneously. These records, totalling nearly 300 pages, were produced in evidence and I have reviewed them carefully.
32. The authority’s position is set out in three documents: an initial s 37 Report dated 22 November 2022; an addendum report dated 16 March 2023, both prepared by AP with the input of JM and subject to approval by AP’s team manager and the local authority panel; and a statement from AP dated 19 June 2023.
33. In the initial s 37 Report, the authority set out its recommendation that C should continue to live with M, and supported her wish to relocate to Germany, albeit not immediately, so as to allow an opportunity for C to first develop a relationship with F. The report noted that C had continuously expressed a wish to return to Germany to be close to her maternal grandparents and uncle with whom she has a ‘close and positive relationship’ which she had been denied since returning to the UK in 2019. She ‘continues to send a clear message that she wishes to live in Germany, which she refers to as ‘home’’. C would also enjoy a better quality of life in Germany given M can return to her employment as a lawyer at an international law firm and enjoy the support of her parents and brothers. The authority also proposed a detailed plan for a staged process of contact between C and F.
34. On the issue that had precipitated the s 37 report in the first place, namely the risk that C was suffering emotional harm because of M’s attitude towards F, the authority concluded that ‘the current concerns do not warrant ... a care or supervision order at this stage’. The authority acknowledged that M had previously frustrated and delayed the process of contact. However, there had been a ‘significant shift’ during the course of the work done with the local authority, with M accepting that it was C’s right to have contact with F. The report also recognised a ‘significant shift’ on the part of F when he accepted that it was in C’s best interests to remain in M’s care rather than live with him; indeed, in her oral evidence AP considered the two to be linked.
35. The authority produced an addendum report of 15 March 2023. By this time there had been the series of contact visits facilitated by the authority described above in which, after a promising start, C had become increasingly resistant to seeing F and refused to do so completely in the absence of M. The authority again concluded that C was sending ‘a clear message that she wishes to live in Germany, which she refers to as ‘home’’. C was ‘not only voicing her views but also manifesting them through her behaviour – by refusing to engage with [F] or acting out’. This was ‘despite [M’s] encouragement’ which, in contrast to M’s earlier reluctance to promote contact, had undergone a ‘breakthrough, and despite her own reservations, [M] was able to push her own feelings

aside and encouraged [C] to engage in contact and even joined in, which is highly commendable, and she clearly prioritised [C's] needs over her own needs'. In assessing what was in C's best interests, a balance was to be struck between the effect on her emotional wellbeing of the separation from her maternal family 'as well as being forced to have contact and a relationship with her father, which she clearly resists at this time' against any harm she would suffer if she did not have a relationship with her father. In the authority's view, and AP's view as the author of the report, any 'parental alienation' from F 'causes less emotional harm at this time than preventing her from relocating' to Germany. Furthermore, 'if [C] and [M] will be prevented from returning to Germany, [C] will continue to grow more reluctant towards her father and to the extent where their relationship will be beyond saving', which might be avoided if C was to be permitted to return to Germany. In the authority's view, 'the most valuable action that [F] can take is to hear [C's] wishes and feelings and support her move to Germany'. The authority's recommendation was that C and M be permitted to return to Germany, with indirect contact between C and F through regular, weekly video calls and M 'continuing to encourage [C] to have contact with her father and potentially with paternal half-siblings, which would address and promote her identity', alongside family mediation. The authority reiterated its view that a care and supervision order was not warranted.

36. I should add that this addendum s 37 report expressed certain doubts about whether F was acting with C's best interests at heart (at pages 23 to 23 of that report). These were based upon reports by the social worker, SM, who conducted the 'Circle of Security' work with F. F did not accept these conclusions and requested that SM be tendered so that these could be challenged, but it transpired at the hearing SM was not available to give evidence. F sought an adjournment to enable him to question her. I refused that application until I had heard all the evidence and could decide on whether the evidence is necessary to my decision. I indicated that I would not rely on any evidence that depended on SM's observations and opinion. Having now considered the totality of the evidence I have concluded SM's disputed statements are not essential to the local authority's conclusions and are not necessary for me to determine the applications. I therefore refuse the application to adjourn for her to give evidence.
37. In her statement of 19 June 2023, AP reiterates and updates the authority's position. She explains how, in light of the lack of progress around contact between C and F, a case discussion was held between C's Guardian, AP and JM on 5 May 2023 in which the Guardian requested the authority to reconsider issuing care proceedings. The local authority did so and decided such proceedings were not justified. The authority recognised that C's lack of a relationship with F had caused, and would cause, harm, but that would not be addressed by an interim care order. The authority was also concerned at the harm being caused to C by the continued separation from her maternal family in Germany and by the impact of being forced to have a relationship with F. They remain of the view that continuing to prevent C from returning to Germany will destroy any prospect of her forming a relationship with F in the future. Only if such a move is permitted is there any prospect of her developing that relationship. As to the proposal for a psychological assessment, they are concerned that this will further delay proceedings, prolong the negative impact on C's wellbeing and further negatively impact on her view of F. Despite intensive work with social workers, and M's attempts at promoting contact, no real progress had been made in building C's relationship with F. AP repeated the authority's view that the most valuable action that F could take was to hear C's wishes and feelings and support the move to Germany. The authority 'believe

that this would assist in improving [C's] relationship with [F], even if it results in them living in different countries'. Their recommendation remained the same as before.

38. AP adopted these reports and statement in oral evidence and was questioned by counsel for M, F and the Guardian. She stated that to remove C from M's care would be 'extremely distressing' for her, and F had accepted as much in a conversation with her. AP was asked whether C's bond with her maternal family had been 'manufactured' to which she replied 'definitely not'. Her desire to return to Germany was genuine. She agreed that the authority had initially been concerned about M's influence on C but did not consider this amounted to parental alienation. M had accepted in an early conversation with AP in September 2022 that she had not been promoting contact between C and F, but there had been a 'breakthrough' and a 'significant shift' by M, who had taken all advice she was given and had supported all contact between C and F, pushing to one side her own feelings and putting C's best interests first. There had been one incident in December 2022 when M cancelled a contact visit but that had been due to a need for to call out a gas engineer. AP was confident that M would continue to support that contact in Germany. C was hostile to F because of his opposition to her return to Germany. Her opposition was justifiable to some extent, given her age and understanding. M's proposals for contact with F in Germany were optimistic but AP was confident M would continue to encourage and support contact. The only prospect of saving the relationship with F was to allow them to relocate. The significant harm to C of having no relationship with F was outweighed by the significant harm that had been caused and will be caused by separating her from her family in Germany.
39. I found AP's evidence to be compelling and I accept it, as well as the local authority's corporate opinion that she articulated. I reject the suggestion made by F (and put by Counsel for F during cross-examination) that AP is biased towards M because they have in common the fact AP is married to a Kurd (M has a Kurdish father) and AP's father is German (M was brought up in Germany). AP is an experienced professional social worker. Her report was supported by the other social worker, JM; by her immediate manager; and by the local authority panel. AP has worked intensively with the family for nearly a year and has witnessed C interacting with M and F on numerous occasions. Her evidence, in particular as to M's 'breakthrough' in supporting contact between M and C, was corroborated by the contemporaneous records. AP's opinion was also supported by the Guardian in his oral evidence.
40. Live evidence was also given by JM, the assistant social worker who supported the family at contact and wellbeing visits. JM undertook two particular pieces of work to elicit C's wishes and feelings, the 'Feeling Wheel' and the 'Three Islands', which provided powerful evidence of C's attachment to her maternal family in Germany and her lack of attachment to F. She also assisted M in putting together the 'script' to be used to explain the legal proceedings to C in a neutral way. JM confirmed AP's view that M had been fully engaged in trying to facilitate contact between F and C and how these had become less successful when attempts were made to separate C from M and ultimately failed on 4 and 18 May 2023 when C refused to accompany social workers without M. In JM's opinion, the reason why the contact had failed was because M was not present to provide support and encouragement to C. The incident on 18 May, when C had tried to get out of AP's moving car, had been particularly distressing for C. After that, AP and JM had both agreed that continuing contact was not in C's best interests. JM agreed that C is very bright and strong willed. She found it 'very difficult to say', whether C had formed her views herself or as a result of influence from others, including M, but she had a

genuine desire to return to Germany and a genuine antipathy towards her father and will not engage in any contact with him, at least not without M present. She believes the authority have exhausted the available options for supporting contact with F.

41. F suggested no basis for rejecting JM's evidence, which I accept.

### *The Guardian*

42. C was initially represented by a CAFCASS officer, Mr. Patrick Mammatah, who produced two s 7 reports dated 12 January 2022 and 25 April 2022. Following the court order of 24 April 2022 under FPR r. 16.4 for a Guardian to represent C in these proceedings, Mr. Johnathan Bettinson was appointed. Mr. Bettinson produced a welfare report shortly before the final hearing, on 10 July 2023. I have also seen position statements prepared on his behalf dated 23 March and 20 June 2023.
43. In his initial s 7 report Mr. Mammatah made positive findings about C's attachment to M and recommended that she continue to live with her. He also noted strong and affectionate ties to her maternal family in Germany who C considers to be significant people in her life. He recognised that C is likely to have experienced a sense of loss at returning to the UK and the fact she is unable to spend time with these family members. He noted M's clear wish to return to Germany to be with her family. However, he expressed concern about C's negative views of F and that M had influenced C in forming those views. When Mr. Mammatah met C on 7 January 2022, C told him that she did not consider F to be part of her family because 'he doesn't care about me', 'he hit me' and also 'hit mummy', that 'he is sick in the head and done crazy things'. When he spoke to M about these matters she accepted that she had told C that F had hit her (i.e. M), but must have been confused when she said F had hit C. Mr. Mammatah also expressed doubt as to M's willingness to support contact between M and C and raised the possibility that M had alienated C from F. He was also concerned that M had denied some of the findings made by Recorder Archer at the fact-finding hearing, but noted that F was similarly in denial and neither parent appeared to have read the judgment. He recommended that contact commence immediately to establish a relationship between F and C, initially indirectly via video calls and cards followed by a period of supervised contact. He was unable to reassure the court that directions for contact would be complied with if C and M were to return to Germany. Such a move might be possible once the relationship with F and C had been established. The delay would not be 'overly detrimental' to C who was not due to start school in Germany until 2023.
44. On 25 April 2022 Mr. Mammatah produced an addendum s 7 report. By this time there had been only one video contact session in which C had told F that she wanted to go to Germany, to which F had responded that she could go and come back, so he could see her also. Mr. Mammatah had subsequently spoken to C and asked her about meeting F and how it had gone. C said 'it was bad' because F 'makes me far from my family. He decides where I need to go. He promised me to do what's best for me, but he doesn't do it ... He doesn't care about me. He makes me far from my family and my home and he makes my mum has only a bit of money left, and she needs to go back to work. Her work is in Germany'. C repeated her desire to be close to her friends, her family and her toys in Germany. In conversation with M, Mr. Mammatah noted that she was 'very frustrated with the process, is still highly fearful of [F] [who] is only proceeding with the court application to further his abuse'. She expressed a significant level of anger, asking if some his questions were 'serious' and stating that 'she was at her end point with the

proceedings and may return to Germany’. M told him that she ‘does not view any form of arrangements as in [C’s] best interests and stated she will not facilitate them’. Mr. Mammatah concluded that M’s actions ‘must be of concern to the court’ and he was ‘at a loss as to how to realistically move forward in this case’.

45. It was as a result of this addendum s 7 report that additional orders to enforce contact were made by Recorder Kelly on 28 April 2022, including the appointment of a r. 16.4 Guardian, Mr. Bettinson. Mr. Bettinson’s views have developed over the period he has been involved. I was shown a position statement dated 23 March 2023 in which he stated he was ‘very concerned that the mother may have deliberately influenced the child against her father, and through her actions has in the past created a barrier to any contact in taking place’ and questioned why the local authority had not recommended a care or supervision order. In his position statement of 20 June 2023 the Guardian set out his view why a psychological assessment of both M and C was necessary, namely (as per the draft letter of instruction) to identify the reasons behind C’s continuing resistance to contact with F, including whether she had been alienated by M; whether her refusal to have contact with F was unreasonable given F’s prevention of a move to Germany; and any interventions that might improve C’s relationship with F. Mr. Bettinson could not support a move to Germany ‘without any realistic assurance, evidenced commitment to contact or plan for [C] to see her father’. He also proposed that ‘given the harm that has been identified, the local authority should be encouraged to escalate their involvement with the family to one of safeguarding/ child protection’.
46. Mr. Bettinson then met with M on 30 June 2023, following which M produced an updated statement on 4 July 2023 which set out detailed proposals for contact between C and F if they were to return to Germany. It appears that this statement caused Mr. Bettinson to shift his position, set out in his report of 10 July 2023, in which he supports M’s application and acknowledges the shortcomings of his proposal for a psychological assessment. This would require the introduction of a new professional and a further intrusive assessment which would cause C additional distress and harm without, of itself, effecting any change in C’s relationship with F. What might follow would be recommendations for how that change could be brought about. One option might be psychological therapy, but this would be costly and require a lengthy further stay in the UK where C is unhappy and deprived of the positive opportunities in Germany, and ‘would not guarantee the desired positive progress’. Another option might be to remove C from M and to be placed ‘in a neutral environment away from either parent while work is undertaken to support the child seeing her father’. This would require a ‘forced separation, which in itself would be traumatic and undoubtedly extremely harmful to [C], at least in the short term’. By contrast, he was encouraged by M’s ‘clear proposals for contact that she says she can guarantee will take place’ in Germany and that ‘she was willing and able to promote a positive image of her father’. On balance, Mr. Bettinson now supports the ‘best or least harmful’ outcome for C as being a return to Germany, but with a plan for contact in place along the lines of that put forward by M herself.
47. Mr. Bettinson gave oral evidence in which he stood by his report of 10 July 2023. In particular, he emphasised that the move to Germany no longer presented such a stark option as before, now that it came with the prospect of F resuming contact with C. M’s proposals had reassured him both in terms of their clarity and detail and the fact that these would be enforceable in the German courts. The Guardian maintained his view in the face of cross-examination by counsel for F who accused him of effecting an unjustified *volte face*. He accepted that a move to Germany created a risk that F would not see C

again, but responded ‘in this case there are risks everywhere. The current status quo leaves him with no relationship’. A move to Germany offered the best prospect of F improving that relationship which was therefore to be preferred over a psychological assessment. In response to my questions, Mr. Bettinson said that C’s wishes and feelings should be given strong, even considerable, weight. He recognised that there may have been some manipulation of C’s wishes and feelings, but advised caution about using the term ‘alienation’. C’s wish to return to Germany, and her antipathy to F, had been consistently stated to a range of people in a range of settings. These could be a combination of her views and those she had picked up from M, her wider maternal family and from F, who had told her he did not want her to return to Germany. This was not a case of one parent deliberately implanting a false narrative about another. Moreover, C’s wishes and feelings could be said to be justified: she is a bright girl and old enough to understand she is stuck in this country and doesn’t want to be; and she correctly perceives F as blocking her from going to Germany.

48. I accept the conclusions expressed by Mr. Bettinson in his oral evidence. While his opinion has changed markedly since his position statements of 23 March and 20 June 2023, he has clearly reflected further and placed particular emphasis on M’s latest witness statement of 4 July 2023 when she set out detailed proposals for contact between C and F in Germany. It was also telling that he accepted he had taken a ‘back seat’ while the local authority had been involved, so did not have the same level of involvement in C’s case as the social workers during the crucial period from September 2022 to May 2023. This may also explain his initial bafflement at the local authority’s decision not to initiate care proceedings. By the time of the hearing, Mr. Bettinson had a much deeper understanding of the evidence and his conclusions closely match those of the local authority. In particular, he agreed that there had not been ‘parental alienation’ by M and that it was in C’s best interests to remain with M and to return immediately to Germany.

#### ***The voicemail messages to F from M’s mother***

49. F also produced at the hearing two voicemail messages said to be left on his phone by M’s mother. Although the date of those messages was not established, they appear to have been left in August 2017 shortly after M’s parents through F discovered the fact that M had a child with F. M did not object to the very late admission of these messages and accepted they were from M’s mother. It is evident from these messages that M’s mother was extremely angry with F, accusing him of using M, ruining her education and her future by getting her pregnant and cheating on her. The troubling aspects of the messages are that M’s mother uses racist terms to describe F and appears to reject the baby. I asked Mr. Bettinson if this message had changed his views about whether it was in C’s best interests to return to Germany and her relationship with her maternal family. His answer was it did not; the message had been sent in anger at a time of crisis and it was evident from what had since transpired that C’s grandmother had not rejected C but had formed strong bonds of love and trust with her. I agree with Mr. Bettinson.

#### **Legal framework**

50. There is no dispute between the parties as to the relevant law so I can state this quite simply.
- (1). I have a power to make the orders sought under s 8 and (in the case of M’s application to permanently remove C) s 13 of the Children Act 1989 (‘the Act’).

- (2). I should only make an order if I am satisfied that it is necessary to further C's best interests.
- (3). The best interests of C are the paramount consideration.
- (4). In determining what is in C's best interests I must take into account the welfare considerations in s 1(3) of the Act which I address, below.
- (5). I must presume that the involvement of both parents in C's life will further her welfare unless I am satisfied, on evidence, that it is not: s 1(2A) of the Act.
- (6). Everything must be put into the balance with a view to measuring its impact on the child and a welfare analysis must be carried out in relation to all proposals before the court. Not only is it necessary to consider all proposals on their own merits and by reference to what the child has to say but also to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse: *Re. F (A Child) (International Relocation Case)* [2015] EWCA Civ 882, [2017] 1 FLR 979, [130], Ryder LJ.
- (7). In a permanent relocation case, there is no presumption that the reasonable relocation plans of a true primary carer will be facilitated unless there is some compelling reason to the contrary. The same welfare assessment is required as in any other case and the welfare of the child remains the paramount consideration. However, certain factors may be of particular relevance, as identified in *Payne v Payne* [2001] EWCA Civ 166, [2001] Fam 473, [40]: '(a) is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? ... Is the mother's application realistic, by which I mean, founded on practical proposals both well researched and investigated? (b) Is [the father's opposition] motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland? (c) What would be the impact on the mother, ... as the single carer ... of a refusal of her realistic proposal?' (*K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793, [2012] 2 FLR 880; *Re. F (A Child) (International Relocation Case)* [2015] EWCA Civ 882, [2017] 1 FLR 979; *F v L (Child Arrangements Order – Relocation)* [2017] EWCA Civ 2121, [2018] 4 WLR 141).
- (8). The Article 8 rights of each of the parties, and of C, to respect for their family life must be given due and proportionate weight particularly where, as here, there is a proposal to remove a child from the jurisdiction (*Re. F (A Child) (International Relocation Case)*, [31]) or from the care of her primary carer in the context of allegations of parental alienation (*Warwickshire CC v Mother* [2022] EWHC 2146 (Fam)).
- (9). The procedure by which I make my order must be fair to all the parties and in accordance with Article 6.

- (10). I will only find such facts as are necessary for me to determine what is in C's best interests.
- (11). When finding such facts, the burden will be on the party asserting the contested fact to prove it, with evidence, so that I am satisfied it is more likely than not that the contested fact is true.
- (12). If I permit M to remove C permanently to Germany, any order I make will be enforceable before the German courts under Brussels IIA: *Re L (A Child Jurisdiction Contact)* [2017] 2 FLR 361. That is because these applications were made prior to 31 December 2020 so the transitional provisions of Brussels IIA apply.

**Fact-finding: has there been 'parental alienation'?**

51. A central issue in this case is whether M has emotionally abused C by alienating her from F, as F alleges and which it is therefore for him to prove, on the balance of probabilities. This is an issue that might itself have been resolved at the earlier fact-finding hearing that took place before Recorder Archer in May 2021, but it was not raised by F. The answer to the question is of potentially great significance. 'Parental alienation', properly so-called, is a form of emotional abuse that may cause a child significant harm. If I find the allegation is made out and there has been such harm then that may be highly relevant to the welfare analysis and my determination which of the available proposals is in C's best interests, including the making of an interim care order under s 38(1)(b). Furthermore, if C's wishes and feelings have been affected by parental alienation then less weight may be attached to them in the welfare analysis.
52. I agree with the Guardian that the term 'parental alienation' must be used with caution. Not all resistance or hostility to a parent can be attributed to 'parental alienation'. The standard CAFCASS definition of alienation, which the courts have adopted, is 'When a child's resistance/ hostility towards one parent is not justified and is the result of psychological manipulation by the other parent'. The test is therefore twofold: the resistance / hostility must be 'not justified'; and it must be the result of 'psychological manipulation'. I accept that such manipulation need not be malicious or even deliberate, but there must be something that can properly be characterised as 'emotionally abusive' about the parent's behaviour: *Re. S* [2020] EWCA Civ 568, [7-8]. An example is where one parent peddles false allegations of abuse or criminality against the other, as in *L (A child)*, *Re.* [2019] EWHC 867 (Fam) and *Warwickshire CC v Mother* [2022] EWHC 2146 (Fam).
53. In my judgment, neither element of the CAFCASS definition is met.
54. First, although I accept C is young, her wish to return to Germany is genuine; it is not the product of 'psychological manipulation' by M planting some false narrative or encouraging C to lie. That wish has been clearly and consistently expressed and I consider C has sufficient understanding to have formed that wish. There may be several influences that have been brought to bear, including (inevitably) what she has learned from her prime carer, M. But in my judgment it is primarily the result of her having formed strong attachments of love and trust with her maternal grandparents and uncles during the two years she lived in Germany which have been maintained and strengthened since her return.

55. Second, C's resistance towards contact with her father is, at least to some extent, justified by objective facts and not the result of psychological manipulation by M.
- (1). C's understanding that F assaulted M and has acted 'crazy' in the past, as reported to Mr. Mammatah, is justified by reference to the facts found by Recorder Archer. I recognise that Recorder Archer did not find all of M's allegations to be proved; nor did he find that there was a 'pattern' of behaviour by F such as to amount to 'controlling and coercive behaviour'. I also recognise the Recorder found that M assaulted F on several occasions. However, I consider the findings that were made against F to be highly significant and reject F's submission that these were 'minor'. I set these out at ¶14 above in some detail because, in my judgment, they demonstrate that F's conduct was highly disturbing, particularly the incident on 21 July 2017; that M was in such fear of F that she was extremely reluctant to tell police officers what had happened lest she get F in trouble, as this would 'make things worse'; and that she had good reason to be afraid of F. Some of C's attitude to F is therefore understandable in the context of F's past abuse of M. I do not consider that M 'psychologically manipulated' C by telling her the truth about F's past assaultive behaviour, even though this will undoubtedly have influenced C to view F negatively. While it might have been preferable for M to keep the fact of F's domestic abuse from C, it is understandable how C may have come to learn about it at some point, whether from M herself or maternal family members, in the course of these proceedings and as she has sought explanations for why they could not return to Germany. I note that there is no evidence that M has breached the prohibited steps order made by Recorder Kelly on 28 April 2022 prohibiting M from 'speaking negatively' about F, 'discussing the court proceedings' or 'discussing a move to Germany' with C.
  - (2). I am more troubled by C's understanding that F had also assaulted C, a view she expressed to Mr. Mammatah on 7 January 2022 and which, if it was said, could only have emanated from M or another maternal family member. This allegation is not true, at least was not alleged at the fact-finding hearing. However, I accept M's explanation to Mr. Mammatah that, if it was said, then C must have confused what she had been told or overheard. I find it significant that C has not repeated this allegation to any of the other professionals who have worked with her intensively in the last year. It is therefore unlikely to be a significant factor in C's opposition to F.
  - (3). The primary motivator for C's hostility to F is her perception that F is preventing her from returning to Germany. This belief is genuinely held and is based, at least in part, on objective facts rather than a false narrative implanted by M. It is objectively true that C and M were forced to return to the UK by the German Courts on F's application and that they have been prevented from returning ever since – even for a holiday – because of F's opposition. The fact that F was, and is, within his rights in taking those steps because of M's unlawful actions in removing C in the first place and it is the courts, not F, that are preventing her from returning does not undermine the genuineness of her belief or mean it is 'not justified'. C is of sufficient intelligence, age and maturity to understand there is a causal connection between her father's actions and her current situation.
  - (4). C's belief that F is the author of her misfortune is not the result of 'psychological manipulation' by C. I accept M's evidence that, at least since the local authority

became involved, she has sought to explain the proceedings to C by way of a ‘script’ developed with the social worker, SM, which makes clear that the decisions about her future are made by the judge (‘wise owl’) and not by F and M. In any event, as the Guardian said in evidence, C may have learned of F’s actions from a range of different sources: directly from M, indirectly through overheard conversations (as M maintains) or from other maternal family members; or from F himself, who has told C that he does not want her to live in Germany. In oral evidence F accepted that he told C that she could go to Germany for holidays, but he wanted her to live in the UK. In the event, F has opposed C even visiting Germany for a holiday.

56. Third, I accept the fact that M unlawfully removed C to Germany and thereafter failed to promote contact between C and F was ‘abusive’ of F, as found by Recorder Archer. I also accept that such conduct can be a form of ‘parental alienation’ and therefore abusive of a child. I make no finding about that, at least as regards the period prior to September 2022, because I do not need to do so in order to resolve the applications before me. That is because I accept the local authority’s evidence (corroborated by the contemporaneous records) that since September 2022 there has been a ‘breakthrough’ in M’s attitude who has since actively encouraged C to engage with F during the contact sessions arranged by the local authority. In my judgment, that militates against a conclusion that she has alienated or is currently seeking to alienate C from F. On the contrary, I accept M’s evidence that she recognises the importance to C of her relationship with F and will actively promote contact between them, including if they are permitted to return to Germany, when the immediate source of C’s resistance to F will have been removed.
57. Accordingly, and in conclusion, I do not find the allegation of parental alienation to be proved. It also follows that the threshold criteria for an interim care order are not met.

### **The welfare checklist**

#### ***a) The ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding)***

58. Given my finding that C’s views are not the product of parental alienation I have concluded, with much assistance from the Guardian, that ‘considerable’ weight should be accorded to C’s wishes and feelings, in particular her wish to return to Germany and to be with her maternal family.

#### ***b) Her physical, emotional and educational needs***

59. C and M are currently living on state benefits in temporary rented accommodation that is unfurnished and uncarpeted without support from F. C’s physical needs would undoubtedly be better met if M were able to return to Germany where she can resume her employment as a lawyer and they could enjoy the benefits of practical support, including accommodation, from the maternal family. Such a move would also better meet C’s physical needs than a move to F, who currently provides no maintenance for C’s support, he only works part time, his partner does not work and they have three other young children to provide for. F’s evidence was that he would get his mother to come and help care for the children if C were to live with him, but C has not met her and the practicality of this was not explored before me.

60. C's educational needs are currently met by M's home-schooling. C is thriving, she is trilingual (speaking German, English and Farsi) and is a year ahead of children of her chronological age. However, she turns seven in October and a move to a mainstream school is recommended by the Guardian. M's proposal is that C starts at a private school in Germany if she is allowed to return, to be paid for from M's salary at the law firm in Frankfurt. It was not clear whether M proposes to continue to home-school C if she remains in the UK. I did not receive any evidence concerning local state school provision in Wales.
61. The key issue before me is how best C's emotional needs are to be met. The professional witnesses agree that C has a strong emotional need to continue living with and being cared for by M and that she would suffer considerable distress and harm if she was removed from C's care, and I so find. I do not consider C's emotional needs can be met as well if she were to be removed to live with F and his family. On top of the significant rupture this would cause to her attachment to M, F and his partner already have three very young children with whom C is yet to develop any relationship.
62. The professionals all agree that C has a strong bond with her maternal family and her emotional need to be with them is not currently being met. C and M have been unable to visit Germany even for a holiday, although her maternal grandmother and uncle have both visited her in Wales. Nevertheless, for this need to be fully met C needs to be living in Germany.
63. As for C's relationship with F, she currently has little (if any) emotional need to be in contact with him. Indeed, the local authority's view is that she is being caused harm by being forced to maintain contact with F. Nevertheless, I accept the Guardian's evidence that the fact C does not even acknowledge F as her father is very concerning and that if she maintains these beliefs and feelings this will cause her harm in the long term. The question I must determine is whether that harm can be avoided by any of the proposals before me without causing C greater harm as a result.

***c) The likely effect on her of any change in her circumstances***

64. A move to Germany with M would better meet C's physical, educational and emotional needs than her current situation or a move to live with F. In particular, C would be able to re-establish her relationships with her maternal family and friends. I have also found, counterintuitive as it may seem, that the best prospect of C establishing a relationship with her father is if she returns to Germany, as this would remove the primary cause of C's resentment of F.
65. The likely effect on C if she were forcibly moved to foster care or to F's care would be highly damaging to C.

***d) Her age, sex, background and any characteristics of hers which the court considers relevant***

66. C is 6, turning 7 in autumn 2023. She is of mixed Iranian (M) and Moroccan (F) heritage, with a strong association with Germany given the firm bond she has formed with her maternal family in Frankfurt, where M was born and brought up, and where C lived between November 2017 and October 2019. She speaks German, English and Farsi. She is a Christian, and regularly attends church with her mother. Her paternal family are

Muslim. No issues were raised before me about the fact C is being raised as a Christian, but that is clearly a part of her identity.

***e) Any harm which she has suffered or is at risk of suffering***

67. C has suffered harm because she has not had the opportunity to develop a relationship with her father since the breakdown in M and F's relationship in November 2017. She is at risk of suffering further harm if that relationship does not develop in future. On the other hand, C will suffer harm if she is forced to have contact with F against her will.
68. C has suffered harm as a result of the rupture to her relationships with her maternal family in Germany. She is at risk of suffering further harm if she is unable to return to Germany to resume those relationships.
69. C is at risk of suffering significant harm if she is removed from the care of her mother, M, whether that is for the purpose of placing her with F or with foster carers in order to enable a relationship with F to develop. Such a step would risk entrenching C's resistance to F, further damaging the prospect of any relationship in the future and causing C further harm.
70. C is at risk of suffering harm by reason of further delay in resolving these proceedings. She will not be able to start school in Frankfurt in the Autumn. M may lose faith and disengage from the legal process or do something ill-advised. M's mood may be adversely affected and her ability to parent C compromised. Delay may further alienate C from F.

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

71. M is capable of meeting all of C's needs, but will be better able to do so if she is permitted to return to Germany where M can complete her legal training, so provide for C, and C can re-establish her relationship with her maternal family and start at school. There is a realistic prospect that M will be able to support C in establishing a relationship with F in Germany.
72. F is capable of meeting C's basic physical needs but is clearly less able to meet those needs than M, particularly if she can return to Germany. He has made no payment towards C's maintenance since November 2017 and he has other significant demands on his resources. F could meet some of C's educational needs by arranging for her to be state educated, but cannot support C with her languages as he does not speak German or Farsi and has poor English. F is not able to meet C's emotional needs to be with M or her maternal family.

***g) The range of powers available to the court under the Children Act 1989 in the proceedings in question***

73. I am satisfied I have power to make orders in relation to each of the applications before me.

## **Discussion and decision**

### ***The welfare analysis: C's best interests***

#### **Proposal 1: return to Germany.**

74. I have reached the firm conclusion that it is in C's best interests to remain with M and to permit C's permanent removal to Germany, but with a suitable order for contact. This is a sound proposal on its own terms and is by far the best option of the three.
- (1). The proposal accords with C's wishes to which I accord considerable weight having rejected F's case that her wishes are the product of psychological manipulation by M.
  - (2). The proposal is a genuine one and is not motivated by a selfish desire to exclude F from C's life. F currently has no significant relationship with C and, for reasons I have explained, the best prospect of any relationship being built is by removing the primary cause of C's hostility towards F, namely the fact she is prevented from returning to Germany. I accept M's evidence that she will continue to encourage C to have contact with F while in Germany.
  - (3). The plan is realistic, as C has a home, family relationships, friends and a school to return to, while M will be able to return to her legal training and to provide for C.
  - (4). The proposal provides a realistic prospect that all C's welfare needs will be met: physical, educational and emotional: see ¶¶59-63, above. That includes C's emotional need (at least in the medium to long-term) to develop a relationship with F, as the immediate cause of C's hostility to F will be removed once she is in Germany so that she may then be willing to re-engage in contact with F. M has also put forward a detailed plan for contact with F which, while optimistic, is still realistic, and will be the subject of a court order which will be enforceable in Germany under Brussels IIA. I accept that there is a risk C's views will not change and efforts to establish a relationship with F while in Germany will fail. As the Guardian observed, all the available proposals come with risks which, in my judgment, are more likely to cause C harm than this one. But this proposal provides at least a realistic prospect that C will in due course wish to engage with F. I have accepted M's evidence that she will positively encourage C to engage in contact with F and have rejected F's allegations of parental alienation. If the arrangement breaks down, the contact order will be enforceable through the German courts. But the success or failure of the proposal for contact will very much depend on F's willingness to make it work. Even if C's relationship with her father did not improve, that harm would (as the local authority believe, and I agree) be offset by the other benefits to C from such a move.
  - (5). F's opposition to the move is genuine, in that he honestly believes his relationship with C will have a better prospect of improving if she remains in the UK than if she moves to Germany. However, for the reasons I have given at ¶30, above, F finds it difficult to accept others' views if they differ from his and to put aside his own needs in order to truly understand C's needs. Part of that, no doubt, is the fact that F has spent so little time with C. I therefore place little weight on F's assessment of C's best interests.

Proposal 2: removal to F's care.

75. It is not in C's best interests for her to be removed from M's care to live with F, either immediately or on a 'suspended' basis. As to immediate removal to F's care, this is likely to cause significant harm to C and is a much worse option than either of proposals 1 or 3.
- (1). It is contrary to C's wishes and feelings. Although C's wishes are not determinative, these views are to be given considerable weight when conducting the proportionality analysis.
  - (2). A transfer of residence to F would not meet C's emotional needs to be with her mother and with her maternal family in Germany and would cause her harm.
  - (3). The rupture in C's relationship with M would cause C significant harm.
  - (4). Although F's proposal may be genuine, in that F honestly believes it is so important for C to develop a relationship with him that it justifies the significant harm she will suffer by being removed from M's care, for the reasons I have already given I place little weight on F's assessment of C's best interests.
  - (5). The plan is not realistic. F is not currently able to meet C's physical needs as he provides M with no maintenance and I am not satisfied that such a move would meet C's educational needs, in particular to maintain her language skills.
  - (6). Any such harm would not be offset by the prospect of developing a relationship with F and her half-siblings. Indeed, it is likely that a forced transfer of residence would further undermine C's relationship with F, making a rapprochement less likely and a greater risk of harm in the long term.
76. As to F's proposal of a 'suspended live with' order, this is also not in C's best interests. Such an order could only be justified if I am satisfied further efforts to encourage C to have contact with F are appropriate; that if those efforts fail it will be due to M's abusive conduct (parental alienation); and that C will then be at greater risk of harm by staying with M than by being removed to F's care. I am not satisfied of any of these. First, substantial efforts have been taken to engineer a relationship between F and C in this jurisdiction and I am satisfied they are now exhausted. It is not appropriate for further such efforts to be made given my conclusion that the only realistic prospect of her relationship with F developing is if C is permitted to return to Germany. Second, if such efforts were to be undertaken they would not fail because of M's conduct. I have rejected F's case that M has emotionally abused C by alienating her from F and have found that since September 2022 M has been actively co-operating in the contact process by encouraging C to engage with F. The primary cause of C's antipathy towards F is his continuing opposition to her returning to Germany and that is the reason these efforts would fail. Third, if they did fail, any harm caused to C by the failure of her relationship with F would be far outweighed by the harm of removing her from M's care. A suspended live with order is therefore not appropriate. This case is to be distinguished from those relied upon by F, namely *ME v MP (Appeal - Termination of Contact)* [2019] 2 FLR 162 (Williams J) and *L (A Child), Re* [2019] EWHC 867 (Fam) (the President), in both of which the mother had alienated the child from the father by making unjustified accusations of abuse.

### Proposal 3: Psychological assessment.

77. It is not in C's best interests to delay the move to Germany for the purposes of a psychological assessment of C and M. While this proposal may seem superficially attractive, it is important to recognise that a psychological assessment is not an end in itself: its purpose is to identify some intervention that may enable C and F to establish a relationship. The various interventions that may result, and their shortcomings, are outlined in the Guardian's report of 10 July 2023: see ¶46 above. In my judgment, the speculative benefits of psychological therapy or the removal of C from M's care into foster care do not justify the risk of harm to C if these proceedings are delayed any further. Nor do I consider that any of those interventions, if adopted, would have any realistic prospect of repairing C's relationship with F; quite the contrary, further delay and enforced interventions, particularly removal from M, are likely to entrench C in her hostility to F while causing her significant additional harm. No other interventions were suggested by F, despite my pressing Counsel on this issue. I therefore reject this option and dismiss the Guardian's Part 25 application as it is not 'necessary to assist the court to resolve the proceedings' (FPR 25.4(3)).

### **Article 8**

78. I reach the same conclusion when analysing the position through the prism of Article 8, applying my findings in the welfare analysis.

### Proposal 1: return to Germany.

79. F and C have an Article 8 right to enjoy a father-daughter relationship. To permit M and C to return to Germany does not breach that right, however.

(1). F currently has no significant relationship with C, despite the involvement of the courts and the local authority who believe all available options have been exhausted. Indeed, to force C to continue to have contact with F against her wishes *is* an interference with C's Article 8 rights. A move to Germany is the only intervention which offers a realistic prospect of that relationship being established. To permit M and C to return to Germany is therefore a measure that *promotes* F's and C's Article 8 rights to enjoy a father-daughter relationship in future rather than an interference with those rights.

(2). F is owed a positive duty under Article 8 to use 'exceptional diligence' to repair the lost parental relationship with C. In my judgment, that duty has been discharged by the efforts made to date and by the proposals for contact once C returns to Germany: the court has not taken, and is not taking, the 'line of least resistance' (*Warwickshire CC v Mother* [2022] EWHC 2146 (Fam), [66], citing *Re S* [2020] EWCA Civ 568, [13]). I note, in any event, that those cases involved findings of parental alienation, which I have not found in this case.

80. A move to Germany will also promote M and C's Article 8 right to be live in Germany with her maternal family, as well as C's maternal family's Article 8 rights. Accordingly, if (contrary to my judgment) such a move does involve an interference with F and C's Article 8 rights to a father-daughter relationship, it is a proportionate means of achieving the legitimate aim of promoting M and C's Article 8 rights to live in Germany and to resume their relationship with C's maternal family.

Proposal 2: removal to F's care.

81. To order the removal of C from M's care, whether immediately or on a 'suspended' basis, would be a disproportionate interference with both of their Article 8 rights to live with each other. The breach of both M and C's Article 8 rights follows from my rejection of F's case that M has emotionally abused C by alienating her from F and my finding that this option would not be in C's best interests; indeed, is the worst of the three proposals.

Proposal 3: Psychological assessment.

82. To require M and C to remain in the United Kingdom indefinitely for the purposes of a psychological assessment and any intervention that is recommended is likely to breach both their rights under Article 8.
- (1). The court's order prohibiting M from removing C from the jurisdiction is an interference with C and M's Article 8 rights to choose where they live and to enjoy family life with C's maternal family in Germany. It is also an interference with C's maternal family's Article 8 rights.
- (2). To date that interference has pursued a legitimate aim, namely to determine with whom C should live and to repair C and F's relationship, and is a justified and proportionate means of achieving that end while reasonable steps to determine C's best interests, and to establish a relationship between C and F, are ongoing. I agree with the local authority that those steps have now been exhausted. To continue that interference for the purposes of a psychological assessment is not a proportionate means of meeting that legitimate end because:
- (a). It is contrary to M and C's wishes.
- (b). A psychological assessment will not improve C and F's relationship by itself. Any intervention that may be proposed will be time-consuming, expensive and likely to be counterproductive, causing C further harm.
- (c). The only further step that has been identified that offers a realistic prospect of establishing such a relationship within a reasonable timescale is by allowing C and M to return to Germany which, I have found, will promote the Article 8 rights of all parties.

***Article 6***

83. As regards Article 6, F's Counsel submits that the absence of the social worker, SM, means he has not had a fair hearing because F is unable to challenge SM's negative assessment of F which I have referred to at ¶36, above. However, as I indicated there, I have not relied on this aspect of the evidence which arose from a specific piece of work by SM which does not affect the local authority's overall opinion as to C's best interests. There is therefore no unfairness.

**Conclusion**

84. F's application for a child arrangement order for C to live with him is dismissed. M's application for a specific issue order granting her permission to permanently relocate to Frankfurt, Germany with C is allowed, but I will make an order for F to have contact with

C in Germany. I invite the parties to seek to agree the terms of the order, to include the proposed arrangements for contact and any consequential directions, in accordance with this judgment.