



Neutral Citation Number: [2022] EWHC 1722 (Fam)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/07/2022

**Before:**

**MRS JUSTICE KNOWLES**

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**Re P (Inherent Jurisdiction Return: Allegations of Female Genital Mutilation and  
Domestic Abuse: Fact Finding)**  
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**Mr Christopher Hames QC and Miss Charlotte Baker** for the father  
**Miss Allison Munroe QC and Dr Charlotte Proudman** for the mother  
**Mr Michael Edwards** for the child by her children's Guardian

Hearing dates: 14-16 March, 18 March, 21-24 March, 5 April, 20-23 June 2022  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on Wednesday 8 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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.

**Mrs Justice Knowles:**

Publication

1. It is likely that this judgment will be published at some suitable point in the litigation, albeit in an anonymised form. I have therefore made limited reference to features of the parties' lives which might otherwise tend to identify them. Normally, I would not have identified the parties' nationality but this is an integral aspect of the case, the omission of which would render any judgment incapable of being understood.

Introduction

2. I am concerned with a little girl who I shall refer to by the initial "P"; this is not the first letter of her name. She is just over 6 years old and presently lives with her mother in this jurisdiction. She is the only child of the Applicant ("the father") and the Respondent ("the mother"). P is represented in these proceedings by her children's guardian. Both P and her parents are nationals of Nigeria. The father lives in Nigeria and was granted a visa to enter this jurisdiction in order to participate in the hearing and to see P.
3. The application before the court made by the father is for P's summary return to Nigeria under the inherent jurisdiction. It is opposed by the mother. The position of the children's guardian is dependent crucially on the findings of fact which I make in this judgment. Those findings of fact will inform my assessment of the risks to P should she be summarily returned to Nigeria in accordance with her best interests.
4. It is important to note that, although this court is entitled to make an order for P's summary return to Nigeria, it is not permitted to implement such an order until the conclusion of the mother's appeals against the decisions of the Secretary of State for the Home Department to refuse applications for asylum which the mother has made for herself and P. The final determination of the mother's appeals was listed before the First-Tier Tribunal of the Immigration and Asylum Chamber on 17 May 2022, but this had to be adjourned following developments during this hearing. A new hearing before the First-Tier Tribunal has been listed on 28 September 2022.
5. This case stems from a fundamental dispute between P's parents about the nature of their relationship and the circumstances in which P both travelled to this jurisdiction with her mother in December 2019 and came to remain here. On the father's case, this was a flagrant, pre-planned and clandestine abduction by the mother in an attempt to excise him from P's life. On the mother's, this was a holiday which the father knew about and endorsed. Following a conversation with the father on 4 January 2020, the mother decided not to return to Nigeria because of threats the father purportedly made to have female genital mutilation ("FGM") performed on P immediately after she returned to Nigeria.
6. I have read all the material in the court bundles and listened to evidence from the father, the paternal aunt, the paternal grandmother, the mother, her maternal uncle, her sister and a family friend. I also heard expert evidence on matters pertaining to FGM in Nigeria from Dr Adimula, Professor Bradley, Mr Zadeh, and Mr Ukwa. Miss Briggs gave evidence to me about the authenticity of the father's signature on the letter of consent used by the mother in November 2019 to apply for a visitor's visa for

herself and P to travel to the UK. I also heard evidence from the children's Guardian. I am grateful to the advocates for their assistance and co-operation with each other.

7. I reserved judgment to reflect on all the evidence. This judgment is lengthy and would have been even longer had I listed all the evidence and submissions I heard. I have, of course, taken all the evidence and submissions into account in reaching my decision. A schedule of the findings I have made is attached to this judgment.

#### Preliminary Case Management

8. The father issued proceedings for P's return on 6 July 2020, over five months after P arrived in this jurisdiction. The first hearing after the mother and P were located took place on 30 July 2020 when it became apparent that the mother had made a claim for asylum for herself and P on the grounds that P was at risk of FGM if she returned to Nigeria. Preliminary directions for statements from each parent were given and information was sought from the Home Office. Interim contact of about 20 minutes' duration between P and the father was ordered for 6pm every Monday, Wednesday and Saturday. After the handing down of the decision of the Court of Appeal in Re G (A Child: Child Abduction) [2020] EWCA Civ 1185, this matter returned to court for further directions. On 21 September 2020, P was made a party to the proceedings and disclosure of information relating to the mother's asylum application was sought from the Secretary of State for the Home Department.
9. On 12 October 2020, Williams J listed a final hearing on 25 January 2021 for five days and gave permission to instruct Dr Adimula, an expert in Nigerian law, to provide an expert opinion on the law relating to FGM and any available protective measures in the event that a return order was made. On 24 November 2020, the mother's solicitors filed and served a Part 25 application to instruct another expert, John Abdullah-Zadeh, an independent social worker, to report on P's welfare in the event she returned to Nigeria. Keehan J gave permission to instruct Mr Zadeh at a hearing on 26 November 2020, maintaining the date of the final hearing in January 2021.
10. At the pre-hearing review on 11 January 2021, Mr Richard Harrison QC, sitting as a Deputy High Court judge, vacated the final hearing because of the implications for these proceedings of the appeal to the Supreme Court in the case of G v G [2021] UKSC 9. It was anticipated that the final hearing would take place on the first available date after 30 April 2021 when it was envisaged that the decision of the Supreme Court would be available. Eventually, the matter was listed for a final hearing commencing on 10 May 2021 before Russell J, but it did not proceed as listed. On that date, Russell J approved the instruction of Professor Tamsin Bradley together with a suitably qualified Nigerian expert proposed by Professor Bradley to provide expert reports on the prevalence of FGM in Nigeria and the risk of FGM to P. The final hearing was relisted before Russell J on 31 August 2021 for five days. On 8 June 2021, the mother's solicitors received confirmation that the mother's asylum claim had been refused and that, as a dependent of her mother, P's claim had also been refused. P's claim in her own right was also refused.
11. Regrettably, further delay ensued because Professor Bradley was unable to propose details of a suitably qualified Nigerian expert to conduct face to face interviews with the father and his family on the issue of FGM. Eventually, on 24 August 2021, Mr

Ukwa was approved to do so and the mother was separately interviewed by Ms Nkwunonwo, she being a researcher well known to Professor Bradley. The father's application to adjourn the final hearing on the basis that interviews with the father and his family would not have taken place in time for a hearing on 31 August 2021 was granted and Lieven J allocated the case to me since I am one of a small number of judges in the Family Division to whom applications for return orders with a linked asylum claim should be allocated.

12. On 28 September 2021, I listed this matter for an 8 day final hearing commencing on 14 March 2022 and gave further directions to bring this matter to trial-readiness, including the filing of a documents by each party setting out the findings each sought against the other, cross-referenced to the bundle. It was surprising that such case management documents had not been previously directed. I conducted a further case management hearing on 15 December 2021 during which I scrutinised the documents setting out the parties' allegations. That process confirmed the need for the mother to clarify certain aspects of her case, including her allegations about the father's controlling behaviour. Further directions hearings were held on 20 January and 25 February 2022, inter alia, to obtain information from the Secretary of State for the Home Department and to make participation directions for the mother, the mother being a vulnerable witness within the ambit of Rule 3A.2A and of Practice Direction 3AA of the Family Procedure Rules 2010 by reason of the allegations she made of domestic abuse.

### Summary of Background

13. In this section of my judgment I have summarised the background to the proceedings, much of which is in dispute between the parties. I have identified where there is a conflict on the written/oral evidence and, if I have made findings, I have done so in accordance with the legal framework set out later in this judgment.
14. The father is 42 years old and was born in Lagos, Nigeria. He is Yoruba. His parents have both lived in Lagos since the 1970s. His father was an engineer by profession and his mother was a school principal. His paternal family come from Osun State but his mother is from Oyo State. Neither of the paternal grandparents bear tribal marks. The father's elder brother and sister-in-law are both doctors, living and working in this jurisdiction. His younger sister is an engineer and lives in Lagos. Neither she nor her children have, on the information available to me, been subjected to FGM. The father attended school and university in Lagos and has two degrees. He is presently studying for professional accountancy qualifications and lives with his parents.
15. The mother was also born in Lagos. She is 33 years old and also Yoruba. She has a university degree and also studied in this jurisdiction between 2012-2014, obtaining a masters' degree. Her own mother has lived in London since 2004. From 2004 onwards, the mother and her two younger siblings lived with their maternal grandmother who seems to have been their primary carer. The mother's younger sister is studying in the UK as is her younger brother.
16. The mother and father met in March 2015 in the building where their respective employers had their offices. The relationship developed quickly and they married in a civil ceremony in July 2015. The mother was pregnant but miscarried later in the summer. In September 2015, they had a traditional ceremony of marriage and the

mother moved into the father's apartment. At about the time that the mother became pregnant with P, the father began to have sexual relationships with other women and his infidelity continued at least, on his own admission, until 2018. Though the mother was suspicious about his frequent absences from the family home, she did not confront him about his behaviour until after P's birth. A pattern began whereby, from time to time, the mother would confront the father and he would either deny or admit an affair.

17. P was born in 2016 by Caesarean delivery after an extremely difficult labour. For about three weeks after P's birth, the mother and P lived with the paternal grandparents as was customary. The mother claimed that the father was upset when a pre-natal scan showed the mother would give birth to a girl and she alleged that the father insisted that P should be dressed in male clothing. In contrast, the father said he was delighted when P was born. He said that P was often dressed in gender-neutral clothing which often matched what her mother was wearing. P was christened at her paternal grandparents' home when she was about a week old. The mother alleged that the father forced her to agree to a change in P's first name on the eve of her christening, a matter which the father denied.
18. Prior to P's birth, the mother complained of being isolated from her family and controlled by the father. She said he would not allow her to use her phone while breast-feeding and denied her any freedom, requiring her to ask his permission to visit her own family. On one occasion in 2018, she visited her family without seeking his permission and alleged that, in consequence, the father "*trashed*" the kitchen in the apartment they shared, saying that the home would not be a mess if the mother did her duty as a wife. She said he told her that she must remain at home to be a dutiful wife. The father denied all these allegations.
19. At the end of 2016, the mother suggested that the family should travel to this jurisdiction to visit relatives. At the time, the father had a valid UK visa but work commitments prevented him accompanying the mother and P. He provided full written consent for the mother and P to visit the UK and purchased their flights. The mother and P left on 14 December 2016 with return flights booked on 29 December 2016. In fact, the mother did not return to Nigeria until mid-January 2017, citing the need to help her mother and to await an outstanding order for spectacles. The father agreed to the delay in her and P's return.
20. The mother made one allegation of physical assault by the father. This allegedly took place in January 2017, shortly after her return from the UK. I will deal with this allegation later in the judgment.
21. In May 2017, the father resigned from his employment. He said that he wished to re-balance work and family life, concentrating on acquiring a universally recognised accountancy qualification and on other entrepreneurial pursuits. The father asserted that he remained the main breadwinner and met the family's financial needs from various employments, business pursuits, savings and asset sales. In contrast, the mother suggested that the father resigned because he could not cope with work stress and he wanted her to become the main breadwinner. In September 2018, the mother obtained part-time employment and was then able to contribute financially. After he gave up his employment, the mother alleged that the father became frustrated and angry about the lack of money and was aggressive to her, pushing her and telling her

to get out of his sight. She said that he left the family home overnight on numerous occasions. The father denied the mother's allegations and suggested that the mother often left the family home to stay with relatives. The father also accused the mother of having an extra-marital affair which she denied. In fact, the father himself continued to have extra-marital affairs with a number of different women. The mother knew about these relationships which were a source of additional conflict between the couple. Despite evident difficulties in their relationship, the mother said that she was getting on better with the father in the latter part of 2019. She sent the father a fulsome and loving message on his birthday, expressing pride at being his wife and the mother of his child.

22. P attended a creche and afterschool club from early 2018. In September 2018, she went to a pre-school when the mother returned to employment. Both parties disputed who was responsible for taking and collecting P from school. The father said he dropped P off and then took the mother to work every day and, from time to time, would also collect P at the end of the school day. The mother disputed this and produced copies of the school register to support her account that she alone was responsible for taking P to pre-school and collecting her. The father believed that the school had connived with the mother and in 2020 made a formal complaint about their involvement. Additionally, the parents disagreed about P's medication, the mother claiming that she was not able to give P medication without the father's permission. The father denied this, but he accepted expressing some anxiety about the mother giving P traditional remedies advocated by her family.
23. In October 2019, the father asserted that the mother suggested another trip to the UK. He said she tried to persuade him that they should relocate permanently to the UK and work illicitly in the maternal grandmother's cleaning business until such time as they could apply for a residency permit because, after a period of time, the mother said P would be deemed to be British. Alternatively, the father could remain in Nigeria and join the mother and P in due course. The father opposed the plan because he did not wish to live separately and did not want to live illegally in this jurisdiction. He then alleged that the mother suggested they could claim asylum as part of the relocation plan. The mother strongly denied these allegations.
24. Home Office records showed that, on 15 November 2019, the mother applied to the British High Commission for a tourist visa to visit friends and go shopping. In her visa application, the mother said she would travel to the UK on 23 December 2019 and return on 3 January 2020. In support of that application, she provided a letter of consent signed by the father, together with a copy of the identity data page from his passport. As I explain later, the authenticity of this document came to be in issue.
25. On 23 December 2019, the mother began her Christmas leave from work. The mother's younger sister visited the family home on Christmas Day. On Boxing Day, the mother and the father took P to an amusement park though the father noticed the mother seemed to be pre-occupied. According to the father, there was a plan for the family to visit the paternal grandparents on 28 December 2019 as part of their Christmas celebrations. The mother disputed the existence of such a plan. On 27 December 2019, the father said that the mother told him she wanted to go with P to her office to collect a Christmas gift and then to visit her sister. Later in the afternoon, the mother phoned to say that she could not find an Uber ride home. Later still, the father called her to find out where she was and the mother explained she had decided

to spend the night at her sister's home. She said that her sister's husband would then drive her and P home in the morning. During this telephone conversation, the father spoke to P and asked her what she was doing. The mother interrupted to tell P to say that she was playing with a cousin. Subsequently, the father attempted to telephone the mother but her phone was switched off. It was common ground that the father did not accompany the mother and P to the airport and that the mother and P were at the airport in Lagos when the father spoke to P that day. However, the mother maintained that the father's account of events on 27 December 2019 was a fabrication. She said that he knew she was travelling to the UK and that her sister took her to the airport because of problems with the father's car.

26. On 28 December 2019, the mother phoned the father from Heathrow airport to announce that she had arrived in the UK with P. The father said she told him that she had gone to find a better life in the UK. He told her he had not agreed to P's removal and called on her to return P to Nigeria immediately. In contrast, the mother stated that she telephoned the father to tell him that she had arrived safely and that he was happy with that news.
27. Immediately after that telephone call, the father said that he called the mother's sister's husband (now sadly deceased) who denied any knowledge of the mother's travel plans. The father then drove to the paternal grandparents' home and they tried to assist by calling the maternal grandmother. Presciently, that telephone call was recorded and a transcript was available. The paternal grandparents told the maternal grandmother that the family was supposed to be visiting them that day, but the mother had called the father to tell him that she had relocated to the UK. The maternal grandmother was surprised and said she understood the mother and P to be on holiday in the UK with the father's knowledge. She said that she would speak to the mother and call the paternal grandparents back. On 29 December 2019, having had no further contact from the maternal grandmother, the paternal grandparents spoke to the maternal grandmother once more in a recorded telephone conversation which was transcribed. Contrary to what had been said the day before, the maternal grandmother confirmed that it was the mother's intention to relocate to the UK. The maternal grandmother understood this was a joint decision and that the father would join the mother in due course. The paternal grandparents made clear that this was not the case. Later that same evening, the father spoke to the maternal grandmother in a telephone conversation which was recorded and transcribed. The maternal grandmother maintained that the mother had told her that the father agreed to her relocating to the UK. The father managed to speak briefly with P during this conversation.
28. During a phone conversation on 4 January 2020, the mother claimed that the father told her that he had already made arrangements for P to be subjected to FGM upon her return to Nigeria on 8 January 2020. The mother said that she pleaded with the father for this not to be done but his response was that it had been dragging on for too long; it had to be done before P was five years old; and all the arrangements had been made. The mother said the father demanded to speak to P, was aggressive and yelling, and said inappropriate things which upset P. He said that all women were dirty whores and P would not be one of them. Until that conversation, the mother stated that she intended to return to Nigeria but was now terrified of returning for fear of what would happen to P. The father vehemently denied the words attributed to him and accused the mother of fabricating the entire conversation as an "*after the event*"

and concocted explanation for P's abduction. No telephone records confirmed a call between the mother and the father on 4 January 2020.

29. According to the mother, this was not the first occasion that the father had threatened to perform FGM on P. In April 2019, when P was three years old, the father had allegedly threatened to take her to his home village so that the elders of that community might perform an FGM ceremony. The mother said that the father told her if she did not attend, she was a disgrace to his family and community. He asserted that the earlier FGM was performed, the less painful it became. When the mother objected, she said that the father became aggressive and responded by telling her that she should not forget that, in Yoruba land, the man owns the child and that she did not have a say. The mother said that she hoped the father would change his mind and that she loved him and would stay with him. Again, the father denied that he had ever threatened P with FGM or made any arrangements for her to be cut and he asserted that the mother's account was a complete fabrication.
30. In 2020, shortly before P's birthday, the father contacted an old friend of the mother to ask her to intercede on his behalf so as to enable him to wish P happy birthday. The day before P's birthday, the father sent the mother an email but received no response. On P's birthday, the father sent a birthday message to the mother's phone and tried to ring her. He was connected to P on Instagram and spoke to P for the first time in several months. He said that when P saw him, she cried because she missed him. However, the mother said that it was the father's inappropriate comments to P which made her cry. He called the mother a "*bad mother*" and said that she must return to Nigeria immediately.

### Legal Framework

#### *The Inherent Jurisdiction*

31. The leading authority remains the decision of the House of Lords in Re J (A Child) (Custody Rights: Jurisdiction) [2006] 1 AC 80. The following principles can be gleaned from the judgment of Baroness Hale:
  - a. The court has a statutory duty to regard the welfare of the child as its paramount consideration; the focus has to be on the individual child in the particular circumstances of the case there should be no assumptions about what is best for an individual child; and reference should be made to the welfare checklist in s1(3) of the Children Act 1989;
  - b. There is no warrant to extend the principles of the Hague Convention 1980;
  - c. "*Thirdly, however the court does have power, in accordance with the welfare principle to order the immediate return of the child to a foreign jurisdiction without conducting a full investigation of the merits*" [paragraph 26];
  - d. "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 dispute about his future to be decided there. A case against his doing so has to be made" [paragraph 32];



- e. Rather than focusing on the technical concept of habitual residence, the court should ask itself: what is the child's 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 evaluation; and
  - f. The period of time spent in each country is also a relevant factor.
32. In In the Matter of NY (A Child) [2019] UKSC 49 at paragraph 49, Lord Wilson commended the use of the welfare checklist, although it is not expressly applicable to making orders under the inherent jurisdiction:
- “...their utility in any analysis of a child welfare has been recognised for nearly 30 years. In its determination of an application under the inherent jurisdiction governed by consideration of a child's welfare, the court is likely to find it appropriate to consider the first six aspects of welfare specified in section 1(3)... and, if it is considering whether to make a summary order, it will initially examine whether, in order to sufficiently to identify what the child's welfare requires, it should conduct an inquiry and, if so, how extensive that enquiry should be”.*
33. In paragraphs 56-63 of In the Matter of NY (A Child), Lord Wilson set out a number of matters which the court should consider before exercising its inherent jurisdiction to return a child to a foreign state. The relevant matters are as follows:
- A. Whether the evidence before the court was sufficiently up-to-date to enable the court to make a summary order;
  - B. Whether the court could make findings sufficient to justify the summary order;
  - C. Whether, in order to sufficiently identify what the child's welfare required for the purposes of a summary order, an enquiry 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 enquiry should be;
  - D. Whether, in the light of Practice Direction 12J, an enquiry should be conducted into the disputed allegations made by the mother of domestic abuse and, if so, how extensive that enquiry should be;
  - E. Whether, without identification in evidence of any arrangements for the child in the country to which return was proposed, in particular of where the child and the mother should live, it would be appropriate to conclude that the child's welfare required a return to that country;
  - F. Whether, in the light of the matters identified above, the court should hear oral evidence and, if so, upon what aspects and to what extent;
  - G. Whether a Cafcass officer should be directed to prepare a report and, if so, upon what aspects and to what extent; and
  - H. Whether a comparison between the powers of the court and the powers of the court in the country to which return was proposed was necessary to reach a speedy resolution of the substantive issues between the parents in relation to the child and

for the court to satisfy itself that the court in the country of return had the power to authorise the mother to relocate back to the country of return.

### *Female Genital Mutilation*

34. The harm caused by FGM is profound and life-long. In Fornah v Secretary of State for the Home Department [2006] UKHL 46; [2007] 1 AC412, Baroness Hale observed the following in respect of FGM [paragraph 94]:

*“... the procedure will almost inevitably amount to either torture or to other cruel, inhuman or degrading treatment within the meaning, not only of article 3 of the European Convention on Human Rights, but also of article 1 or 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 7 of the International Covenant on Civil and Political Rights, and article 37(a) of the Convention on the Rights of the Child.”*

In the same case, Lord Bingham said at paragraph 8:

*“FGM has been condemned as cruel, discriminatory and degrading by a long series of international instruments, declarations, resolutions, pronouncements and recommendations... Therefore, those cultural practices that involve “severe pain and suffering” for the woman or the girl child, those that do not respect the physical integrity of the female body, must receive maximum international scrutiny and agitation. It is imperative that practices such as female genital mutilation, honour killings, Sati or any other form of cultural practice that brutalises the female body receive international attention, and international leverage should be used to ensure that these practices are curtailed and eliminated as quickly as possible.”*

35. Key to the welfare determination the court is required to make as part of this hearing was the extent of the risk of FGM to P were she to return to Nigeria. In Re X (Female Genital Mutilation Protection Order No.2) [2019] EWHC 1990, Cobb J gave guidance on analysing the risk of FGM by reference to the contextual “macro” factors (i.e. prevalence, societal expectation, effectiveness of local laws) together with associated safeguards, and the individual “micro” factors and safeguards pertaining to the facts of the particular case and child. These factors, set out in paragraph 91, are listed as follows:

### **Contextual considerations/Macro factors**

- a. What is the prevalence of FGM in the country to which it is proposed that the child will be taken?
- b. What are the societal expectations of FGM in the country?
- c. If known, what is the prevalence of FGM in the specific region of the country to which it is proposed that the child will be taken?
- d. Is FGM illegal in the country to which it is proposed that the child will be taken?

- e. If illegal, how effective are the authorities in the country in question in enforcing the prohibition on FGM?
- f. Given the extraterritorial reach of the 2003 Act, and the fact that the act of carrying out FGM (and aiding and abetting, counselling or procuring the act) is a crime punishable on indictment to imprisonment not exceeding 14 years, is there an extradition treaty between the UK and the country to which the child will be taken in the event that there is evidence of a breach of the order?
- g. What formal safeguards are available in the country to which it is proposed to take the child to mitigate the risks (access to local tourist police, FCO representatives/consular assistance, NGO workers)?
- h. At what age are girls commonly cut in the country to which it is proposed that the child will be taken? (how does this compare with the age of the subject child?)

**Individual considerations/Micro factors**

- i. Is there a history of FGM in the child's wider family, or in the family to which the child will be exposed abroad?
  - j. If so, on which generation or generations of women has this been perpetrated? Specifically, what is the position in relation to the younger generation(s)?
  - k. What are the attitudes of the mother and/or father to FGM generally, and/or in relation to their daughter?
  - l. Is FGM/circumcision regarded as a woman's issue or a man's issue within the family? Where is the power balance in the family?
  - m. What are the attitudes of the wider family to female circumcision generally, and/or in relation to the subject child?
  - n. What safeguards can the family themselves devise and imposed to mitigate the risk?
  - o. How well have a family cooperated with the authorities?
  - p. What is the professional assessment of family relationships and of the capabilities of the parents?
  - q. Are there any other special features of the case which make FGM more or less likely?
36. In this case, the Secretary of State for the Home Department has refused the mother's and the child's asylum applications based on a fear of FGM if they were to return to Nigeria. In A (A Child: Female Genital Mutilation: Asylum) [2019] EWHC 2475, the President gave guidance on how the family court should approach cases of FGM where the risk had been previously assessed by both the Secretary of State and the First-Tier Tribunal. He rejected a submission that the First-Tier Tribunal's assessment of risk should be the starting point or default position for the family court and that the court should only deviate from that assessment if there was good reason to do so. The approach to risk assessment in a family case was a different exercise from that

undertaken in the context of immigration and asylum. Though the family court would take account of any risk assessment by the First-Tier Tribunal, the exercise undertaken by a tribunal was not a comparable process with that required in the family court. The family court had a duty to form its own assessment, unencumbered by having to afford priority or precedence to the outcome of a similarly labelled, but materially different, process in the immigration jurisdiction (paragraph 56). The President's decision was upheld by the Court of Appeal in Re A (A Child) (Rev 1) [2020] EWCA Civ 731. The reasoning set out in Re A is equally applicable to the determination of risk by the Secretary of State alone.

37. In this case, the risk of FGM does not arise on the simple return of P to Nigeria but on whether the mothers allegations about the father and the paternal family are found proved which is a question of credibility. In that regard, Lieven J stated in AB v AN & Anor [2020] EWHC 2048 (Fam) [paragraph 34]:

*“In contrast, the present case turns on the credibility of the Applicant. She has not suggested that FGM is so prevalent in Nigeria or in southern Nigeria/Lagos where she was living that it is the simple return to Nigeria which poses the risk. Her case is that the risk is posed by the Father’s family as set out in the emails I have referred to above. That is a matter of assessing the evidence that she has produced and her oral evidence. If the court accepts her evidence then the order may well be made, if her evidence is not accepted then the child has no separate interest or case to be advanced. Dr Proudman argued that it is important that the child is not disadvantaged by the taint that exists on the Applicant’s credibility. However, on the facts of this case, the Applicant’s credibility is central to the existence or otherwise of the risk. In that sense it is different from Re A where there was strong reason to believe the risk existed quite independently of the credibility of the mother. It is clear in the light of the Suffolk County Council case that in assessing the Applicant’s credibility the Family Court must consider the matter for itself and not simply adopt or follow the view of the FTT. For the avoidance of doubt, I make absolutely clear that the Family Court must address the Applicant’s credibility wholly independently from the findings of the FTT.”*

### *Fact Finding Hearings*

38. I have considered the allegations of domestic abuse in this case by reference to the definitions contained in paragraphs 2A and 3 of Practice Direction 12J of the Family Procedure Rules 2010, recently amended in consequence of the enactment of the Domestic Abuse Act 2021. Of particular importance in the context of this case are the definitions of coercive behaviour and controlling behaviour contained in paragraph 3. Coercive behaviour “means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim” and controlling behaviour “means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour”.
39. In paragraph 26 of Re B-B (Domestic Abuse: Fact-Finding) [2022] EWHC 108 (Fam), Cobb J admirably distilled the principles governing the court’s determination in a fact-finding exercise. I have applied those principles in coming to my decision and set them out as follows:

*“i) The burden of proof lies, throughout, with the person making the allegation. In this case, both the mother and the father make allegations (in some respects overlapping) against each other on which they seek adjudications;*

*ii) In private law cases, the court needs to be vigilant to the possibility that one or other parent may be seeking to gain an advantage in the battle against the other. This does not mean that allegations are false, but it does increase the risk of misinterpretation, exaggeration, or fabrication;*

*iii) It is not for either parent to prove a negative; there is no ‘pseudo-burden’ on either to establish the probability of explanations for matters which raise suspicion;*

*iv) The standard of proof is the civil standard – the balance of probabilities. The law operates a binary system, so if a fact is shown to be more likely than not to have happened, then it happened, and if it is shown not to cross that threshold, then it is treated as not having happened; this principle must be applied, it is reasonably said, with ‘common sense’;*

*v) Sometimes the burden of proof will come to the judge's rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But, generally speaking, a judge ought to be able to make up his/her mind where the truth lies without needing to rely upon the burden of proof;*

*vi) The court can have regard to the inherent probabilities of events or occurrences; the more serious or improbable the allegation the greater the need for evidential ‘cogency’;*

*vii) Findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation; it is for the party seeking to prove the allegation to “adduce proper evidence of what it seeks to prove”;*

*viii) The court must consider and take into account all the evidence available. My role here is to survey the evidence on a wide canvas, considering each piece of evidence in the context of all the other evidence. I must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the person making the allegation has been made out to the appropriate standard of proof;*

*ix) The evidence of the parties themselves is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability;*

*x) It is, of course, not uncommon for witnesses to tell lies in the course of a fact-finding investigation and a court hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. I am conscious that the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see*

*R v Lucas [1981] QB 720*); I have borne firmly in mind what Lord Lane CJ said in *Lucas*, namely that:

*“To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.”*

*xi) That my function in resolving disputes of fact in the family court is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal made clear in Re R [2018] EWCA Civ 198:*

*“The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established” ([62] Re R).*

*A point which I myself considered in F v M [2019] EWHC 3177, in a judgment which was referenced with approval in Re H-N (see §69/70).*

*xii) At all times, I must follow the principles and guidance at PD 12J of the Family Procedure Rules 2010.”*

40. When assessing the allegations of domestic abuse, I have endeavoured not to make stereotypical assumptions about how alleged victims of domestic abuse tell their story and present to others and, indeed, in a courtroom. My focus was on listening very carefully to the contents of the mother's evidence and cross-checking her evidence against that from other sources rather than allowing myself to be influenced by generalised assumptions about her behaviour. That approach is not novel and accords with the Court of Appeal decision in SS (Sri Lanka), R (On the Application Of) v The Secretary of State for the Home Department [2018] EWCA Civ 1391. In paragraph 41, the Court of Appeal stated as follows:

*“Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.”*

41. I have also reminded myself of the comments of Peter Jackson LJ in paragraph 61 of Re L (Relocation: Second Appeal) [2019] EWCA Civ 2121, cited with approval in Re H-N [2021] EWCA Civ 448, to the general effect that:

*“... not all directive, assertive, stubborn, or selfish behaviour, will be ‘abuse’ in the context of proceedings concerning the welfare of a child; much will turn on the intention of the perpetrator of the alleged abuse and on the harmful impact of the behaviour.”*

### The Allegations

42. Pursuant to my directions, both parents prepared lists of the findings they sought.
43. The father’s case was straightforward and stark: he alleged that the mother removed P from Nigeria without his knowledge and consent and thereafter, obstructed P’s relationship with him and then concocted allegations of FGM as a device to prevent P from returning to Nigeria. He denied the mother’s allegations of domestic abuse, including controlling behaviour, and invited me to make positive findings that the mother had concocted various incidents with a view to impeding his relationship with P and to frustrating her return.
44. The mother’s case was the polar opposite. She maintained that the father knew and consented to the trip to the UK in December 2019, and she only decided to stay here when the father made clear to her his plans for P to be subjected to FGM upon her return to Nigeria. The mother accepted there was a period of time when P had limited contact with her father, but relied on having promoted and facilitated contact throughout these proceedings in defence to his overarching allegation that she had obstructed P’s relationship with him. It was common ground that, for the first seven months of 2020 prior to the intervention of the court, the father was only permitted to speak to P on two occasions.
45. The mother sought findings about abusive behaviour perpetrated by the father. Those findings can be grouped into three broad categories of allegations, each containing a number of examples.
46. Firstly, the father had expressed the intention of subjecting P to FGM on a number of occasions. The rationale for FGM was so that P could control her sexual urges when she was older, the father’s belief being that the mother could not control her sexual urges because she had not been cut as a child. The mother had told the father on numerous occasions that she objected to FGM but the father’s response was “*who is going to stop me?*”. Specifically, on 4 January 2020, the father told the mother that he would show her “*who the man is*” and that he would perform FGM on P.
47. Secondly, the father and the paternal family had subjected the mother to controlling and coercive behaviour throughout their marriage. For example, she had been isolated from her own family; controlled when she wished to use the telephone; required to seek permission in advance if she wished to leave the home or to visit her family; forced to agree a change to P’s name the night before her christening; forced to buy male clothing when pregnant as the father hoped the prenatal scan was incorrect when it showed that they were having a female child; forced to dress P in male clothing after she was born; and forbidden from giving P medication without the father’s permission.

48. Thirdly, the father had physically assaulted the mother in 2017 by punching her on the left thigh whilst the father was driving and the mother breastfeeding P. This incident was linked to the mother's allegations about a prophet at the paternal family home telling her that P should not be fed "ewedu", a local delicacy.

The Hearing

49. All the lay witnesses with the exception of the mother and the father gave evidence by video link from Nigeria. On occasion there were problems both establishing and maintaining the link which imported some delay into the proceedings and meant that an extra day's hearing had to be accommodated on 5 April 2022.
50. Having made allegations of domestic abuse, the mother was a vulnerable witness within the meaning of Rule 3A.2A of the Family Procedure Rules 2010 and I decided to make a number of participation directions to assist her to give her best oral evidence and to limit any anxiety she might experience during the hearing. The directions I made in advance of the hearing were as follows:
- a. The mother and father should enter and leave the Royal Courts of Justice by separate entrances and exits;
  - b. There should be separate conference rooms on separate floors for the mother and the father;
  - c. Whilst in court, the mother should at all times remain in a screened area where she could not see or be seen by the father including when she was giving her evidence. The father should not enter the screened area. During the father's evidence, the mother was permitted to attend by video link with her camera switched off;
  - d. Counsel for the father should alert the mother during cross-examination, when moving to a new topic;
  - e. The mother should be permitted to have regular breaks during cross-examination;
  - f. The advocates should complete the witness template in advance of the commencement of the hearing so that the mother knew the likely length of any cross-examination.

In fact, the mother remained in court whilst the father gave his evidence. When she came to give her evidence, the father was not present in court but viewed and heard her evidence on screen in a conference room within the court building.

51. At a directions hearing on 15 December 2021, I indicated that it would be helpful if the mother's solicitors filed and served a copy of her 2019 application for visas to visit this jurisdiction together with the letter from the relevant UK Government agency granting the mother visas for herself and P. A direction was made to that effect. Accordingly, the trial bundle contained this material but



what was missing were the documents supplied by the mother in support of her application. Those documents went to the heart of one of the key issues in the case, namely whether the mother had obtained the father's written consent for the removal of P to the UK for the purpose of a holiday in late December 2019. If she had, this would lend credence to her account that, contrary to his assertions, the father knew about the trip.

52. On 24 March 2022, I granted an application by the father for the disclosure by the Secretary of State for the Home Department of the complete visa applications made by the mother in November 2019 (including documents lodged in support), which resulted in two year visit visas being granted on 3 December 2019 and issued on 16 December 2019. In compliance with my direction, the Secretary of State disclosed the relevant material which contained a letter of consent dated 1 November 2019 purportedly written by the father giving his consent for P to travel to the UK with her mother in late December 2019 for about a fortnight's holiday. Having reviewed the disclosed material, the father asserted that the signature applied to the letter of consent was not his and had been forged by the mother and/or her associates. On 5 April 2022, Mr Hames QC made an application for the instruction of a handwriting expert to analyse the signature and prepare a report for the court. That application was unopposed by the mother and supported by the children's Guardian.
53. The instruction of a handwriting expert is unusual within family proceedings concerning a child. However, I granted that application for these reasons. Firstly, a key issue in the case was whether or not the father knew and consented to P's removal from Nigeria in December 2019. Secondly, for the first time in her March oral evidence and when being cross-examined on behalf of the father, the mother asserted that the father had provided his signed written consent to a visa being obtained on the child's behalf. She stated she had taken that document to the British High Commission to be notarised and scanned into the electronic document system, in support of her application for a visa. The mother asserted that she had left the hardcopy version of that document in Nigeria so it was no longer in her possession. Thirdly, disclosure from the Secretary of State had revealed a typed "*Letter of Consent*" purportedly signed by the father. Fourthly, the father asserted that the signature on the document was not his but was a forgery. Finally, the father was able to provide original examples of his signature over a period of time - both prior to and after the disputed Letter of Consent - for scrutiny by a handwriting expert even though the disputed Letter of Consent was not in an original form. That rendered the instruction of a handwriting expert worthwhile. Given these circumstances, I decided that the instruction of Elisabeth Briggs, an independent forensic document examiner, was necessary and proportionate to assist me to determine the veracity of the parties' competing and diametrically opposed accounts.
54. The instruction of Ms Briggs necessitated the adjournment of the hearing part heard until the week commencing 20 June 2022. In that week I heard oral evidence from Ms Briggs, the mother and the father. I also heard the oral evidence of the children's guardian. The parties then provided written submissions and they spoke to those submissions on 23 June.

55. **Mr Zadeh** is an independent social worker who was instructed to provide a risk assessment with respect to FGM if P were to return to Nigeria. His first report was dated December 2020 and assessed the risk of FGM if P remained in her mother's care as minimal, since the mother came from a tribe/state that was not preoccupied with FGM in the practice of its traditions. With respect to the father, Mr Zadeh had no reasons to be confident that FGM was not a risk factor for P. He did not think the mother could protect P if P returned to Nigeria without her and, if the mother herself were to return to Nigeria, he was of the opinion that her protective influence would be diminished. He opined that there was a greater risk of FGM in that the father might use it potentially to settle scores with the mother in the context of acrimonious private proceedings. He recommended that P should stay here and be cared for by her mother. As he had failed to speak with the father and the paternal family when writing his report, Mr Zadeh was directed to produce an addendum report in February 2021, taking account of evidence filed by the father. In that report, he did not alter his recommendation and suggested the best solution would be for the father to live in this jurisdiction. He emphasised P's need for stability, safety and emotional security together with her strong attachment to her mother.
56. In his oral evidence, Mr Zadeh confirmed that he had not reported in a case concerning the risks of FGM in Nigeria. He had not explored with the mother if she would return to Nigeria if the court ordered that P herself was to return there. The delivery of his oral evidence was somewhat disjointed as Mr Zadeh had not read the updating statements so I gave him time to consider these. Nevertheless, Mr Zadeh maintained his view that the risk of FGM to P was high if she returned to Nigeria. He was very sceptical, if not scathing, that laws in Nigeria were effective at protecting women and children from FGM.
57. I found that Mr Zadeh's knowledge and experience of Nigeria and of FGM in Nigeria was significantly more limited than that of either Dr Adimula or Professor Bradley. His conclusions about P's welfare were based almost exclusively on the macro factors identified by Cobb J since his interviews with both parents were relatively short. Equally unfortunately, his report was peppered with generalisations such as, all children were at risk of FGM in Nigeria. I came to the conclusion that his evidence to me about P's welfare was of limited value, being somewhat dated and now overtaken by subsequent events.
58. Turning to the experts specifically instructed with respect to FGM, Dr Adimula and Professor Bradley took part in an experts' meeting on 28 February 2022. Both were in agreement that the prevalence of FGM in Lagos was unknown but could not be said to be zero. They also agreed that:
- A. FGM in Nigeria was declining (subject to any new data emerging);
  - B. The prevalence of FGM in Nigeria was complicated and required consideration of a number of aspects, including ethnicity and family association with FGM;

- C. Lagos is an urban, developed city which indicated potentially a lesser risk. However, it is also a multicultural city and so there may well be pockets within that society that were more likely to have higher rates of FGM; and
- D. Although the experts used similar datasets, they differed on the assessment in relation to the specifics of the risk posed in the present case.
59. **Dr Adimula** is a lawyer based in Nigeria who was instructed to provide an opinion, amongst other matters, (a) on the legal status of FGM in Nigeria (including whether FGM was a criminal offence); (b) any legal sanctions against FGM; (c) the availability of support services in respect of FGM and domestic abuse; and (d) whether mirror orders could be made protecting P if she were to return to Nigeria. Her report dated October 2020 confirmed that there had been a drastic reduction in rates of FGM in Nigeria as a whole and much more so in Lagos due to increased education and legal reform. There was a legislative framework for a variety of protective orders in respect of domestic abuse and FGM. Though there had been no successful prosecution of a case of FGM, the legal system was reliable and responsive if it was necessary to protect a child from FGM by seeking protective orders. Dr Adimula was of the opinion that it was safe for P to return to Nigeria and to Lagos in particular as FGM was not a threat. The practice - in her words -was dying out. In April 2021, Dr Adimula provided a response to further questions from the parties, amongst which was a question asking her to clarify her expertise since her report had commented on the prevalence of FGM and the likelihood of FGM being performed in P's family. She asserted her expertise in those matters stemmed from her academic and practice credentials in child protection.
60. In her oral evidence, Dr Adimula maintained her stance that FGM had been reducing since 2017 and particularly that there was little risk of FGM in Lagos as opposed to in rural areas. She had no experience as a lawyer of obtaining protective orders in respect of FGM but confirmed that a protective order could, in theory, be obtained which would last for 30 to 60 days and might be capable of further extension. She had not dealt with any case of FGM and had never heard her colleagues talk about FGM. She maintained her assertion that FGM was not prevalent in Lagos.
61. Regrettably, I concluded that Dr Adimula strayed outside her area of expertise by stating that P could return to Nigeria "*without any risk of FGM*" though she had not been instructed to and had no expertise in carrying out a risk assessment. Furthermore, her evidence left me unclear as to the efficacy of protective measures against FGM if these were required in P's case. Her report failed to identify support services for women and girls with respect to FGM or domestic abuse and she failed to explain the process for or give a timeframe for obtaining mirror orders in Nigeria. I found her overly keen to emphasise that FGM was no longer a problem in Nigeria.
62. **Professor Bradley** is a professor of International Development Studies at the University of Portsmouth. She was instructed to report upon (a) the prevalence of FGM in Nigeria especially in Lagos and Osun state; (b) the current measures to prevent FGM or to oppose it in Nigeria, especially in Lagos and Osun State; and (c) the risk of FGM to P. Her first report dated June 2021 identified that the

most recent survey of FGM in Nigeria put the prevalence in women aged between 15-49 at 24.8%. The practice of FGM varied across Nigeria, with the south-west and the south-east leading on prevalence. FGM was higher among Yoruba women and girls in the southern states. The prevalence of FGM in Osun state was very high: a 2003 study found it to be 85% whereas a 2016/2017 study found that it had declined to 67.8%. The comparable figures for Lagos in respect of both studies were 40.3% and 25% respectively. She concluded that FGM was a very serious problem across all the Nigerian states associated with P's family: in Osun state 82% of girls underwent FGM before the age of five and FGM was higher in urban as opposed to rural locations. In Lagos, the highest proportion of cut girls were Yoruba girls aged from 0-14 years. Professor Bradley noted that, within the Yoruba, the decision to cut a child did not rest with parents but rather was made by wider senior family members and even community leaders. To be uncut was considered shameful and the level of pressure placed on parents who did not wish their daughters to be cut was high. Girls were often taken against the wishes of their parents to be cut.

63. The Violence against Persons (Prohibition) Act 2015 ("VAPP") was the first federal law in Nigeria attempting to prohibit FGM across the whole country. It had been passed in Lagos and Osun state. To date, the law had not been effective in bringing prosecutions for FGM. Though a girl-centred approach to combating FGM had become more common, that strategy had limited impact in Nigeria where the age of cutting tended to be early. Whilst the evidence was limited, Professor Bradley pointed to the emergence of more cross-state cutting in which families took girls into states where VAPP had not been ratified. Similarly, urban families took girls into their rural communities to undergo FGM. Those worrying trends made it very difficult for civil society to act preventatively.
64. Professor Bradley noted that (a) the father's sister had undergone a medical examination and presented a certificate to demonstrate she had not undergone FGM and (b) all the other female members of the paternal family stated that they had not undergone FGM. She raised concerns about the usefulness of the medical certificate, commenting that FGM can be hard to detect especially when carried out on a baby girl. It was also not uncommon for a woman not to realise it had been performed on her, again because of undergoing the practice at a young age and having no memory of it. She drew attention to two other relevant factors in respect of the paternal family: there was no direct link between whether someone was a professional/educated person and whether they had undergone FGM; and religious belief had no proven link to FGM. Analysing the factors in the case, Professor Bradley was of the opinion that P was at high risk of undergoing FGM if she returned to Nigeria.
65. In September 2021, Professor Bradley produced a further report, having been asked to assess the risk to P based on interviews with the paternal family as well as with the mother. For the purpose of the addendum report, the mother had been interviewed by Ms Nkwunonwo and the paternal family had been interviewed by Mr Ukwu. Professor Bradley and her colleagues all concluded that:

*“This is a highly complex and emotive case from both sides of the family. The interviews with all family members revealed a concerning lack of knowledge of FGM. Given the prevalence levels, particularly in relation to Osun and Lagos, it is unlikely that family members would have no knowledge. The denial of knowledge made risk hard to assess however the family living arrangements and lack of connection with Osun and traditional Yoruba marks suggests that it is very possible they do not observe FGM.*

*However, the mother’s fears must be taken seriously not least because of the high prevalence in Osun. We therefore recommend that if the daughter is to travel to Nigeria to see her father and his family she should be accompanied by an anti-FGM trained advocate who must remain with her at all times.*

*Furthermore, we recommend all members of the family undergo FGM awareness training. This should include the mother who needs to understand the enabling/protective options available in Lagos. She should be encouraged to reach out to make contact with stakeholders who may be able to offer her support and give her confidence that her daughter can be kept safe. Having this greater understanding of the risks of FGM as well as the protective options in Nigeria will serve to help her to empower her daughter as she grows.”*

66. In her oral evidence, Professor Bradley was clear that she would have expected the family to have known more about FGM though she conceded that they might be nervous in talking about it. Nevertheless, she would have expected them to know that many families in their home state practised it. Though the father’s family had been willing to engage in the process of discussion about FGM, they were unwilling to delve into their family history and did not accept it was a cultural practice. It was frustrating that they had not been more open. Professor Bradley confirmed that the availability of FGM support and advocacy services in Nigeria was under threat because of a decline in funding.
67. I found Professor Bradley’s evidence about the prevalence of FGM in Nigeria persuasive. It was grounded in close familiarity with a wide range of international and local data about FGM in Nigeria.
68. **Mr Ukwa** also gave evidence to me about his interviews with the father, the paternal grandparents and the paternal aunt. He has been working on issues around gender-based violence in Nigeria for about seven years and has conducted many interviews assessing the risk of FGM. The entire paternal family presented as being unaware of FGM which Mr Ukwa found quite alarming given that the practice was very prevalent in Osun state. However, the paternal aunt was clear that FGM was an abhorrent practice, describing it as torture. Neither grandparent professed any knowledge of FGM though the grandmother confirmed that she had not been cut herself. Mr Ukwa considered that he had been unable to have an open discussion with either of the grandparents.

69. In cross examination by Miss Munroe QC, Mr Ukwa confirmed that, prior to the criminalisation of FGM in 2015, FGM was practised openly without a sense of shame and often celebrated in families who considered it enhanced their daughters' lives. Those associations had not disappeared but had gone underground though celebrations were no longer commonly or openly held. He considered the paternal family's response to stem from either ignorance or denial. Mr Ukwa's oral evidence chimed with the contents of his interviews with the family and was straightforward and measured.
70. Turning to the evidence of **Ms Briggs**, she is an independent forensic document examiner who was asked to determine whether or not the signature on the Letter of Consent dated 1 November 2019 was written by the father. The Letter of Consent was submitted by the mother to the British High Commission in support of her application for travel visas so that she and P might travel to the UK in December 2019. In addition to the scanned copy Letter of Consent, Ms Briggs was provided with 22 documents bearing known signatures of the father, the majority of which were in original form with a small number of copy documents. The signatures were dated between 2009 and 2022 and therefore pre-and post-dated the questioned Letter of Consent. Ms Briggs's report was dated April 2022 and concluded that the questioned signature showed a close pictorial similarity to the known signatures of the father but there were some differences in detail. Her examination had been limited to an extent by being unable to examine the original Letter of Consent. This meant that she was unable to consider some of the finer details such as fluency or how the letters were constructed. Nevertheless, in her opinion, there was some limited evidence to show that, on the balance of probabilities, the questioned signature was not written by the father. The father's signature was written in a stylised form followed by a complex series of loops and illegible features. His known signatures were all fluently written and were similar to each other, showing the degree of variation typical of that found in the normal signature of one individual. The known signatures were all suitable for comparison purposes. In her oral evidence, Ms Briggs told me that it was unusual to have so many known signatures available to her for examination, particularly known signatures across a period of time, some of which were contained in original documents.
71. Despite some similarities, Ms Briggs found a number of differences between the questioned signature and the known signature of the father. The chances of all these differences appearing in one signature was unlikely in her view, especially as two of the differences she identified did not appear in any of the known signatures. Though the questioned document was a scanned copy, the method of scanning would not explain the differences which she found. She had considered carefully whether the Letter of Consent was good enough for her to fulfil her instructions but had come to the conclusion, following a detailed examination of all the material with which she had been provided, that the Letter of Consent provided sufficient information for a well-grounded analysis. For example, one of the differences identified by Ms Briggs was a final angled line drawn separately across the signature in the Letter of Consent. This was not a natural feature of the known signatures and was a significant difference from the continuous angled line flowing initially to the left and then to the right

across all the known signatures. She concluded that, though the strength of the evidence was weak, she considered on the balance of probabilities that the questioned signature was written by someone other than the father. She agreed that her evidence should be placed in the context of the rest of the evidence.

72. Ms Brigg's evidence was measured, straightforward and impressive. She had clearly engaged in a thorough and careful evaluative process in order to reach her conclusions.

Assessment of the Parties and the Lay Witnesses.

73. **The mother.** She gave her evidence calmly to me over two days in March 2022 and again on 20 and 21 June 2022, at all times with the benefit of the participation directions I had made. I was able to form a clear impression of her, bolstered by reading the significant number of documents filed in this case. She is an intelligent and articulate woman who often asked counsel to be more precise in the questions they put to her. That, in part, indicated to me a degree of anxiety on the mother's part about her oral evidence. Her love for P was plain to see – her face was radiant with smiles when asked to describe her little girl.
74. In many respects, the mother was a highly unsatisfactory witness. For reasons which will be apparent later in this judgment, I found it necessary to have at the forefront of my mind when assessing her evidence that a witness may be untruthful about some matters but truthful about others. In part because it was corroborated by the father's own evidence, I found her account of the marital difficulties between her and the father had credibility whereas this feature was lacking in her account of both how P came to arrive and stay in the UK and the allegations of FGM made against the father. Some aspects of her evidence were exaggerated such as the degree to which she was isolated from her own family and friends following her marriage and the degree to which the father prevented her from giving medication to P.
75. It was obvious to me that the mother was upset by the father's confirmation in the witness box that he had been serially unfaithful to her from the very early days of their marriage onwards. Those revelations in the father's oral evidence would also have been humiliating for the rather private woman in the witness box. There were other times in the mother's evidence when I had the strong sense that she was withholding information from the court because it might disadvantage her. Thus, she was less than forthcoming about her own mother's circumstances in the UK and her claimed lack of knowledge about the status/circumstances of her mother's marriage to her stepfather struck me as disingenuous. The mother's account that she had not asked her mother to come to court and give evidence because she was emotional and would not be coherent was unpersuasive. The maternal grandmother was very closely involved in the events following the mother's arrival in the UK and the mother's failure to call her suggested more than mere concern that the maternal grandmother might be upset by giving evidence in support of her daughter.
76. These broad observations about the mother's evidence will be supplemented by more detailed analysis later in this judgment.

77. **The father.** The father gave evidence to me over two days in March 2022 and again on 20 and 21 June 2022. As with the mother, I was able to form a clear impression of him. He too is an intelligent, proud man who loves his daughter and, like the mother, found the process of exposing family life with all its difficulties embarrassing and stressful. At times, he found it hard to express his emotions – for example, when talking about P – but he had no difficulty in being highly critical of the mother’s parenting, accusing her of using excessive physical chastisement on P. Though he admitted he had not spoken about this to anyone in his family and had been content to leave P with her mother, that allegation did him no credit whatsoever. His evidence about the mother’s parenting ran counter to everything I read and heard about the close and loving relationship between P and her mother. I found his evidence on this issue to be untruthful.
78. The father admitted to lying in his written statements that he had not had sexual affairs during the marriage. In chief, he accepted that he had been serially unfaithful to the mother from almost the very beginning of their marriage. His infidelities began when the mother was pregnant with P and continued in a manner which suggested that the father was a man who would do what pleased him, almost regardless of the consequences for others. His admissions caused me to apply to his evidence the approach outlined in R v Lucas (see Legal Framework above) and to remind myself that people lie about some matters for a variety of reasons but this did not necessarily entail a wholesale rejection of the entirety of their evidence. His lies about his own conduct in the marital relationship were, in my view, an attempt to bolster up a just cause and to avoid P knowing that he had behaved badly to her mother. That exercise backfired spectacularly. However, there were other aspects of his evidence about which I was able to have a greater degree of confidence, namely his account of P’s travel to the UK and events thereafter. This was because there was a degree of contemporaneous evidence from other sources which supported the father’s case.
79. Overall, the father was slow to admit fault in himself and defensive about the paternal family’s involvement in his marital affairs. He was indulged by the paternal family and steeped in traditional Yoruban values, such as the husband being in the driving seat, and sought to apply these to married life. Nevertheless, he eventually showed some grudging insight into the effect of his behaviour on the mother though he maintained that P’s exposure to marital rows had had no effect on her.
80. **The paternal aunt.** She is educated to degree level and is in full-time employment. She is married and has three daughters under the age of 10. She produced a medical report from her GP to confirm her assertion that she had not been subjected to FGM and she was adamant that her own daughters would not be cut. In her statement, she described FGM as “*an archaic and inhumane act, which my family has never performed and which is unheard of amongst the educated class in Nigeria*”. Her statement also averred that, despite regular contact with the mother, the mother had never mentioned any concerns about the father either having extra-marital affairs or being abusive and controlling towards her.



81. In her oral evidence, the paternal aunt accepted that she might not have known about the degree of dispute or unhappiness in the marital relationship of P's parents. However, she described the mother as being like her younger sister and would have expected her to indicate something of her troubles. With respect to FGM, the paternal aunt said she did not know anyone who had been cut and considered the practice not to be prevalent in her community. From limited discussion with her mother about the topic when she was a teenager, the paternal aunt was clear that FGM was a bad thing and that the paternal grandmother thought so too. Surprisingly, she had not asked her own mother if she had been cut or sought to establish whether her maternal aunts were cut. The paternal aunt felt comfortable with her knowledge of FGM and said that, now she knew more about it following the interview with Mr Ukwa, she would take steps to stop it if she became aware of it in her circle of acquaintance. However, she had taken no real steps to educate herself after the interview with Mr Ukwa. She indicated a willingness to undertake FGM awareness training if the court thought this would be helpful though her ability to do so might be circumscribed by her other commitments.
82. The paternal aunt was protective of the father and found it hard to accept that he might have behaved badly towards the mother. Her belief that the mother would have confided in her struck me as a little naïve given the strong bonds of filial loyalty of which the mother would have been well aware. It was clear to me that the paternal aunt had been on something of a voyage of discovery about FGM because of these proceedings and was anxious to reassure me that she took the issue seriously even though she did not believe her brother had made any threats about performing FGM on P. I found her lack of interest in and awareness of FGM somewhat concerning.
83. **The paternal grandmother.** She was a secondary school teacher for 35 years, finishing her career as a school principal. In her statement, the paternal grandmother denied placing pressure on the mother to conform to traditional expectations of wives and mothers in Yoruban culture. She rejected any abusive or controlling behaviour as alleged by the mother. Finally, she was adamant that FGM was not practised in her family and she regarded it as "*abhorrent*". Knowing her son, she was certain that he shared her views about FGM and would never cause it to be carried out on P.
84. In her oral evidence, the paternal grandmother was at pains to speak well of the father and found it extremely difficult to accept that he might have behaved poorly towards the mother. She intimated that what went on between the father and the mother was a private matter of which she would have little knowledge. However, she admitted that there was one occasion in about 2018 when she had begged the mother's forgiveness for the father's infidelities. She said the father had been present when she did this. The mother confirmed this event in her oral evidence though not that the father was present. The paternal grandmother was a woman with evident pride in her Yoruban heritage, identifying with the culture, food, dress, and personality traits common in Yoruba culture. Prior to giving her evidence, she had spoken to the paternal aunt about her evidence and, in particular, about a conversation they had about FGM when the paternal aunt was a teenager. Notwithstanding that discussion, the paternal grandmother was

vague about the reason for that conversation and, in broad terms, what had been discussed. She professed to little awareness that FGM might be prevalent in her community and did not believe it was.

85. I found the paternal grandmother's evidence on the issue of FGM troubling. She had not reflected why FGM might be happening in her community and regarded it as a non-issue which had only arisen because of the mother's allegations. I found her to be overly indulgent of her son's behaviour even when she knew he was having affairs and had begged the mother's forgiveness for his behaviour.
86. **The mother's work colleague, Ms Z.** She had become acquainted with the mother in about September 2018 and had worked with her until the mother tendered her resignation from her employment in January 2020. Ms Z described the mother's resignation as a shock. She said she had only had occasional contact with the mother since then. Ms Z described the mother as a bubbly and lively person who only appeared to be sad on rare occasions. In her statement, Ms Z described a conversation with the mother in about April/May 2019 when the mother broke down in tears, saying she was frightened for P's life. She explained that her husband said that P needed to be circumcised as soon as possible in accordance with their traditions. Ms Z said she had told the mother to explain the disadvantages of FGM to her husband and urge him not to carry out his threat. She said that they had not discussed the issue again as Ms Z did not want to upset the mother. It was very unusual for the mother to talk about her family as she was a very private person and Ms Z had been surprised that FGM appeared to be an issue in the mother's family life. Ms Z confirmed the conversation about FGM when cross-examined on behalf of the father. In her statement, Ms Z said that she had also spoken to the mother after her arrival in the UK when the mother told her that the father had made definite arrangements to perform FGM on P when she returned to Nigeria. In her oral evidence, the chronology of her conversation with the mother was confused and she could not remember whether the mother was in the UK when they spoke.
87. Ms Z had only met the father on one occasion in February 2020 when he arrived at the office in an attempt to ascertain contact details for the mother. According to her statement, he told Ms Z that he had plans for P and wanted her to be returned as soon as possible and suggested that Ms Z should do everything she could to persuade the mother to return. Ms Z inferred from that conversation that the father would do as the mother had intimated to her.
88. It was plain that Ms Z did not know the mother well. If the mother was being truthful about the risk of FGM in April/May 2019, Ms Z's evidence tended to support the mother's contention that the father wished to subject P to FGM when she was still a small child.
89. **The maternal uncle.** He had been a pastor with the Truth Evangelical Mission for more than a decade. In his statement he described a visit from the father in January 2020, during which the father reportedly stated that the maternal family should order the mother to return to Nigeria so that P did not miss out on the traditional rights which were essential for a person from Osun state. When the maternal uncle asked the father to clarify what these rites were, the father refused to say and stormed out of the house in an angry manner. Afterwards on

the same day, the maternal uncle spoke to the mother who told him that the father was referring to FGM.

90. The maternal uncle was more expansive in his oral evidence and, when being cross-examined on behalf of the father, he indicated that he had a conversation with the mother about FGM in 2016 after P's birth. She told him that the father had decided P should be subjected to FGM and the uncle had advised her to try and change the father's mind. The maternal uncle went on to say that he had spoken to the father on the telephone to try and talk the father out of his desire for FGM. However, the father had told him not to intrude into his family affairs. The account of the 2016 FGM conversation with the mother followed by the telephone call to the father was entirely absent from the maternal uncle's written statement. He claimed to remember this incident when being asked questions by Mr Hames QC. I found this sudden retrieval of memory about so significant a matter unconvincing.
91. Much of the maternal uncle's other evidence was contradictory and confused. He claimed in his statement that he had celebrated Christmas 2019 with the mother but this was not the case and, in fact, he had not seen the mother or the father over that Christmas period. He contradicted himself over the details of the mother's trip to the UK, describing it as a short break when he knew nothing about the planned duration of that trip. I have approached his evidence with very great caution.
92. **The maternal aunt.** She is a widow with a young child who came to the UK in 2022 to study human resource management at university. She speaks to the mother about three times a week and did the same when she was living in Nigeria. She went to visit the mother about once a month. In her statement, she explained that the father had called her late husband in January 2020 to complain about the mother's behaviour which was disrespectful of Osun tradition and culture. She believed that the father was talking about FGM as she had participated in a youth service scheme in Osun state where FGM was common. She was adamant that the father had known about the trip to the UK in December 2019 as she had been in the marital home on Christmas Day, helping the mother pack for the trip. On 27 December 2019, she had taken the mother and P to the airport with the father's full knowledge as his car had broken down. Her statement made clear that the father had asked her to take the mother to the airport.
93. Her oral evidence expanded on the issue of FGM and she made reference to a conversation in June 2016 with the mother about this topic after P was born. The mother said the issue of FGM had been raised by the father and the maternal aunt advised her to persuade the father that this practice was not necessary. The maternal aunt also indicated that the mother had spoken to her about the risk of FGM to P several times in 2019 before she travelled to the UK. In December 2019, the aunt had spent Christmas Day with the mother and the father and, during her visit, had spent time with the mother in the bedroom packing the mother's suitcase for her trip to the UK. The aunt recalled bringing some clothing for the mother to take to the maternal grandmother. On 27 December 2019, the aunt came to the mother's home to bring the rest of the clothing for the maternal grandmother. She stated that she did not see the father

on 27 December 2019 and did not speak to him, contradicting what was in her written statement. The aunt did not know the details of mother's travel plans but had known of her intention to travel to the UK since about November 2019.

94. A significant portion of the maternal aunt's evidence was not contained in her witness statement though it touched on some of the central factual matters in issue between the mother and the father. Her oral account of 27 December 2019 contradicted her written statement in which she said that she had spoken to the father who had asked her to take the mother to the airport. Her oral evidence about her conversations with the mother in January 2020 was confused: first, she said she did not speak to the mother about FGM but spoke about "*issues*" the mother was having with the father; but then her evidence changed to explain that she had spoken about FGM to the mother later in January. The aunt struck me as a witness who was anxious not to say anything which might harm the mother's case. She could not explain - save to make reference to her bereavement - why her statement made no reference to many of the matters in issue between the parties. I have approached her evidence with caution.
95. **The children's guardian.** She had met P four times prior to the start of the hearing in March 2022. She also saw her when she facilitated the re-introduction of face to face contact between P and the father on 18 March 2022. Her assessment was that P had a close and loving relationship with her mother which gave rise to no safeguarding concerns. P was an active, social child whose characteristics suggested a positive adjustment to life in the UK where she was obviously thriving. If P were to return to Nigeria, the children's guardian thought, on balance, she could manage this given (a) reassurance from both her parents and (b) clear practical arrangements being in place for where she might live and go to school. P had the requisite degree of resilience to adapt to a return to Nigeria. Though P would miss her life in the UK, the children's guardian drew attention to the losses P had experienced consequent on her removal from Nigeria.
96. From her observations of both video contact and direct contact, the children's guardian was clear that P and her father had a loving relationship. The father appeared to be attentive and patient with P, taking care to adapt himself to P's own pace/wishes/needs. She was clear that the father had played a positive role in P's life prior to her arrival in the UK even though there might be dispute about the extent of his involvement. If P were to remain in the UK, her relationship with the father would be curtailed and would be limited to holiday times or such times when the father could afford to travel to and was permitted to enter the UK on a tourist visa. Her evidence was firm in refuting any suggestion that the mother had alienated P from her father.
97. The children's guardian confirmed that the mother had told her that, if a return order were made, she would return reluctantly and sadly with P to Nigeria. In her opinion, were that to happen, it was in P's best interests to live with her mother in Nigeria rather than for there to be a change in her living arrangements. She accepted in cross-examination by Miss Munroe QC that, were P to return to Nigeria, she may be returning to a situation where there was conflict about her between the mother and the father. Such conflict was harmful for a child if a child had no other stability in its life.

98. If the court were to find that the father had threatened FGM as alleged and/or that the paternal family's position on FGM increased the risks to P, the children's guardian would not support a return to Nigeria. If no such finding was made, the children's guardian wanted further information about the practicalities of a return to Nigeria before the court made a final decision about a return order.

Analysis: Generally

99. As Mr Edwards put it in his submissions, there were three touchstone factual issues in this case which the court had to resolve, namely the allegation of FGM, the abduction of P to the UK including whether this was facilitated by a forged letter, and domestic abuse. I propose to address each in turn but make it clear that, in coming to my conclusions about factual matters, I have surveyed the wide canvas of evidence rather than adopting a compartmentalised approach and come to a view about the totality of the evidence before deciding the facts underpinning each of these touchstone issues.
100. This is a complex and highly emotive case in which the stakes for each parent could not be higher. The father faced the prospect of being found to have threatened FGM, an abhorrent form of gender based violence, against his small daughter. Were that finding made, he knew that his application for P's return would be dismissed and that his future contact with her was likely to be indirect via video and, if face to face contact occurred, it was likely to be supervised or otherwise circumscribed. If the mother's case on FGM was not established, she knew it was likely that – unless she obtained the grant of asylum via the judicial process in the Immigration and Asylum Chamber - this court would consider making an order for P to go back to Nigeria. That would unravel their new life in the UK and plunge her back into a situation in Nigeria from which she had fled. In fact, the stakes were even higher for the mother because if her allegations about the father's threat of FM were disbelieved, this court's judgment might be disclosed to the First-Tier Tribunal and become highly influential in the asylum litigation. My general observations about the parents' and other lay witnesses' evidence make it plain that the high stakes for each party impacted on the evidence before the court in an unsatisfactory manner. That was entirely unsurprising.
101. The difficulties with the evidential landscape presented obstacles to a fact finding court, aiming to construct a coherent narrative which could explain all the evidence I read and heard. I have resisted the temptation to create a narrative which might explain everything and account for the different and apparently contradictory narratives before me because such an exercise is, in my view, futile when so much remains hidden or obscure and when witness evidence is tainted by untruthfulness and evasion. Thus, though I may have determined the factual matters in issue, there may be evidence which is at odds with that factual determination. If there is, I have identified it and explained its place in my thinking.

The Abduction to the UK

102. On the father's case, the removal of P from Nigeria in December 2019 was a clandestine and deliberate abduction, underpinned by the use of a forged letter

of consent purporting to be signed by the father. Contrariwise, the mother asserted that the father knew about the trip and had consented to it by signing a letter of consent which was then produced to the British High Commission to obtain a tourist visa for P.

103. In his first statement dated September 2020, the father described a conversation with the mother in about October 2019. She told him she wanted to visit her mother with P and they discussed how this trip might be funded. The mother suggested borrowing money from the maternal aunt's husband or asking her mother to divert the rental proceeds from properties in Nigeria to the mother's bank account. The mother said she would repay the maternal grandmother eventually by working illegally in this jurisdiction. The father became suspicious that the mother was planning to stay in the UK permanently and she confirmed to him she was planning to relocate here and work with her mother or work in an office. She suggested that the father could join her later. She told the father that, when P was about nine or 10 years old, she and P would be able to claim residency because, after that length of time, P would be regarded as a citizen of the UK. According to the father, the mother suggested that the process of settlement in the UK would be faster if asylum could be claimed. The father pointed out to her that they had no right to claim asylum because they were not living in a part of Nigeria where terrorism was commonplace. However, the mother told the father that there were other misrepresentations that Nigerians could use to make asylum claims but refused to provide any examples. The father expressly told her he was not interested in being part of such an illegal scheme and that it was not in P's welfare to be separated from him. He made it plain that he would only consent to a legal means of travelling to and staying in the UK. The mother told him that she would discuss this with him at another time.
104. In the second week of December 2019, the father reminded the mother that they had not had any further discussion about this topic. The mother then told him that she had already applied for a visa to go to the UK. The father asked her what document she had used to apply for P's visa as the father had not signed a letter of consent. The mother told the father that the British High Commission no longer required a letter because P had a history of travelling to the UK with his consent. She promised the father she would give him the passports with the visas when these were returned by the High Commission in early January. She reassured the father that she no longer had plans to travel to the UK because he did not approve. Notwithstanding the mother's assurance, these exchanges aroused the father's suspicions and the following week he covertly recorded a conversation with the mother on 17 November 2019 in which he asserted that she had not told him about P's visa application before submitting it. The transcript of the conversation appeared in the bundle and I have scrutinised it in some detail. Though the father suggested that the mother had applied for a visa application without his consent, the mother did not unequivocally admit to doing so in the transcript I have read.
105. The mother denied any conversation with the father about relocating to the UK without proper leave to enter and asserted that the father fabricated these allegations once he knew that the mother had accused him of wishing to

perform FGM on P. In her second statement dated December 2020, the mother asserted that, prior to 4 January 2020, she had no intention of relocating to the UK since she was financially better off remaining in Nigeria. She said that the father knew about the visa application and her travel plans. In her third statement dated April 2021, the mother stated that, in December 2019, the father agreed to allow her and P to visit the UK.

106. Turning from the contents of the parties' statements, it was accepted that, on 15 November 2019, the mother applied for a tourist visa for herself and P to visit friends and go shopping. In support of P's visa application, the mother submitted a letter of consent purportedly signed by the father and accompanied by the identity data page of the father's passport. In her oral evidence in March 2022, the mother asserted that she had obtained the father's written consent for the visa application. She had scanned and uploaded the letter of consent when making the visa application. The mother purchased the tickets to travel to the UK on 18 December 2019 and paid for them herself. She said the father knew about the visa application and the arrangements for her and P's travel as he had the ticket details.
107. As previously explained, disclosure of the documents supporting the mother's 2019 visa application was obtained from the Secretary of State and the authenticity of the father's signature on the letter of consent was called into question. Following receipt of Ms Briggs's report about the questioned signature, both parents filed short statements. The father maintained his assertion that he had not provided written consent for P to travel to the UK and he was not aware of the trip. He produced the letter of consent he had provided for the mother's trip to the UK with P in 2016 together with an email to the mother attaching that document. The mother continued to assert that the father had signed the letter of consent and that she had witnessed him do so. She had made a scanned copy soon after he signed it, explaining that she had scanned the letter of consent using an app on her phone which created a PDF copy. The letter of consent was submitted with an attached copy of the father's passport identity data page to verify that the letter of consent was signed by him. The mother asserted that the father was the only person who had access to his passport and was the only one who could have made a copy of it to provide to her for the purpose of the visa application.
108. On 20 June 2022, the mother told me that she had seen the father sign the letter of consent. She denied that she had forged the father's signature and moreover asserted that the father had selected signatures for examination by Ms Briggs which were not truly representative. She stated that she had used a scan of the identity data page of the father's passport taken by her in 2019 to support the letter of consent. In cross-examination, she could not explain why her last statement had omitted the significant detail of her witnessing the father's signature. She was unable to explain why, until her evidence in March 2022, she had failed to mention obtaining the father's written consent for the visa application. She accepted that she had been less than forthcoming in her accounts of how the letter of consent was created and came to be signed.
109. On 21 June 2022, the father produced to his legal representatives an email which he sent to the mother in February 2017, attached to which was a scanned copy

of the identity data page of his passport. Visual comparison of the data page attached to the email indicated that it was identical to the identity data page attached to the 2019 letter of consent because both documents contained a small dark mark in the same place on each, accidentally made in the copying. The father asserted that, contrary to the mother's evidence on 20 June 2022, she thus had access to a copy of the identity data page from his passport. When re-called to give oral evidence on 21 June 2022, the mother accepted receiving the 2017 email and accepted that she had used the identity data page emailed to her in 2017 for the purpose of the visa application in 2019. She told me that she had taken another photograph of the father's identity data page in 2019 but when she tried to upload it, the quality was poor so she used the 2017 copy of that page already in her possession. In cross-examination on behalf of the father, she maintained that she had asked the father in 2019 for a copy of the identity data page and denied that she was lying. When cross-examined by Mr Edwards, it became apparent that the mother had access to a copy of the identity data page sent to her in 2017 on her phone at the time she made the visa application in 2019. When asked where the photograph of the identity data page taken in 2019 was, the mother claimed she did not have it because she had lost data when she started to use a Samsung phone rather than an iPhone.

110. The mother's account relating to the 2019 letter of consent and how it came to be signed by the father developed during the course of her oral evidence. First, she failed to mention the letter of consent until she gave oral evidence despite filing four lengthy previous statements. Giving the mother the benefit of the doubt as a non-lawyer, the letter of consent was crucial and should have been mentioned by her and a copy provided. Second, her evidence about the identity data scan made no sense. On 21 June she said that the 2019 scan was not good enough to use so she submitted the 2017 copy instead. This contradicted what she said on 20 June, namely that she had used the 2019 scan to support the disputed letter of consent. Furthermore, I found her explanation for a failure to provide the 2019 scanned identity data page unconvincing. Third, and contrary to her final statement, the mother had access to the identity page of the father's passport all along – it was irrelevant where the father kept it in their home as she had a copy of it on her phone.
111. The expert report and oral evidence of Ms Briggs was clear and persuasive. She factored the poor quality of the disputed signature into her overall assessment and the number and range of sample signatures provided by the father were good for an assessment of this type. The questioned signature had a number of differences which led her to the conclusion on the balance of probabilities that the father had not signed the 2019 letter of consent. I reject the mother's contention that the father had manipulated the signatures submitted for analysis – there was no evidence to support it. Entirely appropriately, Ms Briggs accepted that her assessment had limitations and should be seen in context.
112. Returning to the evidence of the mother and the father, the mother asserted that the father had been fully aware that she was going to the airport on 27 December 2019 for a flight to the UK and relied on the evidence of her sister. By contrast the father said that he had no idea about the mother's travel plans and insisted that, on 28 December 2019, both he, the mother and P were to visit



the paternal grandparents as part of the Christmas celebrations. I have already indicated difficulties with the evidence of the maternal aunt who contradicted herself about whether she had seen and spoken to the father on 27 December 2019. On 28 December 2019, the mother rang the father having arrived in the UK. According to her, the conversation was loving and pleasant as the father knew about the trip. By contrast, the father was stunned to find that the mother and P were in the UK since the mother had told him on 27 December that she was spending the night at her sister's home. He video-called her on WhatsApp and saw that she was at the airport with P. The father stated that the mother told him she had gone to find a better life in the UK. He told her he did not consent to P's removal from Nigeria and said they should return home immediately. On hearing that, the mother ended the call. The father managed to speak to her a short time later but the situation between them remained unresolved.

113. The father travelled to see his parents in accordance with the plan for the two families to spend time together on 28 December 2019. He told them that the mother had taken P and relocated to the UK. Later that day, his parents called the maternal grandmother and that call was recorded and subsequently transcribed. It was absolutely clear that the paternal grandparents informed the maternal grandmother that the father had told them the mother had relocated to the UK. In response, the maternal grandmother said the mother had told her she was here for a holiday and that *"her husband knows she was processing the [word omitted to avoid identification] visa"*. The maternal grandmother promised to clarify the situation and ring the paternal grandparents back. Pausing there, this call made no sense whatsoever if the father knew about and had agreed to the trip. On 29 December 2019, the paternal grandparents spoke once more to the maternal grandmother who said that the mother had explained it was a joint decision for her to relocate to the UK so P could have a future. The mother had told her it was agreed with the father that he would join her later. When that account was challenged by the paternal grandparents, the maternal grandmother said the mother had told her that the father knew about the visa and it was his idea she should travel to the UK. Later on 29 December 2019, the father spoke to the maternal grandmother and made it clear that he had not consented to P's removal and wanted her returned at once. The maternal grandmother continued to assert her understanding that this was an agreed, planned relocation. I observe that the father's conversation with the maternal grandmother made no sense if P had arrived in the UK the previous day on an agreed trip. Both calls made to the maternal grandmother on 29 December 2019 were transcribed.
114. No challenge was made by the mother to the transcripts produced. However, in her oral evidence, she asserted that these family phone calls took place because of a disagreement between her and the father about when and if she was going to visit his elder brother and sister-in-law. The mother accepted in her oral evidence that the paternal grandparents and the maternal grandmother did not speak often so I infer from this that the mere fact these calls took place was unusual and likely to be in response to something untoward within the family. The mother also denied that her mother had said she was relocating to the UK. I found myself disbelieving the mother's explanation for the family phone calls

since there was no mention in the transcripts either of the place where the father's brother lived or of the elder brother at all.

115. Further, it was accepted that the mother had failed to facilitate any phone or video contact between P and her father from 28 December 2019 to 4 January 2020. The father spoke to P briefly on 29 December 2019 at the conclusion of his phone call to the maternal grandmother. In an effort to understand the silence between the parents, I asked the mother why she did not just ring her husband to talk to him about what – on her account - appeared to be a relatively minor issue (namely, the trip to visit the father's brother), causing a large amount of upset between the maternal and paternal families. Her response was "*I was too angry*" which I found wholly unpersuasive and inadequate to explain the situation.
116. Drawing these various evidential strands together, I have reached the conclusion and find that the mother abducted P from Nigeria without the father's consent and did so clandestinely. That conclusion is supported by the events which occurred on 28 and 29 December 2019, namely the phone calls between the extended family as well as the contents of those calls. The mother's evidence and that of her sister was contradictory and unpersuasive but it was the maternal grandmother who gave the game away by asserting on 29 December 2019 that the mother's journey was for the purpose of relocating here rather than for a holiday. In coming to this conclusion, I have taken into account the entirely unsatisfactory evidence given by the mother about the letter of consent and the use of the father's identity data page to support the visa application. My profound misgivings about that evidence were reinforced by Miss Briggs' opinion as to the authenticity of the father's signature. This pointed to a covert application for a visa by the mother who knew that the father would not have consented to the real purpose of the trip. I find that the mother took the necessary steps – including forging the father's signature – to obtain the travel permits from the British High Commission. I accept the father's account about his ignorance of the trip and his lack of consent thereto which was congruent with the contemporaneous evidence, my analysis of the deficiencies in the witness evidence, and with the conclusions of Miss Briggs' report. I have also drawn an adverse inference from the mother's failure to call the maternal grandmother as a witness. She was a key participant in what happened in late December 2019/early January 2020 who could have helped the court. I find that the mother did not call her because she knew that what the maternal grandmother would say when confronted with the transcripts of the telephone calls made on 28 and 29 December 2019 would have undermined her case.
117. When I address the parties' relationship later in this judgment, my conclusions on that topic serve to reinforce my findings about the removal of P from Nigeria.

### Female Genital Mutilation

118. The mother's allegation that the father threatened to have FGM performed on P is one of the most serious allegations that one parent can make against the other. If found proven, the consequences for the father would be profound: he would represent a grave risk to P's physical and emotional well-being and would likely have his contact with her severely circumscribed. It would be almost impossible

to envisage a court returning P to Nigeria in those circumstances. I note that the mother's core allegation is not that the father would take P surreptitiously and in secret to have FGM performed on her, but wanted to do it as part of a ceremony in his home village.

119. Turning first to the allegation that, during a phone call on 4 January 2020, the father threatened to perform FGM on P, the mother's first statement described a telephone call from the father making known *"his stand that he had made arrangements for [P] to have the FGM procedure carried upon our return on 8 January 2020 and he wanted to confirm our arrangement.... I was shocked and I pleaded with him not to do this. He told me that this has been dragging on for too long and as far as he is concerned, he has had time to think about it while we were away, and this must be done before she is four years old, at least. He said all arrangements have been made and this was happening, and I must comply. He then demanded to speak to [P] but he was aggressive and yelling on the phone about me, saying inappropriate and upsetting things, thereby upsetting [P]. He was saying things like, all women are dirty whores and his daughter would not be one of them...."* The mother then blocked the father's calls and described herself as being in a state of shock and fear. In her third statement, the mother described receiving a telephone call from the father who told her that, when she returned to Nigeria, he would *"show me who was the man, why I should listen to him and that he would immediately have FGM performed on [P] and nobody could stop him"*. It was this conversation with the father which, according to the mother, turned what was a holiday for the purpose of shopping into an unexpected and unwanted relocation from Nigeria. The mother claimed asylum on the basis of this threat. I note that there was no evidence produced from the mother's telephone to support her account of receiving a telephone call from the father on 4 January 2020
120. In his written statement, the father said that he messaged the mother on 4 January 2020 but she did not reply. He exhibited the call log on his phone which showed a message to the mother that day, asking to speak to P. That message was not answered by the mother and she did not call him from her telephone. Nevertheless, the father called the maternal grandmother at 19.58 since this was his only means of reaching the mother and he asked to speak with P. The maternal grandmother allowed him to speak with P and the father said that, after he had done so, he asked the maternal grandmother to give him the mother's current phone number so that he could call to speak to P. He denied making any threat of FGM during that telephone call which lasted almost 6 minutes. In his second and third statements, the father confirmed that the last conversation he had with the mother was on 28 December 2019 when she had arrived in the UK and was at the airport. The call log produced by the father as an exhibit to his first statement showed no telephone calls between him and the mother from 28 December 2019 and certainly no telephone call on 4 January 2020. The father's case is that the mother fabricated her account of a conversation on 4 January 2020 in order to bolster her relocation to the UK.
121. In her oral evidence, the mother asserted that she had spoken to the father on 4 January 2020. It was unclear to me from her oral evidence whether she had done so on the maternal grandmother's phone at about 8 o'clock that evening when

the father managed to place a call to the maternal grandmother. The mother described a row with the father during which he threatened FGM on P when they returned to Nigeria. She confirmed that she had permitted the father to speak to P during that telephone call. Contrary to her written evidence, she did not repeat her allegation that the father shouted “*dirty whores*” during that call. Strikingly, and again different from her written statements, the mother asserted that P was happy during her phone conversation with the father. The mother was unable to explain why, according to her written evidence, she had permitted the father to talk to P after he had used offensive language and was shouting at her. Why she had done so after the father had allegedly threatened FGM was another matter for which the mother had no real explanation.

122. I make the following observations about the alleged phone call on 4 January 2020. First, the call logs produced by the father do not support the mother’s account that he telephoned her on that date. She has produced no call log in support of her version of events. Second, it was unlikely in my view that the mother would have permitted the father to speak to P immediately after he had used offensive language and made a threat of FGM. Third, the mother’s oral evidence about the effect on P of her conversation with the father was significantly at odds with her written evidence. Fourth, it made little sense for the father to threaten FGM whilst the mother and P were away from Nigeria since the threat gave them a perfect reason to remain in the UK and abandon any plan to return. The father could easily have waited until they returned to Nigeria before carrying out any threatened FGM.
123. I turn now to the alleged previous threats of FGM made by the father. The mother’s case was that, since April 2016, the father had expressed his intention to have FGM performed on P. His reason for this was so that P could control her sexual urges when she grew up. He believed the mother could not control her sexual urges because she had not been cut as a child. He told the mother that P would need to be cut before she was five years old. The mother told the father on numerous occasions that she objected to FGM but the father’s response was “*who can stop me?*”.
124. In the mother’s first statement, she said the father had raised the subject of FGM shortly after P’s traditional naming ceremony at the paternal grandparents’ home. This was because it was part of the traditional rites for those from Osun state and, according to the father, would prevent P from harassing her husband for sex in the future as her mother did. The mother objected because it was an atrocious thing to do to a girl and no one in her family had undergone FGM. The mother said that the father continued to speak about FGM for P in 2017 and she understood him to be referring to a ceremony before the elders of the community at which she and the father would be present. In April 2019, the mother asserted that the father threatened to take P to his home village the following week to perform FGM. He said that the earlier FGM was performed the less painful it became for the child. The mother objected strongly but the father became aggressive and said that, in Yoruba land, “*the man owns the child*” and the mother did not have a say. According to the mother, she persuaded him to wait a while whilst she thought about his proposal, hoping that she would be able to change his mind. The mother reiterated her concerns about

FGM in her third written statement and emphasised that the paternal family were well connected and would take P from her to perform FGM. In his written evidence, the father denied ever making any such threats and asserted that FGM was not a practice in his family. He stated his willingness to give any reassurance required by the court that P would not be at risk of FGM in Nigeria. Exhibited to his first statement were two affidavits sworn in Nigeria, one from the father and one from the paternal grandfather, affirming that they would not allow FGM to be performed on P.

125. In her oral evidence, the mother maintained her allegations but stated for the first time that, in April/May 2019, she had told the maternal uncle and aunt about the father's alleged threats. She denied telling her sister and uncle about the threat of FGM in 2016. When the father threatened FGM in 2019, the mother explained she had become scared and anxious. The father maintained his denials about FGM in his oral evidence.
126. Documents associated with the mother's claim for asylum were available to me in the trial bundle. In her asylum interview on 7 December 2020, the mother described the father speaking about FGM shortly after P's naming ceremony. She said that she was able to persuade him not to go ahead. When asked about the first time the mother understood the father to be serious about the threat of FGM, the mother explained that this was in 2017 when they were watching a movie. However, after 2016/2017, the mother said "*there was not much story around FGM*", seemingly because the couple were preoccupied with financial difficulties. There was no reference initially to any threats or discussion about FGM until 4 January 2020 but, on being asked further questions, the mother said the father had mentioned FGM in 2019, but she thought he was joking. She explained that she had confided in a work colleague in 2019 and felt she was close to separation from the father at that time. I note that this latter assertion contradicted both the mother's oral evidence to me about being happy in her relationship with the father from about the summer of 2019 onwards, and the contemporaneous evidence of the August 2019 text message which was effusive in its protestations of love for the father.
127. I have already indicated a degree of concern about the maternal family's evidence, both generally and on this topic. That concern was reinforced by the mother's denial in her oral evidence that she had ever spoken to her sister or her uncle about the issue of FGM in 2016 though both of them asserted the mother had done so. Neither the maternal aunt or uncle mentioned in their statements any discussion with the mother in 2019 about the father's threats of FGM. The witness who supported the mother's case was her former work colleague, Ms Z, who spoke about conversation they had had in 2019 when the mother appeared upset and spoke about the father's threat to perform FGM on P.
128. What can be gleaned from the evidence of the paternal family? All the paternal family were as one in denying that FGM was practised in their family. Mr Ukwa found his interviews with them alarming as he was met with either denial or ignorance about the topic of FGM. This was surprising given the family background which originated both in the Yoruba tribe and from a state in which FGM was especially prevalent. Nevertheless, Mr Ukwa accepted that there may have been other explanations for the attitude of the paternal family such as

embarrassment. He observed that the context of this case made it difficult for them to discuss FGM openly. Both the paternal grandmother and the paternal aunt demonstrated a limited knowledge, understanding or reflection about the issue of FGM in their community. They were defensive about the issue but may have felt that they should not show any acknowledgement or understanding of FGM in case this impacted adversely on the father's case. This defensiveness did not necessarily mean they posed a risk of FGM to P.

129. My assessment of any risks posed by the paternal family was dependent on my finding against the father as to whether or not he threatened FGM. If he did, the paternal family either shared his views or at best were unaware of his intentions. In either respect they would not be a protective factor for P were she to return to Nigeria. If the father did not threaten FGM, the risk posed by the paternal family was more limited as it was unlikely that the paternal family would be able to organise/perform FGM against the father's wishes. The risk of FGM to P would be based on her age and ethnic background and its prevalence in Nigeria, particularly the area in which P lived.
130. Ultimately, on this particular issue, it was the credibility of the witness evidence which was decisive. Having found that the mother clandestinely abducted P from Nigeria and acted dishonestly in obtaining entry to this jurisdiction, it would be relatively straightforward for me to make a finding that the mother had also been untruthful about the allegation of FGM. After all, according to the contemporaneous evidence in the phone call between the paternal grandparents and the maternal grandmother on 29 December 2019, the mother had not intended to return to Nigeria when she landed in the UK on 28 December 2019. I have not followed that linear line of thinking but instead have scrutinised carefully the accounts given by the witnesses and such other evidence as is available to me in order to come to a holistic appraisal of the evidence on this issue.
131. Looking at the macro factors identified by Cobb J, FGM was prevalent in the regions identified in this case, all of which were regions from which the paternal family originated. Further, P was at an age when FGM would be performed on a girl. Though FGM was unlawful in Nigeria, the Nigerian judicial system seemed to be incapable of providing any real criminal or civil safeguards, with no prosecutions having been made. Though there were organisations which might be available to mitigate the risk to a child, these were few and far between and were afflicted by a funding crisis. I do not regard the existence or otherwise of an extradition treaty between this jurisdiction and Nigeria as relevant in this case as P would be returning to her country of origin.
132. Turning to the relevant micro factors, the attitude of the paternal family was concerning in seeking to question the prevalence and to dismiss FGM as an extinct practice. They had no proposals for safeguards because they held the view that FGM was not an issue for them. Though they cooperated with the assessment carried out by Mr Ukwa, it remained moot whether the paternal family would undertake the FGM awareness training recommended by Professor Bradley and Mr Ukwa. However, any risk they might pose was very significantly diminished if I did not accept that the father had threatened FGM.

133. Those factors provided the backdrop to my assessment of the key witness evidence about FGM. Making every allowance for the fallibility of memory in the witness box, very little of the evidence relied upon by the mother was persuasive. On her own case, the mother could not even demonstrate that there had been a telephone call from the father to her on 4 January 2020. Her own evidence was peppered with inconsistencies as I have already highlighted above. The supportive accounts given by the maternal aunt and uncle were unreliable on this issue. The high water mark of the mother's case was the evidence of Ms Z, a witness who did not appear to have an axe to grind but who professed to being unsure about the detail of what had happened. Ms Z was, of course, only as reliable as the source of her information, namely the mother. Ms Z's evidence struck me as an insufficient basis upon which to make the serious finding that the father had threatened FGM to P when set against the rest of the evidential landscape.
134. Thus, I find that the mother has not established on the balance of probabilities either that the father threatened FGM on 4 January 2020 or that he had done so on earlier occasions. No findings of fact were sought in respect of the paternal family and FGM.
135. It struck me as inappropriate to make a finding that the mother had concocted the allegation of FGM as a device to persuade the Secretary of State for the Home Department to grant both her and P asylum. That is or may be a matter for another tribunal.

#### Domestic Abuse

136. Leaving to one side the issue of FGM, the mother's allegations of abuse against the father can be categorised as examples of controlling behaviour, as defined by PD12J. There was one allegation of physical abuse in 2017. In submissions on behalf of the mother, Miss Munroe QC submitted that, whilst it was important to contextualise this case in its cultural and ethnic milieu, the behaviour by the father went beyond traditional Yoruba gender roles with its concepts of deference, subservience and the obedience of a wife to her husband.
137. In their written statements, the mother and the father portrayed diametrically opposed accounts of their marriage. According to the father, this was a happy marriage despite his suspicions that the mother may have been having an affair in 2016/2017. For her part, the mother described a controlling relationship from the start of their marriage and a husband engaged in countless affairs with other women. This provoked numerous rows which made the mother deeply unhappy and isolated.
138. The oral evidence of the mother and father was a great deal more revealing about the true nature of their marital relationship. First, the father admitted to serial infidelity from the very beginning of their married life. Though the mother had her suspicions about his behaviour, the father would deny being unfaithful and this would provoke rows between them. He conceded that he had apologised to the mother when she read text messages from and saw the names of other women on his phone. He also admitted to spending money on other women but claimed this had had little effect on the marital finances. I found that evidence

demonstrated his sense of entitlement in doing what he pleased rather than thinking about whether his behaviour affected his wife and child. In a rare moment of insight on this issue, the father accepted that the marriage was not loving and happy. He told me that there were moments of happiness but he and the mother were often like two strangers with different agendas. However, the father was anxious to suggest that the mother was secretive and did not appear to be concerned about his affairs or the state of their marriage. Second, both the mother and father used the word “*toxic*” to describe their relationship from time to time. Both admitted to rows in which voices were raised but neither told me in their oral evidence of physical altercations between them during such arguments. The impression I gleaned from listening very carefully to their evidence was that arguments could be started by either parent and would escalate quickly into a full-blown dispute. Both accepted that P was exposed to this unhappy environment. I had little difficulty in accepting the mother’s evidence that P was affected by the arguments she saw and heard, becoming withdrawn and needing more physical affection. I also had little difficulty with the proposition that, on the whole, the mother felt isolated and unsupported in the marriage.

139. During the course of closing submissions, I suggested to Miss Munroe QC that the evidence confirmed a palpably unhappy marriage between the mother and the father. Neither she nor the father dissented from that view. This couple married after a very short courtship and, I suspect, had no real understanding of each other or of the compromises needed for a fulfilling couple relationship. There were evident stresses in their relationship which I describe as follows. In my assessment of their relationship, I have considered very carefully the lack of truthfulness in certain aspects of their evidence and reminded myself that lies about some matters do not mean that a witness has lied about everything.
140. The father’s infidelity and his suspicions that the mother was having an affair generated corrosive mistrust and conflict in the relationship. Until April 2017, the father was working long hours and had a long commute. The mother felt unsupported by him and was low in mood – if not depressed - from time to time. It was plain from the mother’s evidence that the experience of P’s birth had been particularly traumatic and upsetting for her. She had a long and painful labour and a caesarean section was mooted by the doctor. There was delay in getting consent from the father for that procedure and no consultant apparently available to perform it. Though matters eventually resolved themselves and P was born a healthy baby, the mother was patently upset by what she perceived to be the father’s lack of support following the conclusion of her labour. He had gone home and did not return until the following day, appearing surprised when – in answer to his question about what she needed - the mother burst into tears, saying she needed him to be with her and to support her. Though the mother did not produce medical evidence to support her assertion that she had had postnatal depression, she described a six week check-up following P’s birth at which her gynaecologist told her she may be suffering from the baby blues. I found that evidence credible though, in the absence of supportive medical evidence, I do not find that the mother had been diagnosed with post-natal depression.



141. In response to feeling unsupported by the father and unhappy with his absences from the family home, the mother would often leave with P for extended periods to visit her family. Though the father told me in his oral evidence that he had no difficulty with these trips, in his written evidence this was clearly problematic for him. The mother complained that she had to seek the father's permission for these trips as this was expected within the father's family and culture. I am inclined to accept the mother's evidence that she had to seek the father's permission to visit her family. On one occasion, the mother complained that she had visited her grandmother who was unwell without seeking the father's permission. On her return to the family home, the mother said that the father had trashed the kitchen to teach her to do her duty as a wife (though I was unclear what "*trashing the kitchen*" actually amounted to). The father denied behaving as the mother alleged. In cross-examination by Mr Edwards, the mother complained about finding the kitchen messed up by the father on her return from work which provoked rows between them. I am inclined to the view that "*trashing the kitchen*" was likely to mean leaving it in a considerable mess for someone to clear up. Though the father is a proud man who demanded respect from the mother in accordance with his family and cultural traditions and would have been angered by what he would regard as her disobedience in not seeking permission for the trip to the grandmother, I doubt he would have wrecked the kitchen as seemed to be suggested by the mother. That would have cost money of which there was precious little at that time and the father was very conscious of the strains on their finances. It was far more likely in my view that the kitchen was extremely messy when the mother returned, a mess created by the father.
142. Pressures on the couple intensified after April 2017 when the father left his well-paid employment to study for accountancy qualifications and pursue other business interests. In cross-examination, the father conceded that his various business ventures had failed and that his parents had given him money, presumably to make ends meet. The mother went back to work in spring 2018 in order to contribute to the family finances and explained to me that, though the father was bringing in what he could financially, she needed to work because the couple owed rent on their apartment. In my assessment, their straitened financial circumstances were an ongoing stress until the time the mother left in December 2019. The reduction in their income and standard of living made both the mother and the father unhappy and frustrated and caused rows between them.
143. P's upbringing also appeared to be a source of dispute. The mother alleged that the father prevented her from giving P necessary medicine unless she obtained his consent. The father denied this though he admitted expressing his concerns about P being given traditional remedies. In her oral evidence, the mother explained that the couple's financial problems meant that they could not take P for private medical treatment and there were times, in the mother's view, when P did not get proper medical treatment. Whilst that may have been so, I am simply not persuaded that the father would require the mother to seek his consent before giving P medication – that would have been grotesquely impractical and at odds with the father's evident love and care for P.

144. A major tension in the couple relationship was the influence of the paternal family and the cultural expectations of the mother in her role as a wife and the mother to a young child. It is plain from the evidence that the paternal grandparents espoused very traditional views about the role of a married woman and that their influence over the father was considerable. The mother was expected to be obedient and subservient to her husband and to offer him respect. In part, I suspect, because this couple married in haste without knowing each other well, fulfilling those expectations in the eyes of the father's family came as something of a shock to the mother. According to the mother, overlaid on these traditions was the paternal family's faith in prophets who would experience visions and revelations grounded in the Christian faith which were then used as a form of advice and guidance for daily life. In her oral evidence, the mother explained that nothing these prophets said was particularly awful or objectionable so, though she did not like the paternal family's faith in these individuals, she accepted it.
145. The mother complained that, from September 2015 until May/June 2016, she was not allowed to visit her own family because of advice the paternal grandmother had been given by a prophet. She said this made her lonely and isolated. For six weeks after P's birth, the mother said she was also prevented by the father and his family from making or receiving calls from her family or using a mobile phone when breastfeeding P. She agreed not to speak to her family whilst breastfeeding P and did so when P was asleep. She now regarded this as a form of controlling behaviour. The father denied that the mother had been isolated from her family during her pregnancy. She had moved in with his parents a few days before her due date and, in accordance with custom, had stayed at the paternal grandparents' home for six weeks after P was born. He asserted that her family were free to visit at any time after P was born and denied keeping her from her family during her pregnancy. I find that it is likely and, in accordance with his expectation that the mother should obey him, that the father required the mother either to ask his permission to go out when she was pregnant or to tell him where she was going. However, I doubt that she was forbidden to see her family throughout her pregnancy – neither her sister or uncle mentioned this in their evidence. In any event, there was no difficulty with the maternal uncle being called to the hospital when the mother was in labour which seems oddly inconsistent with a ban on her seeing her family when pregnant. In fact, the maternal uncle confirmed the father's evidence that it was traditional for the paternal family to care for a woman after she had given birth. In similar vein, the prohibition on the mother using the phone near P when breastfeeding was more likely due to fears this might harm a small infant, as the mother herself conceded in her third statement.
146. Cultural expectations also seem to have played a role in the complaints the mother made about the father's behaviour prior to and after P's birth. According to the mother, the father was not pleased when a pre-birth scan showed the couple were expecting a little girl because he wanted a son. The mother said that the father forced her to buy male clothing as he hoped the scan was incorrect and, after her birth, P was apparently dressed for a while in this clothing. She produced a photograph of P allegedly wearing male clothing though it is hard to discern exactly what P was wearing other than something with blue and white

stripes which did not strike me as gender-specific. For his part, the father's statement denied being displeased that the couple were expecting a little girl. He explained that, prior to learning the result of the scan, they had purchased gender neutral clothing such as baby-grows. He exhibited photographs to his third statement showing the entire family wearing pink coloured head gear for P's naming ceremony and showing that P was often dressed in clothing matching that of her mother. Both confirmed their respective accounts in their oral evidence. Whilst I recognise that, in some cultures, the birth of a male child may be preferred, I heard no evidence to suggest this was so in either the Yoruba culture or in the father's own family. Moreover, all the photographs I have seen of the family show both parents' pride and love for P. I accept that P may have worn some clothing after her birth which might not have been quite what the mother wished but I am not satisfied that her account of being forced to buy male clothing prior to P's birth or of P being dressed in male clothing was credible and represented an aspect of controlling behaviour by the father.

147. The mother made another complaint about P's birth, namely that, on the night before the naming ceremony, the father unilaterally altered the name they were to bestow on P. This was because the paternal grandmother wanted a name which would rhyme with that of the father. The father said that they both agreed P's first name and the mother chose P's middle name. He denied the mother's allegation. His oral evidence shifted on that issue and the father said that he alone had chosen P's first name and the mother had chosen the middle name. In her evidence, the mother accepted that it was customary for the father to choose a child's first name, but insisted they had agreed on another first name for P. In both her written and oral evidence, the mother gave no details of the name they had apparently chosen together. I note that, in otherwise unsatisfactory evidence, the maternal uncle confirmed that it was customary for a father to choose the first name of a child. Given the custom, I find the father chose P's first name and the mother her second name but I am doubtful that the couple agreed another first name which was altered at the last minute. Given his character and respect for customary practices, it struck me that the father would be all too keen to choose P's name himself without too much interference from the mother.
148. In January 2017, the mother alleged in her third statement that, during a visit to the paternal grandparents' home, a prophet who was present advised her not to feed P "*ewedu*", a local delicacy, in order that P might be successful in life. In the car en route back to their apartment, the mother voiced her concerns about this advice. The father became angry and told her to remember her place and to obey him. He then punched her on her left thigh whilst she was breastfeeding P. The father's punch caused P to jolt. Fearing what the father might do, the mother rang the paternal grandmother who told the father that both of them must return to the paternal grandparents' home. On their return, the mother was told that she should not question advice from a prophet or any instruction given by the paternal family. The mother said she was very fearful during this incident. The following morning, the mother was obliged to kneel and apologise to the father in the presence of his family which she did, being fearful of what might happen otherwise. In his statement, the father alleged that this entire incident had been concocted by the mother and was adamant that he had not

physically assaulted her. He stated that he and his family regularly ate ewedu, it being a staple food in Nigeria. In their oral evidence, both the father and the paternal grandmother maintained a denial that this entire incident had occurred.

149. Further details about this incident were forthcoming in the mother's oral evidence. The traffic en route home was bad and the mother and father were arguing about the prophet's advice. During the journey the mother was breastfeeding P and sitting in the back seat. The mother described the father becoming very angry, telling her to shut her mouth and threatening to beat her. He swung back with his arm through the gap in the front seat and punched her on the left knee. P was feeding from the mother's left breast so the punch jolted her. The mother confirmed that it was the only time the father had hit her and said that this punch had left her with a reddish bruise. The mother rang her own mother as well as the paternal grandmother. I note that the mother's oral evidence about the threat by the father to beat her and the telephone call to her own mother were details missing from her written statement. When asked why she had mentioned these two matters for the first time whilst being cross-examined, the mother told me she had mentioned them because, in the witness box, she had an opportunity to explain better what had happened.
150. I did not find it straightforward to determine whether the entirety of this incident was as described by the mother or whether, as I consider more likely, there has been a degree of exaggeration about some elements of the account. I was less troubled by a witness remembering some additional details which added to what was already plain from a witness statement (such as phone calls to other family members or the heated exchange between the mother and the father) as I would be about an entirely new and significant element added to an account. Either by admission (the father) or by my earlier findings (the mother), neither adult had been truthful in their evidence to me. Doing the best I can, I am, on fine balance, persuaded that, following a visit to the paternal grandparents' home, the parents rowed in the car on the way home. Uncharacteristically, the father lost his temper and hit the mother clumsily in the way she described, but I am not persuaded he threatened to beat the mother as she suggested. His behaviour was careless of P who was suckling her mother's breast. When the mother demonstrated in the witness box the movements used by the father in the car, I struggled to accept that the awkward angle at which, whilst in control of a moving vehicle, the father would have struck the mother, would have caused her significant bruising. The father's behaviour prompted the mother to make phone calls to both the maternal and paternal family and I accept that she and the father returned to the paternal grandparents' home.
151. What of the role of the paternal grandparents? I found the paternal grandmother's evidence wholly unclear with respect to her views about and connections with so-called prophets. She was adamant that no advice by a prophet had been given about ewedu as suggested by the mother. I found it odd that the mother should have been advised not to give P ewedu when this was a common foodstuff eaten by the entire family without any apparent ill-effect or particular symbolic meaning. I am not convinced that this detail or that about a prophet advising the mother was established, but I accept that being at the grandparents' home in some way sparked the row going home in the car. As for what occurred when

the parents returned there, it strikes me that the paternal family were likely to have supported the father in any dispute with the mother and made plain to the mother that she should demonstrate obedience to her husband. The mother's account of having to kneel and apologise to the father in front of the paternal family members struck me as consistent with the deferential and obedient role a Yoruban wife was expected to play in a family which adhered to traditional values.

152. Finally, the mother alleged that, during a video call with P in spring 2020, the father told the mother she was a bad mother and should return to Nigeria immediately. P began to cry and the mother ended the call. She maintained this accusation in her oral evidence. For his part, the father explained in his third statement that he had been able to speak to P on her birthday. P was happy to see him but found the experience overwhelming and cried, having not seen or heard from the father for several months. In his oral evidence, the father explained that he was only able to speak to P because he had emailed a friend of the mother's asking her to persuade the mother to allow him to speak with P. Though the father believed strongly that the mother wrongfully abducted P, I very much doubt that he would have spoken to the mother in front of P as she described. As he himself acknowledged, he would have gained nothing by doing so. I prefer the father's version of events and consider that the mother was untruthful about the cause of P's distress when the father rang. Given the evidence I heard about the close and loving relationship between father and daughter (including from the mother who accepted that P really missed her father and was sad not to see him), I consider it very likely that P found the experience of seeing and hearing her father after so much time apart difficult to emotionally process and became upset as he described.
153. I have set out the findings I have made on the mother's allegations in a schedule to this judgment. Those findings fall short of the wide ranging case advanced by the mother, but where I have indicated controlling behaviour by the father, I am satisfied that this was abusive within the meaning given in PD12J. In my view, the father's behaviour went beyond the directive, stubborn and selfish behaviour identified in Re L (Relocation) (Second Appeal) (see above). Further, I do not excuse the father's behaviour because, as Miss Munroe QC submitted and I accept, it transcended traditional Yoruba gender roles and had the effect on the mother and, indirectly, P which I have described.
154. In her closing submissions, Miss Munroe QC questioned why the mother would have left a comfortable life in Nigeria to become an asylum seeker here, living precariously on a meagre income and unable to work. My analysis of the marital relationship may indicate why she took that step. In my view, the mother was a deeply unhappy woman whose marriage fell far short of her expectations. The father was a selfish adulterer, used to getting his own way and requiring obedience from her as was expected in his family and Yoruban culture. Feeling isolated and unsupported, I infer that the mother sought an escape route, especially when money became tight and, in her eyes, the father failed as a good provider. Highly regrettably, the mother acted dishonestly in achieving her goal of a new life in the UK where she could be closer to her immediate family. That analysis does not account for some evidence such as the effusive, loving text the

mother sent the father in the summer of 2019 but, in the absence of a truthful account by the mother about why she took the course she did, it is an analysis which plausibly answers Miss Munroe QC's rhetorical question.

### Next Steps

155. If I rejected the mother's case on FGM, Mr Hames QC invited me to make a return order, reminding me that this was an application for a summary return to Nigeria. He accepted that such an order could not be implemented before the First-Tier Tribunal had reached a decision on the mother's appeal against the Secretary of State's refusal to grant either her or P asylum. He drew my attention to the father's proposals for return set out in his first and second statements. If P were to return to Nigeria, the mother said she would also return. If that were to be the case, the father would not seek for P to live with him and support her home with her mother. With assistance from his family, he would be willing to provide the mother with a year's rent on suitable accommodation in Lagos and to meet P's school fees. He would give whatever assurances were necessary to satisfy this court that he would never permit FGM to be performed on P.
156. Miss Munroe QC made oral submissions sceptical about the father's proposals and suggested that there was a real risk that the mother would cease to be P's primary carer. She would be returning in shame as the "loser" in this litigation and would be beholden to the father and his family. She submitted that there was a real lack of detail about any concrete proposals for the arrangements for P's return to Nigeria. I note that the mother has not responded to the proposals set out in the father's statements.
157. On behalf of the children's guardian, Mr Edwards noted that the guardian had previously advocated a two-stage approach, namely fact-finding followed by a welfare hearing. This had been overtaken by events and the very significant delay in obtaining expert evidence and the guardian accepted the reason why I listed this case with a view to making a final welfare decision. However, Mr Edwards submitted that this case might now require a welfare stage albeit in a shortened form to address the concrete proposals for P's return. The father should be required to put real flesh on the bones of his proposals and the mother should respond. He reminded me that P had been through real upheaval in the past two and a half years since she left Nigeria. She had coped well with this and the Guardian's assessment was that she was resilient enough to cope with further change. There was no obvious benefit to P in making a return order now since she could not be told about it pending the decision of the First-tier Tribunal. The court should also have some evidence about whether a mirror order to secure P's home with her mother and to possibly clarify contact arrangements for the father was available in Nigeria.
158. As indicated, it had been my intention to make a final welfare decision alongside any findings of fact. However, I found Mr Edwards' submissions persuasive and realistic. There is going to be a delay before the First-Tier Tribunal hearing in late September 2022 which could be productively used to give real substance to the father's proposals and to investigate the position on mirror orders in Nigeria given the consensus that P should continue to live with her mother. Further, the

tribunal process may have some distance to run even if the First-Tier Tribunal can hold an effective hearing in late September and come to a decision shortly thereafter. It strikes me that there is a real danger that, if made now, a return order may well be challenged and this court invited to set it aside with all the difficulties that process entails. I am thus persuaded that I should delay making a return order for the time being and further timetable this matter to a conclusion once I have heard the parties' submissions on when that hearing should take place and what further directions are necessary to progress this matter to a welfare resolution.

### Conclusion

159. The schedule of findings attached addresses the case advanced by both parents. If a matter in the schedule of allegations produced by each parent is not present, it is because I have either not considered it necessary/appropriate to make a finding about it or because the evidence did not warrant such a finding.
160. That is my decision.

## **SCHEDULE OF FINDINGS**

- A. The mother removed P from Nigeria to the UK without telling the father and without seeking his consent.
- B. The mother applied covertly for a travel visa for P from the British High Commission in Lagos, submitting a letter of consent from the father and having forged his signature to that document.
- C. On 4 January 2020, the mother has not established, on the balance of probabilities, that the father threatened to have FGM performed on P.
- D. Prior to 4 January 2020 and when living in Nigeria, the mother has not established, on the balance of probabilities, that the father threatened to have FGM performed on P.
- E. Prior to P's birth and when she was pregnant, the father required the mother to either ask his permission to go out or to tell him where she was going. This was controlling behaviour on the father's part.
- F. Following P's birth, the mother had to seek the father's permission to visit her family. This was controlling behaviour on the father's part.
- G. On one occasion, following an urgent visit to her grandmother when she had not obtained the father's prior permission, the mother returned home to find the kitchen extremely messy. The father told her he had done this to teach her to do her duty as a wife. This was controlling behaviour on the father's part.
- H. The father chose P's name and the mother chose her second name.
- I. In January 2017, the mother and father rowed in their car on the way home from the paternal grandparents' home. Reaching between the seats whilst driving, the father punched the mother's left thigh. In so doing, he was careless of P who was being breastfed. She was jolted but was otherwise unhurt. The mother was hurt and upset by the father's behaviour. This was the only occasion on which the father hit the mother.
- J. Following the above incident, the couple returned to the paternal grandparents' home where the paternal grandparents made plain to the mother that she should be obedient to her husband. The following morning, the mother was required to kneel and apologise to the father in front of the paternal family. This episode demonstrated controlling behaviour by the father which the paternal grandparents supported or acquiesced in.
- K. The father left his job, causing serious financial strain for the family. This caused loud arguments between the couple in which both raised their voices. These, on occasion, were witnessed by P who became withdrawn and needed additional physical affection as reassurance.



- L. Throughout the marriage, the father conducted affairs with other women which caused loud arguments between the couple, in which both raised their voices. From time to time, P witnessed those arguments and became withdrawn and needed additional physical affection as a result.
- M. In consequence of the above, the mother was unhappy in the marriage and felt isolated and unsupported.