



Neutral Citation Number: [2025] EWHC 439 (Fam)

Case No: FD24P00406

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2025

Before :

THE HONOURABLE MR JUSTICE HAYDEN

Between :

S

(Through his litigation friend, James Alexander Netto)

Applicant

- and -

(1) F

(2) M

Respondents

Deirdre Fottrell KC and Professor Rob George (26th and 27th November 2024) and Andrew Powell (18th February 2025) (instructed by International Family Law Group) for the Applicant

Rebecca Foulkes (instructed by Dawson Cornwell LLP) for the First Respondent
Second Respondent appeared in person

Hearing dates: 26th, 27th November 2024 and 18th February 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 27th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE HAYDEN

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

Mr Justice Hayden :

1. This application concerns S, a young male, born in the United Kingdom, who is now 14 years old. On 3rd September 2024, S applied, through his solicitor, to make himself a ward of the High Court and for an order that he be returned to the jurisdiction of England and Wales, from the Republic of Ghana where he has been living since 30th March 2024.

2. On 4th September 2024, this Court made S a ward of court and granted other ancillary prohibitions surrounding his day-to-day life in Ghana. Those orders were made without notice to S’s parents. At the return hearing, on 12th September 2024, both parents attended but were unrepresented. Lieven J ordered the preparation of a Section 37 Report. Though family lawyers are familiar with the provisions of this section, in the circumstances of this case I consider it helpful to set out the key scope of the provision:

“37 Powers of court in certain family proceedings.

(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.

(2) Where the court gives a direction under this section the local authority concerned shall, when undertaking the investigation, consider whether they should—

(a) apply for a care order or for a supervision order with respect to the child;

(b) provide services or assistance for the child or his family;
or

(c) take any other action with respect to the child.

(3) Where a local authority undertake an investigation under this section, and decide not to apply for a care order or supervision order with respect to the child concerned, they shall inform the court of—

(a) their reasons for so deciding;

(b) any service or assistance which they have provided, or intend to provide, for the child and his family; and

(c) any other action which they have taken, or propose to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction, unless the court otherwise directs.”

3. The Report, which I shall return to, filed on 12th November 2024, did not recommend either a care or supervision order and concluded that it was in S’s best interests to remain in Ghana.

Background

4. The First Respondent, F, is S’s father. F was born in Ghana and is 55 years old. The Second Respondent, M, was also born in Ghana and is 47 years old. The couple has three children, D (aged 23 years), A (aged 15 years) and S, the young person with whom I am concerned. F moved to live in the UK in May 2000. M followed as quickly as she could, believing, as she told me at this hearing, that she considered it important for the family to be together for the sake of the child. The parents and each of the three children now hold both Ghanaian and British nationality.
5. The two girls flourished in the British education system. This is a family who is highly invested in educational achievement. By early 2024, it is clear that the parents had become increasingly worried about S’s disengagement with his education and some of

the young people that he had become involved with. It is their case, which I have no difficulty accepting, that they were genuinely worried about his safety. They devised a plan which they both recognise attracts legitimate criticism and involved a deception on their son. In late March 2024, both parents, S and A travelled to Ghana together. The purpose of the trip was said to be a visit to the paternal grandmother who, S was told was unwell. M and A stayed for a little more than 2 weeks, and S stayed on with F. Unbeknown to S, his parents had enrolled him at a College in Ghana, a co-educational international school, which appeared to them to offer an essentially British based curriculum. Neither parent has made any attempt to conceal the fact that they did not tell S about this, stating frankly that they were worried about his reaction. I have no doubt that had he been forewarned, S would not have travelled to Ghana. Predictably and understandably, S was outraged when he realised what had happened.

6. F returned to the UK, but both parents were in constant communication with the College. Though the evidence is not entirely clear on the point, I have the strong impression that S had come to believe that he would only be staying at the College for a relatively short period. At first, he seemed to be happy, and the initial end of term report is said to have indicated that he had settled well. I record that S told his solicitor, Mr Netto, that he had never felt settled at the school and described it as “*kinda rough...really rough*”. In Mr Netto’s statement filed in pursuit of the wardship application, the following is recorded:

“[S] told me in no uncertain terms that he had repeatedly tried to leave the school and return to his family as a result of him being so unsettled and unhappy there. [S] informed me that, upon him trying to leave, he was physically assaulted by a security guard at the school within the first week of his attendance there. He had said that when he was trying to leave

the school, a security guard had punched him in the stomach to prevent him from leaving.”

7. Mr Netto had enquired of S as to what his relationship with his peers was, at the school.

The following account is set out in Mr Netto’s statement:

“[S] also informed me that he had had a very difficult time with other pupils in the school; he told me that "they have beaten me up" in the past, and that in the second week of school, he was involved in a fight where other pupils in his class had stolen money and belongings from him. He also told me that "the kids there they make fun of me because of my accent ...they think I don't understand the (local Twi) language, but I do". [S] also said he had raised this with his parents whenever he could speak with them by telephone; he said that his parents responded saying that it was "his fault" and seemed, in [S]’s view, completely unsympathetic.”

8. It would seem that S was attending the College, as a boarder, until the beginning of the summer holidays in July 2024. Thereafter, he stayed at the home of his mother’s friend, where he remained until the end of August 2024. S then went on to stay at the home of his maternal aunt and uncle for what was planned to be his staged return to the College in September. When that did not happen, S remained living with them. However, he did not believe he was being sufficiently well looked after there, though to his complaint, he added the caveat *“not on purpose...they have other kids of their own, I guess”*. F, who I find to be vigilant to his son’s practical and material needs in Ghana, arranged for him to move to live with his own brother at the end of October 2024. He remains there.
9. S made a complaint to the Principal of the College, expressing amplified accounts of those incidents referred to above. The Principal responded to S’s father on 2nd

December 2024. The letter states that the College conducted a thorough investigation of the complaints, drawing the following conclusions:

“Peer Interactions

The majority of the Incidents involving physical altercations with peers were found to be retaliatory. There are conflicting accounts between [S] and other students involved, due to the lack of timely reporting. This renders definitive conclusions difficult in some instance. Nevertheless, the consensus portrays [S] as an “instigator and a trouble-maker”. Students and teachers came to realize that that [S]’s behaviour was predicated on his unwillingness to remain in Ghana. Culturally, Ghanaians are warm and welcoming and in that spirit the school, teachers and students went to great lengths to accommodate his behaviour. It is becoming apparent that no accommodation will suffice for [S], except that of his return to England.

Staff Conduct

Regarding the incident with a security guard, multiple accounts suggest the guard restrained [S] to prevent him from climbing over the boarding house fence for his own safety. There is no evidence to support claims that the guard punched [S].

Parental Role and Communication

[S]’s father was consistently informed about his behaviour. While his actions did not warrant dismissal and were attributed to his unique circumstances, they were closely monitored, and staff made significant efforts to support him through this transitional period.”

10. It is unnecessary for me to resolve these issues. However, it is pertinent to note that in June 2023, S, whilst then at his school in London, was issued with an Internal Exclusion order, for two days, following his part in a fight outside school. Also, in February 2024, S returned home with a swollen right eyebrow. Physical altercations with his peers certainly predated S’s move to Ghana. I also note, from S’s records, that there had been

incidents which describe him as displaying excessive “*retaliatory*” reaction. This I note resonates with the observations in the Investigative Report from the College in Ghana.

11. The final hearing of this application commenced on 26th November 2024. I heard oral evidence from F and from the author of the Section 37 Report. It became clear that there were no clear plans as to where S would live if he returned to the UK and it was necessary to adjourn for this key issue to be explored further.

The Legal Framework

12. The legal arguments have been wide ranging. Though I have been addressed quite extensively, in written argument, on the issue of S’s habitual residence, it is to my mind, plain that S remains habitually resident in the UK. In *Re B (A Minor: Habitual Residence)* [2016] EWHC 2174 (Fam), at Para 17 (xii), I noted:

“Habitual residence was a question of fact focused upon the situation of the child, with the purposes and intentions of the parents being merely among the relevant factors. It was the stability of the residence that was important, not whether it was of a permanent character. There was no requirement that the child should have been resident in the country in question for a particular period of time, let alone that there should be an intention on the part of one or both parents to reside there permanently or indefinitely (Re R).”

13. The focus of S’s life is London. He was duped into a move to Ghana and has gone to great efforts to secure his return. His habitual residence remains in the United Kingdom. Further, nobody has disputed that S is a “*Gillick Competent*” young person (*Gillick v West Norfolk and Wisbech AHA* [1986] AC 115 (HL)) and that, accordingly, resolution of his application requires his own views to be factored into a best interests decision relating to his welfare. It is also recognised that given S’s age, his views are to be

afforded significant, though not determinative weight (see: *An NHS Trust v X* [2021] EWHC 65 (Fam), [2021] 4 WLR 11; *Re E (Minors: Blood Transfusion)* [2021] EWCA Civ 1888, [2022] Fam 130). This Court must also have regard to the United Nations Convention on the Rights of the Child (UNCRC), in particular Article 12, which provides that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

14. The Family Court, in its domestic case law, has long emphasised the obligation to comply with both Article 12 UNCRC and Article 8 of the European Convention on Human Rights (ECHR), in the context of the strongly expressed views of a child or young person (see: *Mabon v Mabon* [2005] 1FLR 1011 acknowledging a “*keener appreciation of the autonomy of the child and the child’s consequential right to participate in the decision making process*” (per Wall LJ, as he then was)).
15. S is represented by an experienced legal team. I have been told that though this is his application, he has not wanted to participate directly in this hearing. Specifically, he decided that he would not watch or listen to the proceedings, though he was offered the opportunity for both. S has been particularly clear that he does not want to give evidence and does not wish to be in visible public conflict with his parents. He has been offered the opportunity to meet the judge, in accordance with the prescribed parameters for such meetings, but declined to do so. He has now indicated that he would like to meet the judge after the decision has been taken. He has plainly forged a trusting working relationship with his solicitor. However, neither leading nor junior Counsel had met

with him before this hearing. Ms Fottrell KC had taken the view that a meeting was unnecessarily burdensome to S, given his wish to distance himself from the process, and that there was an effective conduit for instructions via Mr Netto. Whilst not being in any way critical of Mr Netto, I asked Counsel if they would review this and consider meeting with their client remotely. I wanted to be satisfied that S had been afforded the fullest possible participation in this difficult decision. I am grateful to both Counsel for agreeing to do so. I record that they have now had a number of face-to-face (remote) meetings with their client.

16. F has been represented by Counsel and Solicitor; M has appeared in person. M did not give evidence, but she did make a short, valuable, and effective submission at the conclusion of the hearing.
17. Though these are wardship proceedings, the central and critical role of parents in the upbringing of children and decision making about their lives, is framed in the clear terms of the Children Act 1989. Section 3(1) provides:

“In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

‘Parental responsibility’ was an innovation of the Children Act 1989. It sent a powerful signal, whilst explicitly acknowledging parental rights, that the focus is on the parents’ duties towards their child. Parental responsibility endures until a child reaches the age of 18. The jurisprudence of the Family Court and High Court, Family Division, emphasises the fundamental principle of family law in this jurisdiction, namely that responsibility for taking decisions rests with the parents and that the State should recognise that parents, in most cases, will be better placed to take important decisions

concerning their child. The classic statement of the principle is expressed in the judgment of Lord Templeman in *Re KD* [1988] 1 AC 806:

“4. The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not endangered. Public authorities cannot improve on nature.”

To the above, Hedley J in *Re L (Care: threshold criteria)* [2006] EWCC 2 (Fam) added the following:

“It follows inexorably from that, that society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

18. In *Re Ashya King* [2014] EWHC 2964 (Fam), Baker J, as he then was, emphasised that:

“31. ...the State – whether it be the court, or any other public authority – has no business interfering with the exercise of parental responsibility unless the child is suffering or is likely to suffer significant harm as a result of the care given to the child not being what it would be reasonable to expect a parent to give.”

19. Sir James Munby (P) made a similar point in arresting language: *In the Matter of E (A Child) (Medical Treatment)* [2016] EWHC 2267 (Fam) at:

*“Judges do not necessarily know best. Usually a child's long-term carers, whether parents, adoptive parents or long-term foster carers are much better placed than a judge to decide what should happen to their child. In the realm of private law – and this issue, despite the public law context in which it happens to arise, is in truth one in the private law realm – the court, the State, usually becomes involved only because the child's parents or carers have been unable to resolve the difficulty themselves, either because they cannot agree or, as sometimes happens in medical treatment cases, because they prefer to leave a particularly agonising decision to a judge: see, on the latter point, *In re Jake (A Child)* [2015] EWHC 2442 (Fam), para 46.”*

20. Finally, it is also important to have regard to Section 100 of the Children Act 1989:

“100 Restrictions on use of wardship jurisdiction.

(1) Section 7 of the Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.

(2) No court shall exercise the High Court's inherent jurisdiction with respect to children—

(a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;

(b) so as to require a child to be accommodated by or on behalf of a local authority;

(c) so as to make a child who is the subject of a care order a ward of court; or

(d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.”

21. Overuse of the High Court’s inherent jurisdiction requires vigilant patrol. Section 100(2) expressly prohibits the use of the jurisdiction to require a child to be placed in the care or under the supervision of a Local Authority.

The Best Interests Decision

22. In turning to the welfare analysis, it is important I signal that I am entirely satisfied that the parents wish for S to live and be educated in Ghana is driven by their deep, obvious, and unconditional love for their son. I should also signal that it is equally clear that both parents genuinely fear for their son’s life if he were to return to London. They believe and, in my judgement, with reason, that he has, at very least, peripheral involvement with gang culture and has exhibited an unhealthy interest in knives. F told me that they (his parents) did not want their son to be *“yet another black teenager stabbed to death in the streets of London”*. This last sentiment was the only thing that M wanted to convey to me at the conclusion of the hearing. Her relationship with S has been a fiery one, in which neither is free from criticism. That said, her love for her son and her commitment to his welfare is beyond any dispute. I include this expressly so that S may read it.
23. The essence of the parental concern in this case is that sometime around 2022, S, who had been a hardworking and conscientious boy, disengaged from his studies and became involved with a number of young males who, they believed, were leading him into bad behaviour, criminality and danger. It is advanced on S’s behalf that whilst his parents may subjectively have held these fears, they could not objectively be justified. It is argued, as I understand it, that if these parental concerns are not justified, on the available evidence, they should not be afforded significant weight, even though the fears may be genuinely held.

24. Ms Foulkes, on behalf of F, had, astutely, anticipated this point; she deals with it skilfully and persuasively. She has drawn the Court's attention to the NSPCC guidance: 'Criminal exploitation and gangs'. I found this to be a helpful and forensically useful document. I set out below those features of the guidance which I find to be salient to this case. I also consider that it might be useful to draw attention to this document more widely. A number of useful questions are posed in the prefacing paragraphs:

"What is criminal exploitation?"

Criminal exploitation is child abuse where children and young people are manipulated and coerced into committing crimes.

What is a gang?

The word 'gang' means different things in different contexts, the government in their paper 'Safeguarding children and young people who may be affected by gang activity' distinguishes between peer groups, street gangs and organised criminal gangs.

(i) Peer group

A relatively small and transient social grouping which may or may not describe themselves as a gang depending on the context.

(ii) Street gang

Groups of young people who see themselves (and are seen by others) as a discernible group for whom crime and violence is integral to the group's identity.

(iii) Organised criminal gangs

A group of individuals for whom involvement in crime is for personal gain (financial or otherwise). For most crime is their occupation.

It's not illegal for a young person to be in a gang – there are different types of 'gang' and not every 'gang' is criminal or dangerous. However, gang membership can be linked to illegal activity, particularly organised criminal gangs involved in trafficking, drug dealing and violent crime."

25. Of particular relevance to this case is the list of behaviours that family members, friends, and involved professionals might notice. This is not intended to be exhaustive nor prescriptive. I approach it as an interpretive aid for identifiable evidence:

- “(i) Frequently absent from and doing badly in school.*
- (ii) Going missing from home, staying out late and travelling for unexplained reasons.*
- (iii) In a relationship or hanging out with someone older than them.*
- (iv) In a relationship or hanging out with someone older than them.*
- (v) Being angry, aggressive or violent.*
- (vi) Being isolated or withdrawn.*
- (vii) Having unexplained money and buying new things.*
- (viii) Wearing clothes or accessories in gang colours or getting tattoos.*
- (ix) Using new slang words.*
- (x) Spending more time on social media and being secretive about time online.*
- (xi) Making more calls or sending more texts, possibly on a new phone or phones.*
- (xii) Self-harming and feeling emotionally unwell.*
- (xiii) Taking drugs and abusing alcohol.*
- (xiv) Committing petty crimes like shop lifting or vandalism.*
- (xv) Unexplained injuries and refusing to seek medical help.*
- (xvi) Carrying weapons or having a dangerous breed of dog.”*

26. I have also considered: Protecting children from child criminal exploitation (updated 18th February 2025). The following passages are relevant:

“Financial exploitation

This type of child criminal exploitation can involve children being coerced, threatened or manipulated into moving money for the person exploiting them. Children can be forced to hold or move money through:

- (i) physical cash*
- (ii) their already existing bank accounts*
- (iii) cryptocurrency accounts*
- (iv) opening a new bank account which is then controlled by the exploiter.*

Carrying weapons

Children and young people might be exposed to, or forced to use, a wide variety of weapons. This includes knives, firearms and harmful sprays and liquids such as CS spray or acids.

They can sometimes be made to store weapons or transport them from one area to another. They may also carry a weapon, such as a knife, because they fear for their own personal safety. Research has found that young people in England and Wales are disproportionately affected by knife crime.

A child found to be carrying a weapon is a recognised sign that they could be experiencing criminal exploitation. However, a child or young person found to be possessing a weapon more than once may receive a detention and training order or be given a custodial sentence depending on their age. While being convicted is sometimes an opportunity for children to receive the right support, it can also be traumatic, build distrust for services and continue the cycle of exploitation.”

27. As Ms Foulkes identifies, the social worker gave evidence that a striking number of these signs and behaviours can be identified in the evidence from the period predating S's removal to Ghana. With some amendments, I broadly adopt her identification of the factual matrix:

- (i) For the 2022/2023 school year, [S] had 25 unauthorised lates attendances. By the following school year, that had risen to 50, i.e. 20.7% of possible attendances.
- (ii) On 6th June 2023, [S] was issued with an Internal Exclusion order, for a fixed period of 2 days, as a result of fighting outside school. The 'reintegration meeting' notes record that [S] was clashing with his parents over his choice of friends and that [S] did not want the reputation of being a 'snake'/'grass' etc.
- (iii) On 5th July 2023, the GP referred [S] to children's services following concerns raised by [S] that his mother had used physical force to manage his behaviours. The mother herself raised concerns about angry outbursts from [S].
- (iv) The SAFE assessment and the Child and Family Assessment record that the parents were struggling to manage [S]'s behaviour. Tensions were reported to be escalating to a level where the parents were using physical means to contain [S] when he was angry or upset. The mother reported that [S] often had angry outbursts when asked to follow rules around his internet use and when out in the community. The parents informed the SAFE worker that they struggled at times with [S]'s anger and that when he became upset he would swear, slam doors and become aggressive towards them. They also shared that they were worried about his friendship group and felt that he was being negatively influenced by them, which caused him to do things so that he would fit in with them. The assessment

also records that the parents worried when [S] did not return home on time and they were unable to contact him when he was out. It is plain from the parents' statements that this was distressing to both of them, particularly to the father. The school informed the SAFE worker that [S] does not always follow instructions and was recently in trouble for kicking another student under the desk. The school also further reported that [S] often seemed withdrawn, sullen and down. All this was noted as inconsistent with his usual behaviour.

- (v) The school raised concerns about incomplete homework on 6th October 2023, 13th October 2023, 26th January 2024 and 7th February 2024.
- (vi) On 17th November 2023, during a SAFE visit to the family home, the father reported that during the previous week [S] had punched him repeatedly in the arm because he did not want his father to take him to school.
- (vii) On 25th November 2023, the parents notified the police, at 11.04pm, when [S] did not return home and could not be contacted. This was entirely out of character for him. It is also important to note that he was, at that stage still only 12 years old. In this traditional, rather conservative Ghanaian household, as I find it to be, I have no doubt that would have been highly distressing to the parents.
- (viii) On 16th January 2024, during a SAFE visit, [S] reported that he sometimes felt pressured by his friends to do things he did not want to do. I accept this recording as accurate and consider it to be a moment of candour on S's behalf. He gave a somewhat oblique example of not liking to "*play fight*" because he gets "*nosebleeds*". As an illustration of the point he was making, i.e. his sense of peer pressure, the example he chooses has a degree of ambivalence. The Children Act

1989 requires the Court to assess a child's wishes and feelings, not just on the central issue in dispute but more generally when evaluating the evidence. In this exercise, 'wishes' and 'feelings' must not be conflated. A child's feelings are sometimes most eloquently articulated by what they do not say. I have a strong sense, having regard to the broader canvas of evidence that, in this conversation, S was signalling a degree of stress that he did not feel able fully to articulate.

- (ix) The above conversation forms a relevant evidential backdrop to an incident on 12th February 2024. On that date, [S] came home at around 10.30pm, with a swollen right eyebrow caused, he said, when he was punched in the face by a "friend of a friend". [S]'s own benign description of that incident in his statement jars strikingly with his earlier expressed dislike at "play fighting". I consider it more likely that this was a pattern (S having referred to it before) of relatively low level physical intimidation, which S plainly did not like.

"42. On 12th February 2024, me and my mates were going into Central London on the tube. We were joking around and doing a bit of rough play but nothing scary or serious at all. After a little bit of friendly joking around, a friend of a friend called [I] got up and hit me above my eye. He was a friend of [K] and [K] made him say sorry. [I] did apologise and we got on with the rest of our day. We were on the tube when this happened and that is the photographs my parents have."

- (x) On 13th February 2024, during a SAFE visit to the family home it is recorded that, when the parents began to outline their concerns (many of which centred around [S]'s friends and a mobile phone that his friend had given him) and behaviour that they had been struggling to manage, [S] *disagreed with almost anything they said and would often speak in a disrespectful way or scoff at them when they said something.*

- (xi) On 26th February 2024, the parents again notified the police, when one of [S]’s friends manipulated his social media to post a provocative message to gangs in the local area. The school recorded that [S] was reported to be concerned that, due to this being posted, he would suffer some repercussions by “*other kids at school*” and that he may be in danger. S did not attend school that day. S’s teacher and father tried to convince S to attend school and assured him that the school would protect him. S was adamant that he would not go. In his statement, F describes S as “*in pain and agony*” and “*bitterly crying*”. F reports that S said to him “*no Daddy, you don’t understand, these guys come with knives and guns to you after school to attack to ensure you are dead*”. F describes being “*extremely terrified*” for S’s safety. He states, “*I also cried with [S]*”. It is important to identify that S was told, purportedly by friends, that somebody had gained access to his TikTok account and had been forcefully derogatory towards two local gangs. S was apparently told some hours after it had happened and deleted it.
- (xii) According to the record in the school notes, S stated that he had “*given out his password previously to friends and believes he knows who may have done this but can’t be sure, he now has access to his account again and has changed passwords*”. This was said when S’s teacher, father, social worker and police were trying to reassure him. S is an intelligent young man who I consider would not casually give his password out to others. Most young people would not. S’s unwillingness to identify who had hacked his account, despite knowing to whom he had given his password, strikes me as reflecting the real anxiety he felt for his safety on this occasion. By 29th February 2024, S was noted to be “*his normal self again*” and notwithstanding the account that I am satisfied he gave to his father on 26th February 2024, was stating that “*the real reason he refused to come*

into school was not due to fear of repercussions from any of our pupils – but that he didn't want any of his peers speaking to him about what had happened". S clearly appeared to think that the storm had passed.

- (xiii) On 7th March 2024, the school investigated a concern about [S] having an expensive jacket, with the sales tag still attached, which he stated that he had got from a friend who he claimed could obtain clothes at a reduced rate. [S] told the school that this friend was a 'seller' and that he was a 're-seller'. The school recorded concerns about [S]'s social vulnerability and susceptibility to grooming, particularly considering his recent periods of truancy.
- (xiv) On 14th March 2024, a local authority referral records that the parents tended to struggle to pick their battles with [S] which has led to him being secretive and lying about where he is going and that there were some concerns around [S]'s activities outside of the family, including buying and selling clothes from unknown persons and being given a phone but declining to say who it is from.
- (xv) On 17th March 2024, [S] was out with friends until 1.30am and could not be contacted.
- (xvi) On 21st March 2024, the CF Parenting Service assessment recorded that:
- (a) [S] gets angry easily and will tell his parents not to say or do something to him, threatening that he will get angry if they do.
 - (b) After turning 13 years old in 2023, [S] started to become more aggressive.
 - (c) [S] has been known to lie to his parents and will sneak out of the home when the mother is asleep and the father is not home. He will also call and say he is at a particular place but his tracker will show another location.
 - (d) A Year 9 child is said to have given [S] an iPhone 11 and the parents were unable to install an app on it to control [S]'s usage. This is a relatively

expensive smartphone and the account given by S raises reasons for concern. The father had also seen a second phone in [S]’s possession. [S]’s subsequent account that both phones were bought by his parents is contradicted by the fact that he told children’s services that someone had given him a phone *as parents won’t allow him to have a phone past 7pm*. It is necessary to state that which is now obvious from the above, that S is frequently untruthful.

(e) [S] has started buying and selling clothing and designer clothing via Snapchat. His explanation is that they are bought cheap and then sold on. F is concerned that these may be stolen goods which he is involved in selling. The parents assert that S has also started wearing very expensive branded clothing, which the parents cannot afford, on a regular basis. This is to some extent corroborated by observations at school.

(f) This behaviour, cumulatively, reflects some features of grooming, noted in the NSPCC documents.

(xvii) On 28th March 2024, the school notified the parents that a student had alleged that [S] had been stealing phones which he was said to have been posting on social media ‘stories’ to sell. The school, from the recorded notes, appear to have been sceptical about the information they had received. However, the parents examined [S]’s phone messages with him and found very worrying Snapchat conversations between [S] and others. These conversations are written in a barely penetrable argot but it is clear that they relate to the theft of some “tech” (which may itself be slang for a mobile phone). S or “one of his boys” is being directly accused.

- (xviii) On 18th April 2024, the father wrote to the school to request a period of absence for [S] “*due to the kind of friends [S] has gotten himself into*”.
- (xix) On 8th July 2024, the Metropolitan Police Service (MPS) notified the school that [S] had asked a girl for an indecent image of her which he then shared with others. When informed by the school that the parents were concerned about influences [S] had become associated with, the officer expressed the view that the parents were correct to be concerned.
- (xx) On 17th August 2024, the parents found a kitchen knife hidden behind their living room window, which they believe had been put there by [S]. There has plainly been an attempt to conceal the knife in the garden. Additionally, F has seen a video of [S] and other youths waving knives in the air. There are also a number of photographs of knives on [S]’s phone, including a photograph of his friend with a knife and of knives in a school bag. All these are exhibited to F’s statements. [S] has agreed that the photograph is of his ‘friend’, [K]. It was [K]’s friend who is said to have punched [S] in February 2024. In his first statement, [S] describes [K] as “*like an older brother to me and seeming like a good guy...there’s nothing to be worried about*”. I am satisfied that all this corresponds closely with the factors identified by the NSPCC which indicate the potential for involvement in gangs.
- (xxi) On 27th August 2024, [S] shared his bank account details with an individual who he claims not to know, opening himself up to being the victim of fraudulent/ criminal activity. [S]’s own explanation for this, i.e. that the bank was querying transactions which he had made in Ghana – does not accord with the concern expressed by the bank that his account may have been used to *receive* fraudulent funds. Nor does it fit with the messages between S and the third party who

transferred £350 to [S]’s account in order for [S] to transfer half of that to another unidentified person on the basis that he could keep half for himself. S’s account is manifestly unreliable. The messages end with [S] asking the third party what he is going to do with the money, who responds *Dw* [don’t worry] *about it* to which [S] replies *Sn* [say nothing]. For the avoidance of doubt, I am satisfied, on the balance of probabilities, that this reflects criminal activity on S’s part.

28. I am satisfied that S was involved in criminal activity and in or on the periphery of gang culture. The facts as outlined above and the reasonable inferences to be drawn from them permit of no other sensible explanation. S’s case is that both his parents were making up stories to “*make themselves look good and making him look bad*”. This response, in my judgement, reflects S’s immaturity. As an explanation, it is entirely implausible. I note that S’s school have also noted that S struggles to take responsibility for his actions and when sanctioned at school for a misdemeanour, he would, in their judgement, “*spin a narrative about how he had been unfairly treated at home*”.
29. I have already referred to the conclusions of the s.37 Report. The Report was completed on 12th November 2024. S’s circumstances have changed in the way outlined, but the conclusions of the report require to be stated:

“In accordance with the evidence gathered within this report through engagement with [S] and the wider professional network, it is my professional judgement that [S] is not currently at risk or suffering from significant harm in the care of a wider family member in Ghana. I have also taken [S]’s views into consideration around him wanting to return to the UK as a matter of urgency. It is also believed that emotional harm or physical harm may be suffered by [S] at this time if he is to return to the UK. Therefore, for now I disagree with [S] wanting to return to the UK, but should this change in the future then I

recommend that [S] fully understands the impact of gang involvement. Furthermore, it is not necessary at this stage ... to issue Public Law proceedings as [S] will be in a boarding school which is structured and will meet his needs.

The reasons for so deciding are as follows:

[S]'s involvement with gangs has exposed him to significant harm. This has caused [F] and [M] to struggle to implement and maintain boundaries with him. [F] and [M] are worried that [S] might get killed, stabbed or imprisoned if he returns to the UK immediately. [F] and [M] found [S] a boarding school as a protective environment where he can thrive in and realise his full potential. I made a video call to have a picture of [S]'s current living arrangement. I observed that the accommodation was spacious, clean and tidy. [S] has his own bedroom, toilet and bathroom, and there was electricity power supply. The boarding school ... has an uninterrupted power supply and clean running tap water. This environment will meet his basic needs. It is in the best interests of [S] to remain in Ghana and attend the boarding school as he will have a fair chance of excelling in life, despite wanting to return to the UK as soon as possible.

Services or assistance the Local Authority has provided and intends to provide, for the child and the family.

N/A

Any other action the Local Authority has taken, or proposes to take, with respect to the child(ren).

The ... has completed a child and family assessment alongside this s37 court report, as this case was not open to ... children services at the time of this request. The outcome of the child and family assessment was for [S] to be on a CIN plan if he was in the UK. However, case will be closed if he stays in Ghana. I recommended through my professional viewpoint that [S] stays in Ghana and continue with his boarding school. Although it is important for [S] to be with his primary caregiver and siblings. However, when taking [S]'s wishes and feelings into consideration and his unpleasant experiences of being away from his family, it is in [S]'s best interest to prevent him from significant harm. Thus, returning to the UK as soon as possible will continue to expose him to gangs and significant harm. This has caused the tension between [S] and his parents. Therefore,

it is important that [S] is encouraged to stay in Ghana at this present time, as this keeps him away from a dangerous situation.

When the Local Authority proposes to review the case.

N/A

Recommendations:

- (i) As much as it is a good thing to be with a primary caregiver, it is my recommendation for [S] to stay in Ghana and continue with the boarding school which will serve as a protective environment that will prevent him from being exposed to significant harm.*
- (ii) [S] be closed to Children's Social Care if he stays in Ghana. The family have also advised that they do not wish to receive support from Children's Services if [S] stays in Ghana.*
- (iii) [F] or [M] to spend time with [S] when he is on holiday break.*
- (iv) Boarding school... to support with counselling on [S]'s past experiences of gang involvement and reassuring him that he is brilliant young person and has a brighter future ahead of him."*

30. In evidence, Mr D, the author of the s.37 Report remained clearly of the view that it is in S's best interests to remain in Ghana. S is not attending school, at present, but he has been engaging in remote learning which his father has arranged for him. Latterly, S has been expressing some concern about falling behind in his studies. F has identified alternative schools for S to attend. S has visited one with his father. F has plainly thought carefully about how best to encourage his son back into education. One of the schools that he has selected he regards as progressive and attuned to the British educational system. One particular issue that has arisen is S's desire to continue to have his hair braided. This might sound trivial, but it is not. This was something that F (and his brother in Ghana) was resistant to. I am told that traditionally, in Ghana, men do not

braid their hair. It is regarded as feminine and in conservative communities, may attract censure or provoke anger.

31. In the months between the two dates of this hearing, I have detected a change in attitude on F's part, in relation to his son's braiding. He has been able to accommodate it and accept it. He has also now seen other young men in Ghana sporting the same fashion. Part of F's resistance lay in the fact that he believed S had copied the style from a young man in London who he considered to be a bad influence. Both F and S agree that they have been getting on better recently. They speak frequently and during F's recent visit, there was a happy and spontaneous photograph of them both together with S, now much taller than his father, putting his arm around F's shoulder. Despite everything that has happened, it is obvious that there is a strong father and son relationship.
32. S's desire to return to the UK has not abated. Ms Fottrell is critical of the Section 37 Report, whose author she contends has "*sided with the parents*". Certainly, Mr D's analysis closely mirrors that of the parents, but it is, in my judgement, arrived at independently. I did not understand Ms Fottrell to be suggesting otherwise. However, I do consider the report focuses, heavily, on the appropriateness of the exercise of parental responsibility in the decision to remove S to Ghana. As I have explained in my outline of the legal framework, the decision here is wider than that and requires a broader analysis of S's best interests.
33. The concealment from S of the real purpose of the visit to Ghana is a breach of trust, even if justified on the facts. S is entitled to look for and expect truth, honesty and respect from his parents. Their actions jeopardised their son's happiness and emotional wellbeing. S has really only known life in London. To be tricked into an alien world and, as he will no doubt have perceived it, to be abandoned there, has been very

distressing for him. His communications with his father provide clear and almost palpable evidence of his distress. Though S has, determinedly, remained in the shadows of this hearing, it is important that he realises that I have been acutely conscious of his unhappiness. He should also know that his parents have not sought, at any point, to avoid or minimise their responsibility for this. Their actions were borne of desperation and fear. I have a strong sense that S recognises this, at some level. I also consider that there have been times when S has shared some of those fears.

34. I adjourned this case in November because there was no coherent plan to accommodate S's return. I considered it necessary for there to be a clear plan if I was going to be in a position fully to evaluate S's options. S's mother, for the reasons that I have referred to, remains implacable. She will not agree for her son to return to live with the family. The Local Authority does not consider that the criterion for intervention is met and, accordingly, has not identified a placement. On their analysis of risk, which I share, any placement would have to be outside London. Young men in the care system, separated from their families, frequently fare badly in such circumstances.
35. There is, in my judgement, every prospect that S might abscond and, in doing so, put himself at great risk. S's father recognises all this and, at this hearing, told me he would seek independent accommodation for himself and his son. It was not a plan that had been thought through, or in any way, prepared. F had not contemplated the fact that it would probably have to be away from London. This would jeopardise F's employment, the family's income, and the happiness of S's teenage sister, with whom S is close. Nor is any finance in place to fund such an arrangement. None of the options in the UK is attractive.

36. Ms Fottrell suggests that there should be a further adjournment for a second Section 37 Report which focuses on putting a plan together and revisits the welfare analysis. The Children Act 1989, Section 37 provides a jurisdictional bridge between private law proceedings under Part 2 of the Act, in which a local authority plays no part, and the public law provisions in Part 4. Section 37(1) gives the court power to direct the appropriate local authority to investigate the child's circumstances. The authority must consider whether they should apply for a care or supervision order under s.31 with respect to the child (s.31(2)). If the authority decides to make a s.31 application then that application will be a public family law application under CA 1989, Part 4 and the bridge from the earlier private law proceedings provided by s.37 will have been crossed. In *Re K (Children)* [2012] EWCA Civ 1549, the Court of Appeal considered the position where a local authority complies with a s.37 direction by undertaking an investigation but decides not to make an application under s.31 and purports to comply with s.37(3) by informing the court of their reasons, any services that are to be provided to the family and any other action that is to be taken. McFarlane LJ, as he then was, clarified the jurisdictional basis for making any public law order when ordering a Section 37 Report:

“25. A significant facet of the s 37 bridge is that where a court directs that a report is to be provided under s 37 a limited jurisdiction is established by s 38 under which, depending on the facts of the case, the court may make an interim care order or interim supervision order. If an interim care or supervision order is made the proceedings will, for the duration of that order, become 'specified proceedings' under CA 1989, s 41 and the court thereby has jurisdiction to appoint a children's guardian for the child.”

37. Section 38(4) limits the length of an interim care or supervision order to the earliest occurrence of several events. In the context of a s.37 direction, which as has been said, may not result in the Local Authority issuing a s.31 application, an interim order may be made by the Court, of its own motion, pursuant to s.38. The order will come to an end on the date when whichever of the following events first occurs:

(i) the disposal of an application for a care order or supervision order made by the authority with respect to the child;

(ii) in a case in which no direction has been given under section 37(4) and no application for a care order or supervision order has been made with respect to the child, the expiry of the period of eight weeks beginning with the date on which the order is made; and

(iii) in a case in which the court has given a direction under section 37(4) but no application for a care order or supervision order has been made with respect to the child, the expiry of the period fixed by that direction.

38. Ms Fottrell was suggesting that these public law orders would provide an effective legal framework to facilitate S's return. However, given that the objective of the Section 37 Report would be to identify cogent and realistic welfare options, any return prior to the conclusion of the report would, to my mind, be premature. As McFarlane LJ noted (*Re K* supra para. 32), it is necessary to "*bear very much in mind*" that the statutory framework of the Children Act 1989 firmly shifted the weight in favour of a Local Authority which, alone, has the power to issue a public law application under Section 31.

39. In *Re M (Intractable Contact Dispute: Interim Care Order)* [2003] EWHC 1024 (Fam), Wall J, as he then was, also emphasised the statutory structure:

“123. [The court] cannot require the local authority to take proceedings. The limit of [the court's power] is to direct the authority to undertake an investigation of the children's circumstances.”

40. There can be little doubt that the parents’ exercise of parental responsibility was lawful. Ms Foulkes submits that I should decide whether an interference with such lawful exercise can be justified. For the reasons discussed above and because I am exercising the inherent jurisdictional powers of the High Court, under wardship, I consider the investigation is broader than that. I must look at S's welfare interests in the round. In his most recent statement, S makes it clear that he does not wish to return to live with his mother at this point. Theirs is a complex relationship, currently under strain. In her closing observations, M told me how committed she is to her family. She said that if S were to come back to the UK, they “*might lose him forever*”. She emphasised that the decision to take him to Ghana was not to “*punish*” but to “*protect*” him. She said that if he stays there and these negative influences in his life fade away, she will be able to protect him in the future. She believes S is happier in Ghana than he was or concedes, and that she and F are doing their best to help him there. She contrasted the stark options of S being unhappy with losing him altogether. She told me that when life is lost, you cannot get it back.
41. S going home to his family is simply not an option. Though S has expressed a willingness to go into foster care, if that was the only way he could return to the UK, he has little understanding of what is involved in that option. I have no doubt that S’s

legal team have explained some of the realities of the care system to S, and in detail, but I share the school and parents' concerns about the maturity of some of S's decision taking. From his comfortable and protected background, it will, inevitably, be difficult for him to absorb what Ms Foulkes describes as "*the reality of becoming a child in care and all of the associated outcomes for such children, together with the risk... of resuming his earlier associations and increasing his risk taking behaviours*". F's third suggestion of finding alternative accommodation for him and S struck me as an instinctive, loving and emotional response. It was however, entirely lacking in any planning or resources.

42. There can be no doubt that S's move to Ghana has been a big cultural shock to him, one which was unexpected and for which he was unprepared. Life for him there is very different, he baulks at some of its inconveniences, especially the power outages. However, it is also important to remember that Ghana is an important facet of S's own cultural identity. His extended family in Ghana have gone to great lengths to claim him as their own and to help him to settle in whatever way they can. For reasons that strike me as entirely understandable, S may not always have been gracious in acknowledging the help he has received. S's experiences in Ghana will generate in him a greater understanding of his own identity and that of his family. As is clear from my analysis of the evidence above, I consider that S is at real risk of suffering greater harm in returning to the UK than if he were to remain in Ghana. I recognise that this is, in many ways, both a sobering and rather depressing conclusion.
43. What S requires, at present, is the support and love of his family whilst he navigates the challenges of adolescence. Though it is perhaps counterintuitive, I consider that he is best placed to receive and absorb this support whilst living in Ghana. He has regular

contact with his father and family, not only by video contact, but by visits too. S has educational opportunities that he can choose to take up and expand. He is away from, what I consider are, the malign influences of the young men he has surrounded himself with. His extended family are able to support him and promote his security, alongside his parents.

44. Though I deprecate the parents' deception in getting S to Ghana, I have no doubt that he would not have gone willingly. I recognise that they felt that they had no choice and that the greater risk of harm would be for him to remain in the United Kingdom. The decision falls within what I regard as the generous ambit of parental decision taking, in which the State has no dominion. Accordingly, though the parents require no encomium from me, I hope it is of some comfort to them that, having heard all the evidence, I share their view of where their son's best interests lie. The observations of Lord Templeman (see para. 17 above) remain apposite, some 37 years later.