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Case No: FD23P00528

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 February 2024

Before :

Mr Jonathan Glasson KC sitting as a Deputy Judge of the High Court

Between:

NG

Applicant

V

CJ

Respondent

Ms Martha Gray (instructed by Dawson Cornwell LLP) for the Applicant
The Respondent appeared in person

Hearing dates: 24, 25 and 26 January and 8 February 2024

This judgment was given at 10.30am on 8 February 2024.

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 JONATHAN GLASSON KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT:

1. On 16 October 2023 NG, the mother of T, applied to the High Court for an order returning her son T to Pakistan. T's father, CJ, opposed that application. This is my judgment on that application following a three-day hearing on 24, 25 and 26 January 2024. At the hearing NG was represented by Ms Gray of counsel and CJ appeared as a litigant in person. NG attended by CVP remote link and was assisted by an interpreter.
2. In advance of that hearing, I read the hearing bundle which had been lodged together with the skeleton arguments from both parents. I have considered all of the evidence submitted and, in this judgment, I have set out the evidence that bears most directly on my findings.
3. In this judgment I refer to the child as T, to NG as the Mother or the Applicant, and to CJ as the Father or the Respondent.
4. The judgment is structured as follows:
 - (a) The background to the application before me
 - (b) The evidence from Ms Demery, the Cafcass officer
 - (c) The evidence from T' parents
 - (d) The father's application for further evidence to be admitted
 - (e) The parents' closing submissions.
 - (f) The legal framework
 - (g) My findings of fact relevant to this application
 - (h) Discussion and decision

(A) THE BACKGROUND

Factual overview

5. T was born in 2020 and is now aged 3. He came to England with his father in July 2023 and has lived with his father since that date.
6. T is the only child of his parents' arranged marriage. He was born in Pakistan to parents who are both of Pakistani heritage. T's mother lives in Pakistan with her mother in Dera Ismail Khan, sometimes referred to as DI Khan. The exact address has only been disclosed confidentially because of the Mother's serious allegations against the Father of physical and sexual abuse.
7. The parents were married in 2020 by way of Islamic marriage in Pakistan. Following the marriage the Father travelled between Pakistan and the UK. From June 2021 to March 2022 he lived entirely in the UK. At some point in 2022-2023 the father

pronounced Talaq before witnesses in Pakistan and on 7 September 2023 he sent the divorce deed to the Mother by WhatsApp. The precise date of the divorce is in dispute.

8. T has been living with his father in Essex since July 2023. His older paternal half-brothers, P and U, are young adults. They divide their time between their mother's home and their father's home. The majority of T's extended maternal and paternal family live in Pakistan. T's brothers are involved in T's care as is their mother, CJ's former wife, FM.
9. The circumstances in which T came to the UK are disputed. The Father says that T came to the UK with the Mother's full knowledge and agreement. He relies on a consent form which appears to have been signed by the Mother in support of the visa application. The Mother says that although she signed a consent form, she did not sign the consent form that is in evidence before the court. Later in this judgment I will set out the evidence that I heard on that issue.

Procedural background

10. On 16 October 2023 Moor J made an order at a hearing without notice to the father that T should be a ward of court and listed the matter for a return hearing on 23 October.
11. On 23 October Ms Nagheena Khalique KC, sitting as a Deputy Judge of the High Court, made an order for a final hearing to take place on 28 and 29 November. That was made on the basis that the father was opposing the application for two reasons: the child's welfare and the mother's consent. However, after the hearing the father's position seems to have changed. Ms Khalique's order records at para 9:

“The father, however, after the hearing stated that he would voluntarily return with the child once the passports are released by His Majesty's Passport Office but not to the mother's care or to the region he believed the mother was living in. The mother clarified that she is now, in fact, living in rented accommodation in Dera Ismail Khan at a confidential address. The mother sought to retain a final hearing in this matter in light of the unknown timescales for receipt of the child's passport, father's fluctuating position, and his confirmation to the court that he intends to obtain legal advice. This hearing may, however, be vacated by consent in writing.”

12. On 28 November 2023 the matter was listed before me. The father arrived late and handed in a second witness statement from himself together with exhibits, He also submitted a number of supporting statements. Time was given to the Mother to review that material and in the afternoon the Mother made an application for the case to be adjourned. Counsel for the Mother said that there were gaps in the evidence in relation to welfare and that given the father's position it would not be possible to determine this case on the basis of submissions as had been contemplated in the order on the return date. The mother would need time to respond to the Father's evidence.
13. I acceded to that application and made clear that I wanted to give directions to ensure that the resumed final hearing would be effective. I raised two particular issues: one was whether the court currently had a sufficient evidential basis to determine the welfare issues and the second was to maintain judicial continuity if possible. I also

encouraged the father to contact the duty lawyer on Child Abduction Lawyers Association for legal advice, which he duly did.

14. The following day I heard further submissions on appropriate directions. Counsel for the Mother submitted that it would be unnecessary for the court to conduct a finding inquiry into the allegations of physical and sexual abuse that the Mother had made against the Father. On behalf of the Mother, it was also submitted that if the Father had been unable to obtain legal advice by the time of the next hearing, then he should be required to submit his proposed questions to the court in advance. I duly made that order.
15. I also made an order for a welfare report from CAFCASS and gave directions for the Mother to file evidence in response. I directed that oral evidence would be given at the final hearing by the Mother and the Father and that if any party wished other witnesses to be called then they should apply beforehand. In the event no such applications were made.
16. Immediately after that hearing the Father made a request for the order to provide permission to file further evidence after the Mother's evidence. In the order for that hearing, I refused that request referring to my decision at the hearing that the Father did not have permission to serve further evidence.

(B) THE EVIDENCE FROM THE CAFCASS OFFICER

17. Ms Demery has been a Cafcass officer since 2001 and before that she also worked in child welfare. For the purposes of her report, she carried out a number of inquiries. She spoke to the allocated social worker for T after the Mother had made a referral to them on 27 September 2023. The allocated social worker had completed a child and family assessment, and she was going to advise no further action. However, the allocated social worker said that whilst she had no concerns about the care the Father was providing, she was worried about the potential of exposure to domestic abuse. That concern arose from the history of the Father in relation to his first wife and his two children.
18. Ms Demery explains that history in her report as follows:

“I have had access to the electronic case files from 2014 in respect of court proceedings between CJ and his former wife, FM. The proceedings did not lead to Section 7 reports. There was considerable involvement from [the local authority] and the family were known to MARAC. However, there were proceedings in 2011 and a Section 7 report was prepared which concluded the risk of harm to FM and the children was high following a fact-finding hearing. The report, I understand recommended no direct contact between CJ and his sons. This resulted in a Section 91(14) being ordered until U was 16 years old.”

19. Ms Demery sets out her opinion carefully in her report:

“39. T is three years old, and he is too young to voice an opinion or understand the implications of the difficult decisions that need to be made about his future. He does not have the capacity to understand the impact on his emotional development of growing up without his other parent or how this absence may

affect him in the long-term. Until T is older, he is obliged to rely upon the adults in his life to make decisions that are in his best interests.

40. From my discussions with T's parents, it is apparent that he is a much-loved child. The reports from his nursery and the social worker attest to the close relationship that T enjoys with his father and no concerns have been expressed about his father's care of him. I have observed him in his home with his father, who is very nurturing of T, as is his older brother. It is difficult to assess the quality of T's relationship with his mother given the limitations of the medium by which I observed them.

41. While CJ considers that T would have a better life in the United Kingdom, he has not thought through the emotional impact on T of spending less time with his mother and his extended maternal and paternal families who remain in Pakistan.

42. T has already in his young life experienced a number of significant changes in his circumstances – his parents' separation, his father being absent for months at a time, changes of addresses in Pakistan and of more recently a change of country. Most significant of all has been his change of primary carer. If the court orders T's return to Pakistan, he will undoubtedly find it unsettling and may experience some difficulty in re-adjusting to an entirely different environment.

43. The parents in their respective statements have made serious allegations against each other and their families. NG has alleged domestic abuse, which was witnessed by their child. Research shows that even babies can be adversely affected by being raised in an environment where there is discord and violence. CJ has stated that NG has neglected T. Neglect can adversely affect a child's cognitive and emotional development.

44. While CJ was not convicted of domestic abuse of his former wife, it is apparent from the proceedings concerning U and P that there were profound difficulties in the relationship between FM and CJ which led to the involvement of children's services and eventually led to making of the Section 91(14). There is a lack of clarity concerning the current status of the relationship between CJ and FM, but given their complex history, this could present a risk of harm to T.

45. The options before the court of T remaining in England or returning to Pakistan are finely balanced. The ideal for T would be for him to live in the same country as all the significant adults in his life.

46. There are no two people more significant in a child's life than his/her parents and it is important for a child's longer term psychological development to have, providing it is safe, close relationships with both parents.

47. In the United Kingdom he has his father and older brothers with whom he has forged a close relationship. It seems that CJ's former wife is also an important person in his life. However, in Pakistan he has his mother, and all his maternal family as well as the majority of his paternal family. The indirect contact between

T and his mother is problematic and is not meeting his needs to retain a close and positive relationship with her.

48. NG, as I understand it, does not have any family, aside from T in the United Kingdom, a country that she has never visited. It is by no means certain that she could easily obtain a visa to travel to the United Kingdom should T remain with his father. Therefore, it would be much more difficult for her to retain a relationship with T, should he remain in his father's care, than it would be for his father should T return to NG's care in Pakistan. His father is able to travel freely between the two countries and has relatives with whom he is able to stay in Pakistan."

20. Ms Demery concluded her report with a recommendation "*that T is returned to Pakistan, for the court there to make the welfare decisions about this little boy's future, a country where he has lived for the majority of his life.*"
21. Ms Demery gave evidence before me on the first day of the hearing. She was an impressive witness who gave her evidence in a careful and considered manner. Her answers were conspicuously fair to both parents. She made plain that T has received good parenting from each of his parents and was a much-loved child.
22. In response to questions on behalf of the Mother, Ms Demery said that it was a concern to her that the Father did not acknowledge the difficulties for the Mother in maintaining her relationship with T if he were to stay in England. She said that the Father had told her that it would be easy for the Mother to obtain a visa to come to the UK. She disagreed with that view and contrasted the Mother's position with the Father's. He had dual nationality and was able to travel freely back and forth. Moreover, he had extensive family of his own in his Pakistan and travelled there frequently.
23. Ms Demery was asked about the fact-finding inquiry that had led to an order preventing the Father seeing his younger son U until he was aged 16. Ms Demery explained that whilst her focus was on the present situation, she was concerned about that particularly as it seemed FM was involved in the care of T. She said that whichever way she looked at it, the findings made in relation to the Father's children from his first marriage seemed a risk factor.
24. Ms Demery said that the current contact arrangements for the Mother and T were unsatisfactory and very difficult for a child of T's age. She had observed one of the video contacts by WhatsApp and she said it was difficult on all sides. Ms Demery had noted that the Mother had told her that such contact was immensely distressing.
25. Ms Demery said that in her opinion the only realistic way of ensuring T had close contact with his mother and his maternal family was for him to return to Pakistan. She said that it was very uncertain whether or not the Mother could come to the UK, where she could stay, whether or not she could afford to travel. She noted that the Father travelled frequently to Pakistan and that his brother lived close to where the Mother was living. She acknowledged that T had got used to his life in England and his time with FM and his half-brothers. She had observed he had a very good relationship with

his half-brother who was charming, well-educated and clearly very fond of his brother. She said T had been put into an invidious position.

26. Ms Demery said that both parents had expressed animosity towards the other and she said that there was immense amount of hostility. When she spoke to the Father, he was very dismissive of the Mother. She said that he holds to a narrative that means he can say he has saved T from a neglectful Mother. Holding to that view would be harmful to T as it was important for him to have a relationship with both his parents.
27. The Father asked Ms Demery about the risks to T if he returned to Pakistan and his Mother took him to Waziristan which was a dangerous area. He said that was a risk to T's life which she had to take into account. Ms Demery explained that she understood that the Mother lived where the Father's family actually live. She was asked about the fact that she could inspect where T was living now but had no way of inspecting where T would live were he to be returned to Pakistan. Ms Demery accepted that there were limitations in respect of what she could see in Pakistan. She said that T would lose out in some ways whatever was decided. That was why it was a finely balanced decision. However, she had to weigh in the balance the importance of T having a relationship with his Mother.
28. The Father reminded Ms Demery that he had told her that he would take T to see his mother in Pakistan during the holidays. She said that she remembered that. She was asked about the fact that the Father had been acquitted in his criminal trial. She said that whilst that was true there had been a fact-finding inquiry which had led to what was called a barring order. In her experience such an order was not put in place lightly. The Father asked her why she had not taken into account the fact that U was sitting happily next to him when interviewed and that he was part of T's life. Ms Demery said that it was positive that T had a good relationship with his brothers, but she could not ignore the history between the Father and FM, particularly as FM seemed to be heavily involved in T' care. FM might well have feelings of anger at what had happened in the past. Ms Demery explained that she asked U and the Father whether she could speak to FM, and it was agreed that U would relay that request to his Mother as he was the conduit of communication between his Father and FM. In the event FM did not contact Ms Demery.
29. Ms Demery was asked whether she agreed that T would be better educated here. She was asked whether it was wrong that he should be prevented from going to University, like his half-brother. Ms Demery said that a court in Pakistan would be able to make welfare decisions and that she could not look too far into the future. She noted that the Mother intended for T to go to an English-speaking school.
30. At the end of her evidence Ms Demery said she stood by her recommendation. She said that if the Mother had definitely given her permission for T to come to England and then changed her mind then that would weigh in the balance. However, the major concern that she had would remain: "*how does this little boy best retain a relationship with both his parents*".

(C) THE PARENTS' EVIDENCE

The Mother's evidence

31. In my judgment this case fell within the *Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022*. No application had been made for a Qualified Legal Representative (“QLR”) to be appointed and in any event, I note that there is a shortage of QLRs available, and one is very unlikely to have been available in the time scale set by the court. In deciding how to proceed I took into account the observations of the President of the Family Division in his July 2023 “A View from the President’s Chambers” when writing about QLRs:

“Although courts will be mindful that PD3AB, para 5.3 provides that ‘a satisfactory alternative means to cross-examination in person does not include the court itself conducting the cross-examination on behalf of a party’, that guidance does not trump the over-riding objective and, where there is no alternative, courts may have to revert to asking the questions where that is the only way to deal with the case justly, expeditiously and fairly in the absence of a QLR.”

32. Accordingly, the Father submitted a list of questions that he wished to be asked of the Mother which I reviewed and revised slightly. I then asked the Mother the Father’s questions explaining to the Mother the basis upon which I was doing so.
33. In response to questions from her counsel, the Mother explained that there are ongoing proceedings in Pakistan in relation both to financial remedies following her divorce and also her application for guardianship. The next hearing was listed shortly.
34. The Mother was asked about the consent form which appears at p.83 of the bundle, and which appears to show her signature. She said that it was not her signature and that it was not the consent form that she had signed. She said that she had read the consent form before signing it and that it did not refer to residence or travel. The consent form she had actually signed had been signed when she had travelled with T to Islamabad in March 2023 to register the application for a visa. She had wanted to travel to Islamabad in July 2023 when the expectation was that T’s passport would be collected. However, she was told that it was not necessary, and that T would be returned to her straight after collecting the passport.
35. The Mother said that over the summer when she had been blocked from speaking or seeing T it had been very hard. She said “*I was very attached to him, and he was attached to me. And then not allowed contact*”. She said that she was sure that if T stayed in the UK the Father would make it a huge problem for her to see her son. He would not promote contact in any way.
36. In response to the questions that I asked the Mother on behalf of the Father, she confirmed that she was living in a rented house in DI Khan. There is a park nearby where children can play and indeed, she goes there with her nieces. She had been to that park with T and the Father as well. She had been enrolled as an advocate since 2015. She is earning three times the amount that she was given by the Father when they were married. She is able to pay for medical care for T. The Mother works from 9AM to 230PM and those hours would mean that she would be available for T when he was not at school.
37. She confirmed that she would be able to pay school fees for T to attend an English-speaking school. She had visited three of the potential schools. Buses were provided by

the schools to collect and then return the children that were enrolled there. She is currently living with her mother and a woman who helps them. That woman is the third generation of a family who have served their family.

38. The Mother said that she would not take T to Waziristan if the father had concerns about it. If T returned to Pakistan, he would live with her in DI Khan. One of T's maternal relatives had worked in Waziristan but was now retired and living in DI Khan. Another relative was still working in in Waziristan, but the Mother was firm that she would not take T there.
39. After I had asked the Father's questions, I explained that I had some questions. The first related to the email that she sent on 22 August 2023 to the UK Missing Persons Unit. I asked whether that email might be read as meaning that she knew in advance that the Father was taking T to the UK. The Mother said that so far as she was concerned T was only going to Islamabad because it was necessary for his fingerprints to be obtained for his visa. She had not been told by the Father of any plans to travel to the UK from Islamabad. She confirmed what she had said in paragraph 1 of her first statement that the Father had "*told me once T's British passport is issued, he will apply for my British visa. T's father was visiting Pakistan and told me he needs to take T to the British High Commission in Islamabad so he can receive his passport. He did not return*".
40. The Mother was also asked to clarify the position in respect of custody proceedings because conflicting dates had been included in the skeleton argument and chronology. She confirmed that she instituted custody proceedings in Pakistan on 16 September 2023. It was prepared in English. The application at p.87 of the bundle was drafted on her behalf. I asked her about the fact that in the application it stated that the "*cause of action accrued a few days earlier when the respondent refused to allow the petitioner to meet her son and is still continuing*". The Mother thought that that might be a clerical mistake, but it was referring to not being able to contact T. The application referred to threats having been made to take T to the UK.

The Father's evidence

41. The Father confirmed that he had blocked the Mother on WhatsApp from the whole of June 2022 to July 2023. He said that he was concerned that the Mother was addicted to social media and that she had connections with the Taliban. The father confirmed that he had accused the Mother of being sexually aroused by the Taliban. He said that after watching the film *Titanic* the Mother had become sexually aroused all the time. He thought that T should be kept away from such a person. He said that it was in fact his family who were largely responsible for caring for T before he came to the UK.
42. The Father was asked why he had not given the Mother's details on the UK Visas and Immigration ("*UKVP*") form in March 2023 but had instead given his brother's address. He said that it was a cultural issue as women did not answer the door in Pakistan. It would be appropriate for the brother to respond to the High Commission. In any event the address that he gave on the visa form was the address for both his brother and for the Mother as they lived in what was described as being like a family compound.
43. He said that both he and the Mother had agreed that it would be better for T to be in the UK with his brothers. The Father said that the Mother had a vested interest in T

coming to the UK as she would then obtain a visa for herself. However, then the Mother had become convinced that that would not happen and so objected to T coming to the UK.

44. The Father said that he had divorced the Respondent in 2022 and that that was why he had blocked her on WhatsApp. However, the Respondent did not want to leave the property and there were negotiations with her family about a settlement.
45. The Father denied that he had refused to allow the Mother to travel to Islamabad in July 2023. He said it was not convenient for her to travel and she would be uncomfortable. He was asked about the fact that when they set off for Islamabad T only had a small bag with 4 changes of clothes. He was asked why that would have been so if the Mother was packing for him to go to the UK. The Father said it was because there was very cold weather in the UK and there was no point in packing more clothes.
46. The father said that once T came to England the whole family blocked contact between T and his mother. He said that this was so as to avoid T becoming unhappy when he saw his mother and missed her. The Father said that the Mother had agreed to that in advance. When he was asked why he had not referred to such an agreement in either of his two lengthy statements the Father replied that there were a number of things he had not said in his statements, but which were true. He denied that he was lying and said that it was the Applicant who was lying to the Court as she was outside the jurisdiction. He said that the Applicant had kept T in filthy conditions.
47. The father denied that he had removed T from Pakistan without the Mother's agreement on 22 July. He said that not only was it with her consent, but it was also with her encouragement. There had been no negative consequences at all for T in coming to the UK. He accepted that there was a potential for T to have been upset but he said that T has never been distressed. He said T has been rescued by him.
48. The Father said that he would do his best to ensure that T has a meaningful relationship with his mother. Whenever there are holidays, he would take T to Pakistan even though he had not said that in his statements. He said the Mother could come and stay with him. She was not dependent on him sponsoring her application for a British visa. In any event when T grows up, he will realise how his life has improved by being in the UK. He pointed out that he has close connections with the Pakistani community here.

(D) THE FATHER'S REQUEST TO ADMIT FURTHER EVIDENCE.

49. At the start of the second day the Father made an application for photos of T since his arrival in the UK to be admitted. Those were uncontroversial and their admission did not cause any prejudice to the Mother. Indeed, as it transpired the Mother relied on one of the photos in her closing submissions.
50. The Father also applied for permission to rely on photographs from DIK so that a question could be put to the Mother as to whether she knew who lived there. The Mother was given an opportunity to review the photograph and no objection was taken to it being admitted. I therefore gave permission for this evidence to be admitted notwithstanding that it was being adduced very late.

51. Later on, in the second day the Father expressed concern that there were some WhatsApp messages between him and the Applicant that had not been included in the bundle. He said that they had been exhibited to his first statement which he had handed in at the hearing on 20 October. The Applicant's legal team checked overnight to see whether or not they had copies of those messages but confirmed on the morning of the final day that they had copied all of the exhibits which had been served by the Father. The court staff also carefully checked to see whether they were on the case file, but none were found.
52. On the final day the Father produced the WhatsApp messages that he thought had been included. The majority of the message were in Urdu. No translation was available. The father confirmed that in the messages the Mother did not say words to the effect "I trusted you to take T to the United Kingdom" but instead said "I trusted you to take T with you". In circumstances where translation of those message would necessitate an adjournment and would be of at best marginal assistance, I declined to adjourn the hearing so that they could be translated and refused permission for them to be admitted.

(E) THE PARENTS' CLOSING SUBMISSIONS.

53. In her closing submissions Ms Gray argued that the "magnetic factor" in the case was that unless T was removed to Pakistan his mother would be unable to have any meaningful relationship with him. She argued that in assessing the Mother's evidence I should take into account that she was a vulnerable witness who was giving evidence remotely and with an interpreter.
54. Ms Gray submitted that the court should not place any weight on the consent form, and it should be entirely disregarded. I asked whether that submission went too far, given the absence of any expert evidence proving that the signature was not, as claimed, that of the Mother. In response Ms Gray suggested that she put her argument on the basis that the court should put little weight on the consent form. She referred to the fact that although the Father had referred to it in his first statement and said that he had exhibited it to that statement, in fact it had not been exhibited. The form in the bundle was provided by the Mother having received a copy from one of the Father's cousins as it was being circulated in his family group. Ms Gray argued that demonstrated that the Mother had nothing to hide.
55. She said that all of the surrounding evidence supported the Mother's case that T had been taken to the UK without her consent. She had been prevented from travelling to Islamabad in July 2023 even though she had wanted to travel. The reasons given why she could not travel were spurious. T only had a small bag with him which was wholly inconsistent with a trip to the UK. Immediately on arrival the Father had blocked the Mother from contact and in the witness box for the first time put forward the assertion that that was in fact with the Mother's agreement. Once she knew that T had been taken to the UK, the Mother had promptly acted in seeking the help of agencies in the UK, including the NCA and the NSPCC. She had instigated proceedings in Pakistan and then, once she had been advised that she needed to issue proceedings in England, she did so. The application to the Pakistan court which I referred earlier did not demonstrate that the Mother had agreed to T coming to the UK but only that she might have been aware of that as a potential risk.

56. Ms Gray said that in looking at the welfare issues it was accepted that T had developed a close relationship with his father and that he would lose his relationship with his half-brothers. He had also developed a bond with FM. However, it was notable that the Father had previously been absent from T's life for long periods. Pakistan was his country of birth and the place where his identity needs could best meet as a member of the Sia sect. Up until his removal in July 2023 T had never left Pakistan and never visited England. He was habitually resident in Pakistan and had extensive family in Pakistan both on his father's side as well as on his Mother's.
57. The most important issue was whether T could maintain a relationship with his Mother if he stayed in the UK. The Mother has no passport and no relatives in the UK. It was unclear whether she would be able to obtain a visa. There were huge difficulties in her being able to come to the UK. The reality would be that she would be dependent on the indirect contact by video which Ms Demery had described as being problematic. The Mother would be entirely reliant on the Father to facilitate contact and the court was fully entitled to conclude that the Father was actively hostile to the Mother. He was highly critical of the mother and had made gratuitously offensive remarks about her in his statements and his oral evidence. He had blocked the Mother for over a year before he had taken T to the UK. That was itself a form of abusive behaviour. In his evidence he had displayed a complete lack of empathy and understanding of how T may have felt being taken to the UK and denied contact with his Mother. Whilst in some respects he had developed a nurturing relationship with T, the Father's pronounced hostility would mean he would not promote in any way a relationship with the Mother.
58. In his closing submissions, the Father emphasised that the consent form showed clearly that the Mother had agreed to T coming to the UK. He pointed to the fact that the form that was signed shows the Mother's address which was the address which was given on the visa form. That supported his view that the Mother lived in a family compound with his brother. He said that the Mother was lying under oath about the consent form. He said that he would put himself on the guillotine if the Mother was correct and that she had not signed the consent form in the bundle. He pointed out that the Mother's lawyers had not commissioned any expert evidence proving that the signature on the consent form was not hers. The Father said that he had thought he had exhibited the consent form to his statement but in any event what he had meant to exhibit was in the bundle exhibited to the Mother's statement. The Father insisted that she signed the consent form in March 2023.
59. The father said that there was no question but that T's emotional needs were now being met. He denied having any problems in T having contact with his Mother. He said that he had explained why he had blocked her between 2022 and 2023 – it was because he had divorced the Mother but that she had refused to leave the home. He said, “she was sitting in my property he said and not moving out”. In relation to blocking the Mother after he had brought T to the UK, he said that that might have happened by accident. He said sometimes he blocks close contacts by mistake when he is driving as an Uber driver. The father denied that the Mother was the primary carer for T. He said that he had been his primary carer for his first 11 months of life and had been caring for him for the past seven months since he had been in the UK. When T was in the Mother's care he was being neglected and his family had had to look after T.

60. The Father argued that the decisive factor was the risk that the Mother would take T to Waziristan which was entirely unsafe. He pointed out that the Mother's sister was working in Waziristan. The Father said that in the Mother's evidence she had not denied that she would take T to Waziristan.
61. In his written submissions at the start of the hearing the Father had argued forcefully that Ms Demery's report was biased and unfair. I asked him whether he remained of that view having heard her evidence. The Father said that he still thought that the report was unfair, and that Ms Demery was biased against him as her recommendation does not flow from her analysis. She had not understood the position with FM. He did not live with her and his contact with her he said was suspended. He said that there was an expiry date for everything, and the court should not take into account what had happened in the past between him and FM. Having been denied bail and detained before trial, he was eventually acquitted. FM's evidence had been used to prosecute him, but he had been acquitted. The same evidence was then used in the fact-finding inquiry which had led to the order preventing contact with U.
62. The Father said that he has done all he can do to minimise any harm to T. He argued that there was an Article 3 risk to T because of the possibility that he would be taken to Waziristan. He said that T would have a better education here and argued that the Mother had not given the correct information about schools that would be available should T be returned. He urged the court to consider the rights of T's brothers as well as his own.
63. The Father denied absolutely ever having been abusive in any way to the Mother. He had not shown any hostility to her. He expects to take T to visit Pakistan during the holidays.

(F) THE LEGAL FRAMEWORK

64. Both Ms Gray and the Father had made detailed submissions in writing as to the legal framework that I should apply and there was no real dispute as to the approach that I should take. The issue was the application to the facts in this case.

The key principles to be applied

65. In *Re J (Child Returned Abroad: Convention Rights)* (2006) UKHL 40 [2006] 1 AC 80, Baroness Hale summarised the key principles applicable on applications for summary return under the inherent jurisdiction as follows:
 - (a) 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 (para 18)
 - (b) 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 (para 22)
 - (c) In all non-Convention cases the courts must act in accordance with the welfare of the child. (para 24).

- (d) 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. (para 25)
- (e) A 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. (para 26)
- (f) In doing so the court was not punishing the parent for their conduct but applying the cardinal rule. (para 27)
- (g) It is plain, therefore, that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child. (para 28)
- (h) The most one can say, in my view, is that the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever. (para 32)
- (i) One important variable, as indicated in *In re L* [1974] 1 WLR 250, 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. (para 33)
- (j) Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests. A child may be deeply unhappy about being recruited to one side in a parental battle. But if he is already familiar with this country, has been here for some time without objection, it may be less disruptive for him to remain a little while longer while his medium and longer time future is decided than it would be to return. (para 34)
- (k) Our law does not start from any a priori assumptions about what is best for any individual child. It looks at the child and weighs a number of factors in the balance, now set out in the well-known “check-list” in section 1(3) of the Children Act 1989 ; these include his own wishes and feelings, his physical, emotional and educational needs and the relative capacities of the adults around him to meet those needs, the effect of change, his own characteristics and background, including his ethnicity, culture and religion, and any harm he

has suffered or risks suffering in the future. There is nothing in those principles which prevents a court from giving great weight to the culture in which a child has been brought up when deciding how and where he will fare best in the future. Our own society is a multi-cultural one. But looking at it from the child's point of view, as we all try to do, it may sometimes be necessary to resolve or diffuse a clash between the differing cultures within his own family. (para 38)

- (l) A relevant consideration is whether the courts of the returning country are capable of determining what are in the best interests of the child (para 39). There are also bound to be many cases where the connection of the child and all the family with the other country is so strong that any difference between the legal systems here and there should carry little weight.
- (m) The effect of the decision upon the child's primary carer must also be relevant, although again not decisive (para 40)
- (n) These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. (para 41)

66. *In Re NY (A Child) v Reunite International and others* [2019] UKSC 49, [2020] AC 665, paragraphs 55-63, Lord Wilson identified eight linked questions that should be considered before making a summary order under the inherent jurisdiction.

- (a) First, the court should consider whether the evidence before it was sufficiently up to date to enable it to make a summary order and does it address issues of welfare?
- (b) Second, is the court able to make sufficient findings to justify the summary order? In the light of the policy in favour of the making of substantive welfare determinations by the courts of habitual residence, did there need to be inquiry into the child's habitual residence.
- (c) Third, the court should consider whether, 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 and, if so, how extensive that inquiry should be.
- (d) Fourth, the court should consider whether in the light of Practice Direction 12J, an inquiry should be conducted into the disputed allegations made by the mother of domestic abuse and, if so, how extensive that inquiry should be.
- (e) Fifth, whether there is evidence about the proposed living arrangements for the child and the parent?
- (f) Sixth, the court should consider whether, in the light of its consideration of the five matters identified above, any oral evidence should be given by the parties and, if so, upon what aspects and to what extent.

(g) Seventh, the court should consider whether, in the light of its consideration of the same matters, a CAFCASS officer should be directed to prepare a report and, if so, upon what aspects and to what extent.

(h) Eighth, the court should consider whether it needed to compare 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?

67. Lord Wilson emphasised that “*The effect of the above is not to submerge efficient exercise of the inherent jurisdiction to make a summary order within an ocean of onerous judicial obligations. The linked obligations are obligations only to consider the eight specified matters.*”

The Pakistan Protocol

68. Ms Gray submitted that although this case did not fall within the strict ambit of the *UK-Pakistan Judicial Protocol on Children Matters I* should apply the spirit of the Protocol.

69. The protocol begins with a recital which includes the following:

“Whereas:

- (a) Desiring to protect the children of the UK and Pakistan from the harmful effects of wrongful removal or retention from one country to the other;
- (b) Mindful that the UK and Pakistan share a common heritage of law and a commitment to the welfare of children...”

70. The Protocol itself applies within relatively narrow parameters set out in its §2- 3 i.e. where:

- (a) the 'left behind' parent has a residence order and has not consented to the child being removed to/retained in the UK; or
- (b) the removal/retention is otherwise in breach of a court order.

71. Those conditions do not apply here. Nonetheless there are other provisions which are of some relevance:

“(1) In normal circumstances the welfare of a child is best determined by the courts of the country of the child's habitual/ordinary residence.

(8) It is further recommended that the judiciaries, the legal practitioners and the nongovernmental organisations in the UK and Pakistan use their best endeavours to advance the objects of this protocol.”¹

72. Francis J considered the approach to be taken by the court to a case where the strict terms of the Protocol did not apply that issue in *Y v S* [2017] EWHC 1020 (Fam):

¹ In relation to provision 8, I was provided with a copy of the recent judgment of Mr Justice Ali T Baqar Najafi of the Lahore High Court *Seyyed Mudasar Ali Shah v Federation of Pakistan* (W.P. No.77522/2022) in which the learned judge referred to the Protocol.

“My attention has been correctly drawn to the decision of Mr. Justice Wilson (as he then was) in *Re H (Child Abduction: Mother’s Asylum)* [2003] EWHC 1820. In that case, the Judge found that the protocol of agreement between the UK and Pakistan did not apply because the father did not have the benefit of a custody/residence order and nor had there been any relevant order by a court in Pakistan.

In para. 5 of his judgment, the Judge said:

“It appears that the intention behind the provision that the non-consenting parent should have an actual order for custody/residence is to obviate a possibly complex enquiry in each of our two states as to whether that parent had rights of custody, or at least a right to object to the child’s removal, according to the law of the other...”

Accordingly, following that principle enunciated by Mr. Justice Wilson in that case, I conclude that as the mother does not have an actual order for custody or residence then the terms of the protocol are not expressly triggered. However, the Judge went on as follows:

“Nevertheless I regard it as important for me to bear in mind both the first clause, which I will set out in para [29] below, and the four recitals to the agreement. The recitals express, first, a common desire to protect the children of the two states from the harmful effects of wrongful removal from one to the other or wrongful retention in one as against the other; secondly, a common recognition that our two states share a heritage of law and a commitment to the welfare of children; thirdly, a common aspiration to promote judicial co-operation, enhanced relations and the free flow of information between our respective judiciaries; and fourthly, a common acceptance of the importance of negotiation, mediation and conciliation in the resolution of family disputes.”

Accordingly, it is clear to me that, whilst the strict terms of the protocol are not engaged, the spirit of the protocol is.”

(F) FINDINGS OF FACT

73. I deal first with the issue as to whether the Mother agreed in July 2023 for T to come to the UK. This is not a case under the Hague Convention and so consent is not relevant in the way that it would be in such a case. However, I accept Ms Demery’s evidence that it is a factor that weighs in the balance in assessing whether the application should be granted.
74. The starting point (but no more than that) is the consent form. I am unable to accept Ms Gray’s submission that it should be disregarded though I agree that its significance or otherwise needs to be assessed in a wider context.
75. The UKVI form that was completed for T specifies that a letter of consent must be submitted with the Form. According to the form, that letter of consent must confirm.

- “ · the relationship between you and your parent(s) legal guardians
- consent from your parent(s) legal guardian(s) to the application
- consent from your parents(s) legal guardian(s) to the living arrangements in the United Kingdom and the address you will be saying
- whether one or both of your parent(s) legal guardian(s) have responsibility for you

Both parents/legal guardians must sign the letter of consent, except where only the parent/the legal guardian has sole responsibility”.

76. The document in the bundle contains all of this information and on its face was signed by both parents. No evidence was served by the Mother supporting her assertion that the signature was not hers. She said that she did sign a consent form but not one which refers to living arrangements. In my judgment, on the balance of probabilities, the Mother did sign the consent form in the bundle. It seems to me to be unlikely that she would have signed a form that was not one that met the requirements of the Visa application. That the Mother signed this form is consistent with her first statement where she said that the plan was for her to apply for a visa once a British passport had been issued to T.
77. However, the fact that the Mother probably signed the form in March 2023 is not inconsistent with her evidence that she did not think that the Father would take T to the UK in July. In my judgment the evidence is compelling that whilst the Mother may have suspected that the Father might take T without her knowledge, she had not agreed that he should take him in July. I accept her evidence that she believed that he was being taken to Islamabad. That is demonstrated by the small bag that was packed for him. The Father’s explanation – that it was because it was very cold in England - is unconvincing given that T arrived in England in the summer. The photo adduced by the father dated 22 July shows T at the airport without any shoes. Moreover, the Father’s actions in then blocking the Mother strongly indicates that what he had done was without the Mother’s consent.
78. I do not accept the Father’s explanation that avoiding any contact with the Mother was a pre-planned agreement to minimise the distress of T leaving his home in Pakistan. That was an explanation given for the first time in the witness box and was not referred to in either of his very detailed witness statements. Equally unconvincing was the contradictory explanation given for the first time in closing submissions that he might have blocked the Mother by accident. The rejection of her request that she travels to Islamabad in July 2023 also supports a conclusion that the Father was intending to take T without his Mother’s consent. She had been able to travel to Islamabad in March 2023 and the Father’s explanation that he did not want her travel in July 2023 because it would be uncomfortable is unconvincing, particularly when judged in the context of his other actions.
79. In my judgment, the application to the Pakistan court and the email to the NCA which I have referred to earlier, do not undermine a finding that the Mother did not agree in July 2023 for T to come to the UK. As Ms Gray pointed out, the fact that the Mother may have had indications that there was a risk that the Father might act unilaterally and take T to the UK does not mean that she consented to such a step. In fact, the application makes clear that it was something that she feared.

80. As to the NCA email, it is possible to read it as indicating that the Mother knew that the Father was taking T to the UK before they travelled. However, I reject such a reading as being unlikely. English is not the Mother's first language, and the email is focused on having been blocked from contact and then receiving a call from the Father in which she was told that he was going to divorce her and keep T.
81. For those reasons I therefore conclude that T was taken to the UK in July 2023 without his Mother's permission and that has been kept in the UK since then against the Mother's wishes. The fact that I have not accepted the Mother's evidence in relation to the consent form does not undermine the confidence with which I make that finding for the reasons I have given.
82. I turn now to other findings of fact.
83. Notwithstanding the summary nature of the hearing that has taken place and the wide range of accusation and counter accusation made by the parents there are some facts which are directly relevant to my determination, and which are in not dispute.
84. First, the Father blocked the Mother on his phone between 2022 and 2023. That meant that when the Father was in the UK, his contact with T was only through his niece.
85. Second, the Father again blocked the Mother on his phone after he brought T to the UK in July 2023.
86. Third, since T has come to the UK indirect contact has only been achieved through orders of this court. Furthermore, it is not in dispute that video contact is clearly an unsatisfactory means of maintaining a relationship with a 3-year-old child.
87. Fourth, the Mother does not have any passport at all. She has no family or contacts in the UK other than the Father. In my judgment it is unlikely that she would be able to travel to the UK to see T.
88. Fifth, there were court proceedings between the Father and his former wife, FM. There was considerable involvement from Kent Children's Services and the family were known to MARAC. There were proceedings in 2011 and a Section 7 report was prepared which concluded the risk of harm to FM and the children was high following a fact-finding hearing. The report recommended no direct contact between the Respondent and his sons. This resulted in an order being made under Section 91(14) of the Children Act until U was 16 years old.
89. There are three other findings of fact which, whilst in dispute, can in my judgment be readily made notwithstanding the summary nature of these proceedings.
90. First, I do not accept the Father's evidence that he would take T on holiday to Pakistan and that he would promote contact with the Mother that way. That assertion, made in oral evidence and submissions, is at odds with his pronounced and entirely undisguised hostility to the Mother. He made gratuitously offensive remarks about her and said that he would not wish anyone to have contact with such a person. He has blocked contact

with the Mother for prolonged periods of time. I also note that after the October hearing he said that he would return T to Pakistan but not to the care of the Mother.

91. Second, I accept the Mother's evidence that she would not take T to Waziristan. Now that the maternal grandmother has retired and is living in DI Khan the reasons to do so would be diminished. Whilst the maternal aunt has a job in Waziristan, I accept the Mother's evidence that she would respect the Father's request and not take T to Waziristan. I do not accept that there is a risk of a breach of Article 3 ECHR in returning T to Pakistan because of the possibility (which I have rejected) that he might travel to Waziristan.
92. Thirdly, I do not accept the Father's evidence that the Mother neglected T and that he would be sent back to live in filthy conditions. The Mother is living in a large, rented house with her mother and has a woman that helps with domestic tasks. Whilst the Mother works, she has explained that her working hours would be compatible with T attending school. The statements from the Father's brothers suggesting that the paternal family were largely responsible for T's care and that the Mother was neglectful seem to be motivated by animosity caused by these proceedings as well as those in Pakistan.

(G) DECISION

93. I turn now to my decision in relation to the application on the basis of the legal framework and my findings of fact.
94. I start by considering again the questions Lord Wilson identified in *Re NY*. Those questions were considered first at the adjourned hearing in November and informed the directions that I gave at that hearing. The questions were also considered again at the start of the hearing on 24 January, but it is appropriate that I step back once again and consider them.
 - (a) Whilst it is true that Ms Demery's inquiries into the Applicant's living arrangements have inevitably been less extensive than her review of the Father's living arrangements which she has been able to visit I am satisfied that the evidence before me is up to date and sufficiently addresses the welfare issues. Both parents have given detailed evidence on this, and I have been significantly assisted by the report of Ms Demery.
 - (b) I am able to make sufficient findings to justify a summary order given my factual findings above. There is no dispute that T was habitually resident in Pakistan up until July 2023. The fact that subsequently he had adapted to life here is an issue that I must (and will) factor into my welfare assessment.
 - (c) I am satisfied that in the circumstances here I am able to make sufficient findings without embarking on a more extensive inquiry into welfare. The single most important factor here is whether or not the Mother would be able to maintain a meaningful relationship with T if he were to stay in the UK. That question is unlikely to be resolved in any different way by a more extensive inquiry. In any event I am satisfied that with the assistance of Ms Demery's report there have been sufficient enquiries into the welfare issues.

- (d) I have taken into account Practice Direction 12J. It has not been argued on behalf of the Mother that I need to make finding into all the disputed allegations made by her of domestic abuse.
 - (e) I have been provided with evidence about the proposed living arrangements of the Mother and the Child, including photographic evidence. I do not accept the Father's assertions that the living arrangements are inadequate.
 - (f) At the hearing in November 2023, I determined that it was necessary to hear oral evidence from both parents. No application was made to me for any other witnesses to be called. I have taken those witness statements into account, and I am satisfied that I would not be assisted by hearing oral evidence from them.
 - (g) As noted earlier, I directed a report from CAFCASS which has been of assistance. I note in particular that without that report I would not have been aware of the proceedings that led to an order preventing the Father from having contact with T's half-brother until the age of 16 (a fact which the Father had not referred to).
 - (h) Neither party has sought to suggest that Pakistan does not have a proper system in place to determine any future relocation application by the father or any application in respect of relocation/child arrangements for T.
95. I have considered carefully the evidence by reference to the welfare checklist at section 1(3) of the Children Act 1989.
96. First, the ascertainable wishes and feelings of the child
97. T is too young to voice an opinion or to understand the implications of the difficult decisions that need to be made about his future. I have no doubt that it was initially confusing and distressing for T to have been removed from his mother and primary carer and to have no contact with her. It is likely to have been upsetting for T to have suddenly found himself in an unfamiliar environment away from his home. The evidence however is that T has adjusted and seems to be happy in England. He has a good relationship now with his Father and with his half-brothers. Equally however I am sure that T would be pleased to be reunited with his mother.
98. Secondly, the child's physical, educational and emotional needs:
99. T's physical and educational needs are currently being met. I accept Ms Demery's evidence that "*The reports from his nursery and the social worker attest to the close relationship that T enjoys with his father and no concerns have been expressed about his father's care of him. I have observed him in his home with his father, who is very nurturing of T, as is his older brother. It is difficult to assess the quality of T's relationship with his mother given the limitations of the medium by which I observed them.*"
100. Significantly however I consider that the Father lacks sufficient appreciation of T's emotional needs. As Ms Demery said in her report "*he has not thought through the*

emotional impact on T of spending less time with his mother and his extended maternal and paternal families who remain in Pakistan. T has already in his young life experienced a number of significant changes in his circumstances – his parents’ separation, his father being absent for months at a time, changes of addresses in Pakistan and of more recently a change of country. Most significant of all has been his change of primary carer.” The Father lacks any real understanding of the need for T to have a meaningful relationship with his Mother.

101. Thirdly, the child’s age, sex, background and other relevant characteristics: T is three years old. He was born in Pakistan and is a Pakistani and a British citizen. Both parents were born in Pakistan too, married and initially lived together there. Up until July 2023 T was living with his Mother who was his primary carer. He was also living with his extended paternal family in Pakistan. He was also able to spend time with the maternal family. His family are Muslim and as such Pakistan is an important part of his cultural and religious identity. His connections to British culture are more limited. To use the language of *Re J*, Pakistan is T’s “home country”.
102. Fourthly, the likely effect on them of any change in circumstances: A return to Pakistan will mean more significant changes and there inevitably would be a period of adjustment. However, he will be returning to his Mother and other family members and a routine, and community which he is familiar with despite the time that he has been away in the UK. The mother is now renting a large house with her mother in close proximity to wider family members (paternal and maternal).
103. Fifthly, harm suffered or at risk of being suffered: T will suffer harm if he is deprived of a meaningful relationship with his Mother. Additionally, as noted earlier, T’s allocated social worker has expressed concern about T’s potential exposure to domestic abuse in CJ’s care. Ms Demery reiterated a number of times in her oral evidence that the complex history between FM and the Father, and the fact that a court had ordered that the Father should have no contact with U until he was 16, was a factor that could not be ignored. These are significant factors notwithstanding the fact that T currently seems settled with his father.
104. Finally, how capable each of his parents are of meeting his needs: In some respects, the evidence indicates that the Father is capable of meeting T’s needs. However, the Father’s pronounced hostility to the Mother and my conclusion that he is unlikely to promote a meaningful relationship with the Mother leads me to conclude that the Father is neither willing nor capable of meeting T’s need to have a relationship with his Mother. The Father has been highly critical of the Mother’s parenting, suggesting that she is obsessed by social media and neglectful. However, when the Mother gave evidence, she was clear as to how she would be able to care for T with the support of her mother and that that would be compatible with her working hours. She will also have the support of T’s wider family, including his paternal family.
105. Stepping back from the welfare checklist and the analysis above I look at the overall question of what will be in T’s best interests and the considerations set out in *Re J*. As Baroness Hale said, those considerations “*should not stand in the way of a swift and unsentimental decision to return the child to his home country even if that home country is very different from our own*”. The court does have the 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 doing so, I emphasise the court is not punishing the parent for their conduct.

106. In my judgment there is one compelling factor here which drives a conclusion that it is in T's best interests for him to be returned to his mother's care in Pakistan where future welfare decisions can be determined by the courts in Pakistan as necessary. T can only have a meaningful relationship with both parents if he is returned to Pakistan. It is unrealistic to suppose that the Mother will be able to come to the UK. I can have no confidence given the findings that I have made that the Father would take T to visit the Mother during the holidays. By contrast the Father is able to travel freely to Pakistan and has indeed spent significant time in Pakistan. He has extensive family there. T's half brothers are also able to travel to Pakistan.
107. Ms Demery was correct when she said that in some respects T will lose out whatever is decided. She said that her major concern was how does this boy best retain a relationship with both his parents. I agree. In my judgment the answer having regard to all of the foregoing is for the court to order his return to Pakistan. That decision is also consistent with the spirit of the Protocol.