

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

NCN: [2024] EWHC 2160 (Fam)

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 August 2024

**Before:**

**Mr N Goodwin KC sitting as a Deputy High Court Judge**

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**Between:**

**DL**

**Applicant**

**- and -**

**BJ**

**Respondent**

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**Mr Edward Bennett** (instructed by **Aramas International Lawyers**) for the **Applicant**  
**Mr Chowdhury Sultan** (instructed by direct access) for the **Respondent**

Hearing dates: 15 and 16 August 2024

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## **Approved Judgment**

This judgment was handed down on 16 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr N Goodwin KC

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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

**Mr N Goodwin KC sitting as a Deputy High Court Judge:**

A. Introduction and background

1. I am concerned with an application under the inherent jurisdiction for the summary return of N (d.o.b. 09 November 2022), now aged 1 year 9 months, to Dubai in the United Arab Emirates. His father, the applicant, is DL, a US national who moved to the UK in 2009 but now lives and works in Dubai. His mother is BJ, a British national born in the Philippines who moved to the UK in 2009. N is a dual British and American national. He has a maternal half-brother, S (d.o.b. 23 January 2013), now aged 11, who is not the subject of these proceedings and lives with his father, the mother's former husband whom she divorced in July 2021.
2. In December 2019 the parties met and began a relationship. The parents are not themselves married, although the father has parental responsibility through his registration on N's birth certificate. In 2020 the mother began working part-time for his company. In September 2020 she was issued with a UAE residency permit as part of the parties' early plans to move to Dubai. In March 2022 they began living together in London and N was born that November.
3. The parties continued to discuss a move to Dubai where the father had work. In July 2023 they went there on a short holiday. Although the mother had reservations about a full-scale move, she ultimately agreed to go, and the family surrendered their London tenancy, which they vacated on 27 September 2023. They then lived in hotels and Air B&Bs pending their departure. In October 2023 there was a series of arguments between the parents, including some in which the mother threatened to abduct N to the Philippines. The police were involved. There were further arguments in December 2023, including one at the airport which resulted in the mother and N not boarding their originally intended flight to Dubai on 09 December 2023.
4. Notwithstanding these difficulties, on 09 December 2023 the father flew to Dubai as part of their intended relocation, with the mother and N joining him on 20 December 2023. She took some 7-8 suitcases of luggage with her. They moved into an apartment and visited a nursery potentially suitable for N. The parties spent Christmas together, then the mother took N to visit her family in Manila for two weeks in January 2024. The family then returned to London for a week on 27 January 2024 so that the father could complete some business and the mother attend S' birthday party. On 05 February 2024 they returned to Dubai. On 15 February 2024 the mother arranged for all her UK mail to be forwarded to Dubai. On 20 February 2024 the mother liaised with an agency to confirm her UAE visa requirements. Her and N's initial visitors' visas were successfully extended until 05 April 2024.
5. On 03 March 2024 the mother told the father that she wished to return to the UK or to the Philippines. The father made clear in a WhatsApp message on 16 March 2024 that

he did not consent to her leaving with N “until we sort out custody”. The mother responded with “we’ll see about that”. She describes in her statement telling the father on other occasions in March 2024 that she wanted to leave. On 01 April 2024 the father obtained UAE medical insurance quotes for all three family members.

6. It is common ground that the mother then brought N from Dubai to the UK on 04 April 2024 without the father’s permission. Her own and N’s visitors’ visas were due to expire the following day. The father indicates that this was of no concern and he was in the process of obtaining more permanent residence visas for both.
7. On 26 April 2024 the mother sent him, from the UK, a screenshot of tickets she had purchased for herself and N to travel to Singapore, complaining that she was unable to obtain accommodation in England with the money provided by the father. He has, despite the acrimony, continued to pay her a salary of £42,000-£46,000 per year during the proceedings although this is for nominal employment only. In her message to the father, the mother announced her intention to emigrate with N to the Philippines – “once I reach Philippines tomorrow that will be the end of us remember that”. When the father reminded her that he did not consent, she responded “And I don’t need your permission... You are just my boyfriend...you’re not my husband sorry”.
8. The father lodged his application for summary return that same day. The case came before Moor J. on 03 May 2024 when both parties were represented. A recital to the order records:
  - (a) The mother accepted “the principle of contact between the applicant and the child in the future, but that she does not feel able to support or agree contact at this time, save for sending some photographs and/or short video of the child through the parties solicitors”;
  - (b) She had purchased flight tickets for herself and [N] to travel to the Philippines before the father had brought proceedings;
  - (c) The mother was “unclear about her ultimate intentions of where she wishes to reside with the child. She would like to visit the Philippines with the child for 2 months to spend time with her family. If the respondent mother decides in the future that her ultimate intention is not to live in the UK with the child, but to live in the Philippines with the child, she will do so by lawful means and will make the appropriate application in the Courts of England and Wales or the UAE, for leave to remove.”
9. Moor J. listed the case for a two-day final hearing, ordered the surrender of travel documents, forbade the parents from removing N from this jurisdiction, ordered a CAFCASS report in relation to the question of summary return and gave other standard directions for trial. A separate order was made for police disclosure. The mother has therefore since remained with N in England, living at her former husband’s home, although she has recently secured a 12 month tenancy of her own in London.

10. On 18 July 2024 Poole J. conducted a pre-trial review and gave permission for the parties jointly to instruct an expert in UAE family law for the purposes of considering protective measures in the event of a return order, whether there was a process for determining relocation there and whether English orders were enforceable.
11. I have read the extensive court bundle, including a single joint expert report from Andrew Allen KC regarding UAE law. I have heard oral evidence from Allison Baker (CAFCASS) and oral submissions from counsel. At the PTR Poole J. directed that there would be no oral evidence from either parent “save with the leave of the judge conducting the final hearing”. At the outset of the hearing, both counsel agreed I should hear only from the CAFCASS reporter. Curiously the mother’s counsel applied, in the middle of his closing submissions, for the mother to give oral evidence in response to the father’s last statement. I refused that application.
12. It is common ground that the parties’ relationship was highly acrimonious and that both exposed N to mutual verbal and physical altercations. The police were called on various occasions, each alleging domestic abuse against the other. In 2021 the mother attended her GP surgery with an abrasion or cut to her head which she blamed on S’ father, although Ms Baker notes that the mother subsequently said N’s father was responsible. A month later the case was closed as the mother said the information in the referral was inaccurate, explaining that she had pushed her partner and regretted it.
13. There followed on 15 June 2022 a midwifery referral to Children’s Services and S was allocated a social worker. The mother did not disclose any previous domestic abuse or concerns. The case was closed. In August 2022 the mother reported malicious communications between her and the father, following an argument the previous night. The police officers examined the messages and saw that they were mutually abusive, but with no evidence of malice or harassment or threats of harm.
14. On 02 December 2023 the police were involved following a domestic incident in which the mother allegedly physically assaulted the father. He declined to support police action and the mother refused to answer the standard DASH (domestic abuse) questionnaire. A safety plan and assessment followed.
15. On 10 July 2023 the father was arrested for common assault of the mother, witnessed by the children and was subject to bail conditions not to return to the family address. Professionals’ concerns were reduced because of the parties’ then separation, but they reconciled. A further police referral was made on 01 November 2023 following an argument – Ms Baker notes that this states that the father was due to relocate to Dubai for work on 15 November 2023 and opposed the mother’s plan to take N to the Philippines. No physical violence was involved.
16. In their statements, both parties allege a far greater number of domestic abuse incidents occurred than are apparent from the police records. Amongst the mother’s allegations

is an assertion that on 17 March 2024 the father assaulted her, causing her to drop N. The father exhibits numerous photographs of injuries to his face and body caused by the mother's alleged assaults. I have, at the mother's counsel's request, listened to 4 audio or video extracts covertly recorded by her, selected from a USB stick containing a far greater number of recordings. The father had not considered it necessary for the court to listen to any of this material but in response suggested two of his own. I concur with Ms Baker that these show highly disturbing domestic incidents between the parties with extreme verbal aggression and some degree of physical altercation. The relationship was highly dysfunctional and both parties have exposed their son to an appalling level of conflict. Care must be taken when viewing covert recordings. One can tell from some of these that the parent undertaking the recording is conducting themselves in full knowledge that their contribution is being recorded, and tailoring their speech accordingly, whereas the other parent is unaware.

17. In her report, Ms Baker, who had devoted very considerable time and resources to reviewing the entire contents of the USB stick provided by the parents, stated that "the evidence provided of their [the parents'] bi-directional abuse shows that N suffered cumulative harmful experiences, that his parents had a toxic, volatile and highly dysfunctional relationship, which must have compromised their parenting capacity, damaged them, and must have damaged [BJ's] eldest son as well as N".

B. UAE law: expert report

18. There is no dispute regarding the accuracy of the advice set out in the expert report written by Andrew Allen KC.
19. The report clarifies that there is a child custody jurisdiction and a relocation jurisdiction in the UAE, as well as a child maintenance jurisdiction. Article 10 of the Civil Personal Status Code for Non-Muslims, introduced by Federal Law No. 41 of 2022 states that custody is a joint and equal right of both parents, subject to any request by either parent to revoke the other parent's right or, under Article 14, to vary the division of time the child spends with each. Under Article 10(3) "in the case of a dispute between both parents over an issue related to joint custody, either parent shall be entitled to apply to the court in accordance with the relevant form to challenge the position of the other parent and ask the court to decide on the subject matter of dispute".
20. Under Article 10(4), the court will apply the 'best interests' principle when making welfare decisions, whether in relation to custody or relocation.
21. Separate legislation, Domestic Violence Law no. 10 of 2019, prescribes protection for the victims of domestic abuse, including the availability of restraining orders, and there are ancillary agencies and charities that provide support.

22. Whilst there is no automatic recognition of orders made in the UK, these will be given significant weight by the UAE courts and can be submitted for consideration as part of any child custody case. It would be sensible to translate any UK order into Arabic.

C. CAFCASS

23. In her written report, Ms Baker recommended that N remain in England “primarily on the basis of [N] and [BJ’s] alleged uncertain immigration position were they to return, and off the back of [BJ’s] hostility to a return”. The mother had always been his primary carer and had lived in England for many years. She had laid down some roots here, S was born and lived here and her ex-husband had been a key source of support. In the absence of information about immigration, the uncertainty as to whether the mother could live in the UAE meant that “England may be the only option for N to have a relationship with both his parents”, although this would militate against the father playing any “central role” in his son’s life, assuming he remained living and working in Dubai.
24. She identified that N had experienced significant harm as a result of the parents’ domestic abuse. She emphasised in her oral evidence that the recordings were “chilling” and “disturbing”, principally because it was plain that N was exposed to them. His distress was audible on the audio and video recordings she had reviewed. He was in danger of being caught in the crossfire. There was shouting and swearing and it “sounded as though physical incidents were happening”. There was “bilateral” responsibility.
25. Whilst the parents’ relationship was toxic and dysfunctional, the pattern of “high-risk situational couple violence” would however reduce in the event that the parents maintained their separation and no longer had direct contact with each other. If the parents lived in the same jurisdiction, it would be possible for N to be supported to spend time with his father, provided there was careful safety planning around handover arrangements. She agreed that the engagement of a nanny to facilitate contact handover would reduce the risks, and that a parenting app would ensure communication was kept at an appropriate and child-focused level. Ms Baker accepted that the father’s proposals would give N security and a safe environment in which to see both parents in the UAE, provided these new measures and boundaries were adhered to.
26. In her oral evidence Ms Baker confirmed she had read the information about immigration and protective measures set out in the father’s updating statement. These led her to moderate her recommendation, and she now considered that the merits of either ordering or refusing a return order were equally balanced. She accepted that there were no practical or legal bars to the mother being able to remain in the UAE, certainly until the courts there made long-term welfare decisions. N’s very early years were important to his overall development. His father had an important part to play, yet N was missing out on his parenting input. Contact had only been very limited since his return to England. If N remained living in England, the likelihood of restoring his

relationship with his father would reduce, yet it was in his interests for them to have a direct relationship. N's sibling bond with S was important. He otherwise had no other family members in either England or Dubai.

D. Legal principles

27. There is no dispute about the applicable law. In J v. J (Return to Non-Hague Convention Country) [2021] EWHC 2412 Cobb J. helpfully summarised the principles set out by the House of Lords in Re J (A Child) (Child Returned Abroad: Convention Rights) [2005] UKHL 40:

i) "... any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];

ii) "There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it" [22];

iii) "...in all non-Convention cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];

iv) "... 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 the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases." [26];

v) "Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child" [28];

vi) "... focus has to be on the individual child in the particular circumstances of the case" [29];

vii) "... 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" [32];

viii) "One important variable ... 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" [33];

ix) "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" [34];

x) "In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned" [39];

xi) "The effect of the decision upon the child's primary carer must also be relevant, although again not decisive." [40]

28. I have also been referred to Re NY (A Child) [2019] UKSC 49, in which Lord Wilson posed eight linked questions to be posed in non-Convention summary return cases, also helpfully summarised by Cobb J. in J v. J:

“i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);

ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);

iii) In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in section 1(3) of the 1989 Act; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);

iv) In a case where domestic abuse is alleged, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the



disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);

v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);

vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;

vii) The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";

viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63])”.

29. I shall return to these legal considerations in due course, but it will be clear, above all else, that the court’s decision will be anchored in the paramountcy of the child’s welfare and the application of the s.1(3) CA 1989 welfare checklist.

E. Analysis and conclusions

30. Before commencing my evaluation of the application’s merits, I address the questions set out by Lord Wilson in Re NY. The mother has not sought to argue that the answers to any of them preclude the court from determining the summary return application at this week’s hearing. No adjournment has been sought. In summary:

(a) I have lengthy and up to date statements from both parties and a recent CAF/CASS report, supplemented by oral evidence, in which Ms Baker provided updated recommendations in light of the father’s suggested protective measures and the information provided in relation to her immigration status in the UAE;

(b) No party invites the court to make any detailed findings about their respective conduct within their relationship. The father accepts that N was exposed to a reprehensible level of domestic conflict, for which he takes his share of responsibility, and the mother has not sought to advocate that she is blameless. As I state later in this judgment, I agree with Ms Baker that the parties’ separation will substantially reduce the risk to N of further emotional harm from exposure to the relationship. I am also able to evaluate whether the protective measures proposed by the father, and the available legal remedies in the UAE, are sufficient to guard against that risk. These factors combine to mean that, having considered PD12J FPR 2010, I do not think that a fact-finding hearing is necessary in order to determine this case fairly. Neither party urges one upon me. The court will however

make findings about habitual residence, amongst other matters, and has the material to do so;

- (c) There is no dispute but that the court must consider the welfare checklist under s.1(3) CA 1989. It is assisted in that respect by some of the observations made by CAFCASS and by the parties' submissions. The CAFCASS report refers to the records maintained by Children's Services and the police. For the purposes of this summary return application, the welfare enquiry need not be more extensive. For example, no party has applied under Part 25 FPR 2010 for an expert assessment of the family members or the child;
- (d) I have evidence before me about the basic living arrangements proposed for N in Dubai, where he was previously living and have no reason to doubt that the accommodation his mother proposes for him in England would be inadequate;
- (e) The court has determined that the only oral evidence would be from Ms Baker;
- (f) The court has evidence in the form of an expert report as to judicial processes and legislation in the UAE in a family law context.

31. In those circumstances I determine that the application can be heard fairly at this listed final hearing.

32. I turn therefore to a consideration of habitual residence which, as set out by Lady Hale in A v. A (Children: Habitual Residence) (Reunite International Child Abduction Centre and Others Intervening) [2014] AC 1, "corresponds to the place which reflects some degree of integration by the child in a social and family environment". I have re-read the summary of law set out by Moylan LJ in Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention) [2020] EWCA Civ 1105 at paragraphs 42-65 and apply those principles to the present case without reciting them.

33. Given his age, N's habitual residence was entirely dependent on his parents'. They had been living in London since the start of their relationship in December 2019. N spent the first year of his life there and was plainly habitually resident in England over that period. The strength of his connection to England was however somewhat diluted by (a) the parties' joint discussions about a permanent move to Dubai and (b) the mother's frequent references to taking him to the Philippines. Ultimately the question is whether his habitual residence in England changed at the point of relocation to Dubai. On the evidence before me, the parties both intended their move there in December 2023 to be permanent. In her statement the mother accepts that "The plan and the agreement was that me and the applicant relocate in UAE and start a new life leaving the past behind and start over (i.e forget about what all the domestic abuse happened in the UK, get a better quality life, cheaper rent, less tax, to be able to afford a nanny, we discussed on many occasions a deal which was if any fighting won't happen in a span of 3-6 months we will get married as we both agreed".

34. There are a number of other sources of evidence supporting a conclusion that the parties' intention was to move permanently to Dubai, for example a police report from

28 October 2023 recording the mother's assertion that "they were packing up to leave the country and move to Dubai...she was not scared of her husband and as far as she was concerned they were continuing to move to Dubai together", and another police report from 09 December 2023 whereby the mother notes the father's intention to "settle there permanently". I reject the mother's oral submission that this was only intended to be for a trial period. Their intention, on the facts of this case, is a powerful, albeit not determinative factor, in the necessary evaluation of all the relevant circumstances pertaining to habitual residence.

35. Given the degree of pre-planning that went into the parties' relocation and their joint settled intention to remain in Dubai at the point of their arrival, I am clear that the father acquired habitual residence there on 09 December 2023 and the mother 11 days later. They had brought substantial amounts of luggage. They had surrendered their English tenancy in September 2023 and had since been living in hotel and Air B&B accommodation. The mother arranged for all her mail to be redirected and she liaised with an agency in the UAE about her visa arrangements. Although she and N remained on visitors' visas up to the point of his abduction, I do not find that this undermined their essential integration, because I accept that the father was in the process of obtaining more permanent residence visas through his employment. For his part the father was undertaking full-time employment in Dubai. They both investigated a nursery place for N. Their short return trip to London on 27 January 2024 did nothing to disrupt their intentions or the practical plans they had made for stable, long-term residence in Dubai.
36. Whilst the mother may have had misgivings about moving abroad, and plainly harboured a wish to move to the Philippines if the parties' relationship foundered, she had nonetheless made a clear decision that her family life, and, critically, N's place in their family life, would be in Dubai. Dependent as he was on his parents, N's practical ties with England had also been cut at the point of departure, save that S remained there, and thereafter N acquired, I find, a certain stability in his living arrangements in Dubai and in the care he received from both his parents, the two most central people in his life.
37. The only factor undermining the stability of N's residence in Dubai was the level of discord between the parents. This however had been a permanent feature of the parents' relationship and was not peculiar to Dubai, albeit the relationship finally ended there. If their abusive relationship destabilised their son, it did so in England as much as it did in Dubai. In any event, as I have found above, at their point of arrival in Dubai in December 2023 they both acquired a new habitual residence there. Their arguments and fights, in Dubai, did not serve to re-establish habitual residence in England.
38. I find that N had established some degree of integration in a social and family environment in Dubai by the time his mother took him back to England and by the time

of the father's application for summary return. Habitual residence in the UAE is amply established on the facts.

39. Next, there is no suggestion but that the mother abducted N to the UK without the father's permission. She concedes this, as she inevitably must. More accurately, he had expressly told her in advance that he did not consent, but, in recognition of their disintegrating relationship, said that they needed to resolve custody issues first. I am not, of course, deciding long-term custody. In seeking an order for summary return, the father wishes N to return to the country from which he was abducted, so that the UAE courts can make more substantive decisions. The mother wishes N to remain in the UK so that, similarly, the courts here can take those decisions.
40. I must consider N's wishes and feelings under the CA 1989 welfare checklist. Plainly he is too young to express these but, if able to, he would want to feel safe in both parents' care, to see them both, to experience security and to have his wider needs met.
41. England has been N's home country for a substantial portion of his life. He holds British citizenship and his only passport is British. Aside, however, from the parties' decision to relocate to Dubai, I consider that the mother is unlikely to remain in the UK in the long term. Her original plan upon arrival here in April 2024 was to relocate immediately and without the father's permission, to the Philippines. In her statement she maintains that she has no choice but to relocate there. The recital to Moor J.'s May 2023 order records that she was "unclear about her ultimate intentions of where she wishes to reside". Although, in resisting the father's application for summary return, she effectively proposes that the English court is the forum in which N's child arrangements should be litigated, she does not assert any intention to stay here with him in the long-term. This is consistent with her assertion in her statement that, whilst in Dubai, she often threatened the father that she would return to Manila.
42. I also note from the WhatsApp messages sent between the parties after the mother took N to the UK, that the mother indicated she may have to return him to the Philippines and leave him there whilst she travelled abroad to obtain work to support him. This, alongside the likely temporary nature of her residence in England, militates against her assertion that a refusal of the summary return application offers N the greatest chance of stability. This is not a case in which the mother argues that England is his 'home country' where his long-term future lies. In fact, unlike the father's settled intention to remain long-term in Dubai, the mother's plans are inchoate.
43. Pending substantive welfare decisions made by the courts of either jurisdiction, the only country in which N would have the opportunity to spend proper time with both parents is the UAE. This is an important part of the analysis of his emotional needs under the welfare checklist. The father works full-time in Dubai and cannot move to the UK in the interim. The mother is not, in the same way, tied to the UK. There are therefore

obvious welfare advantages to N if I were to order his return to the UAE where he could, subject to any orders made by the courts there, spend time with both parents.

44. It is regretful that the mother has not facilitated sufficient contact between N and his father since his return here. She has proposed contact at a contact centre, but none has taken place. The father has had only 5 video contacts, each lasting 5-10 minutes. For a child of N's age this is woefully inadequate. He is developing very fast and reaching new milestones with each passing month. At present he is doing this with virtually no input or influence from his father. I have no confidence that the mother will co-operate with a more generous contact regime if N remains in the UK and the father in Dubai. Her stance in relation to contact reflects the strong views she expressed about the father's parenting rights at the point of the removal – see for example her message on 26 April 2024 stating “you have no rights whatsoever to withheld me or [N]” and “[N] will be never ever go in your hand that we will make sure...we will make sure you are just a stranger...you don't deserve the boys in any shape or form”. She was unable to offer any contact at all at the hearing before Moor J. save for photographs and videos.
45. I am satisfied, in accordance with the expert evidence, that the UAE courts exercise a relocation jurisdiction in respect of children based on ‘best interests’ principles. I am not, of course, making any long term welfare decisions and another court will in due course decide where N will live, unless the parents can agree. I am satisfied that both parties will be able to put their cases before a tribunal there, as they would here in the UK. The UAE Civil Personal Status Code 2022 establishes that joint custody is the starting point in custody cases, with an emphasis on equal rights and responsibilities. This dispels any notion that the mother might encounter a patriarchal litigation disadvantage in the UAE courts. I also note that the UAE is a signatory to the UN Convention on the Rights of the Child.
46. I admitted into evidence an updating statement from the father which sets out information about the immigration and visa status of the parents if summary return were ordered. In my judgement, this information substantially addresses the concerns about immigration understandably voiced by Ms Baker. In summary:
- (a) Parties entering the UAE from the UK are automatically granted a free visit visa which is initially active for 40 days, which can be extended several times. The expert report refers to 30 days but there is no significance in the difference;
  - (b) The mother can obtain a residence visa either through her current and continuing employment in the father's company or as an employee of a different company. If she chooses to continue her nominal employment for the father's company he will undertake to sponsor her UAE residence visa, alternatively to transfer her visa rights acquired through employment with his company to any new employer. He agrees to cover all associated costs of sponsoring her visa application as her employer. These would be covered by a new employer if she chooses to work elsewhere;

(c) N can obtain a dependent sponsored UAE visa to secure his legal residency in the UAE, provided the mother produces his birth certificate.

47. The father also provided evidence in relation to the other protective measures that would be in place in Dubai in order to ensure a “soft landing” for the mother and N if summary return were ordered. He will undertake to continue to pay her salary (£42,000-£46,000 g.p.a.) for up to 12 months or until she secures work, if sooner. In addition to paying the mother her salary, the father undertakes to pay a monthly allowance to cover N’s living expenses (including groceries and childcare costs), as well as medical insurance for both the mother and N. Having seen the particulars and costings for 1-bed properties included in the father’s statement, I am satisfied that this sum and the period of time over which the father guarantees its payment are sufficient to meet the mother’s needs (a) pending the identification of her own employment and (b) a determination by the Dubai court about N’s long-term living arrangements. She would have a tenancy in her sole name, sufficient funds to meet their needs and to employ a nanny.
48. I must consider the change of circumstance for N that a return order would entail. Such order would separate him from his half-brother S. S has however already spent time in Dubai in holiday and there would be no reason why the siblings could not see each other there regularly, in addition to frequent indirect video contact. This family had, of course, agreed to the siblings being permanently separated across two continents when the parents relocated together last December. Furthermore, the mother’s intention to relocate to the Philippines with N would have dislocated the siblings over an even greater geographical distance.
49. As I have set out above, at present N is having no direct contact with his father and their relationship is suffering as a result. A critical advantage in a change of circumstances involving a return to the UAE would be the restoration of his relationship with his father. His mother would accompany him and continue to be his primary carer, as before, subject to any decisions by the UAE courts. This would soften the change of circumstances he would experience in moving from one country to another. She has not sought to argue that her mental health would suffer, or that her ability to meet his needs would be compromised, if she had to return to Dubai to care for her son. N would also be returning to an environment in which he had already spent a number of months and in which he undertook a variety of activities commensurate with his age.
50. The toxicity, conflict and abuse apparent in the parents’ relationship exposed N to both physical and emotional harm. This is an important part of his emotional and physical needs under the welfare checklist in the present case. These needs are enhanced by the vulnerability of being such a young child. I accept Ms Baker’s description of the parents’ behaviour as “chilling”. There is however no prospect whatsoever of the parties reconciling and their living arrangements that previously generated such high levels of discord will not be replicated, whether N remains in England or returns to the UAE.

The father submits that all contact handovers can be managed by employing a nanny, so that the parties need have no face-to-face contact with each other at all. All parental communications could be managed through a parenting app. I agree with Ms Baker that these measures would significantly reduce the risks to N.

51. I also accept, in any event, that the UAE has a well-developed domestic violence jurisdiction and that either parent would have access to the courts there to seek further protective measures, as they would in England – see for example Federal Law No. 3 of 1987 which establishes the legal basis for a restraining order. There are several organisations, such as the Dubai Foundation for Women and Children, that provide protection, shelter, counselling, advice and legal support to the victims of domestic abuse. I do not therefore consider that N’s return to the UAE would expose him to the levels of parental dispute and aggression apparent pre-separation.
52. I must also consider under the welfare checklist the parents’ ability to meet his needs. Aside from their serious failures in exposing him to their mutual domestic abuse, I see no reason why both parents could not meet in principle his physical, emotional and educational needs during the period between now and a substantive welfare decision. He would be housed, fed, nurtured and emotionally stimulated in either country. Nothing I say in this judgment is intended to supersede the welfare evaluation of any future court as to the parties’ abilities to meet N’s long-term needs.
53. The final matter under the welfare checklist is the range of powers open to the court. Neither party suggests that the case is suitable for ‘no order’.
54. Having evaluated each of the factors above, with a particular focus on the welfare checklist, I conclude that N’s welfare, my paramount concern, requires a summary return to UAE. He should be returned within 14 days or at such other time as the parties may agree in writing. The protective measures proposed by the father should be set out clearly in the body of an order, which I now invite counsel to agree and draft. The UAE courts will, in the absence of agreement, make substantive decisions about N’s long-term welfare, the arrangements for his care and the country in which he spends his childhood. I grant permission for the case papers to be disclosed to any UAE child safeguarding agency and to the UAE courts and direct that a copy of this judgment and today’s order be translated into Arabic at the parties’ joint expense.

Mr N Goodwin KC sitting as a Deputy High Court Judge  
16 August 2024