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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2023

Before:

MRS JUSTICE KNOWLES

Re P (Inherent Jurisdiction Return: Return Order: Welfare Analysis)

Mr Christopher Hames KC and Miss Charlotte Baker for the father
Miss Allison Munroe KC and Dr Charlotte Proudman for the mother
Mr Michael Edwards for the child via her children's Guardian

Hearing dates: 16-20 January 2023

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:Introduction

1. On 4 July 2022 I handed down a judgment following a fact-finding hearing conducted within inherent jurisdiction proceedings for the return to Nigeria of a little girl, P, now aged nearly 7 years (Re P (Inherent Jurisdiction Return: Allegations of Female Genital Mutilation and Domestic abuse: Fact Finding) [2022] EWHC 1722 (Fam)). That judgment should be read alongside what follows herein.
2. Following my judgment, the father continued to pursue his application for P's return which was resisted by the mother. An important feature of this case is that, in August 2020, the mother made an application for asylum for herself and P which was eventually refused by the Secretary of State for the Home Department. That refusal is now the subject of an appellate process before the First-tier Tribunal of the Immigration and Asylum Chamber. A final hearing of the mother's appeal against the decision of the Secretary of State is listed for 6 March 2023. Until that appellate process is complete, this court cannot implement any order it might make requiring P to return to Nigeria.
3. I have read the written material in the updated bundle and the documents provided by the advocates. I heard evidence from the mother, the father, Mr Oba Nsugbe KC who is an expert in Nigerian law, and the children's guardian. I reserved judgment to reflect on the evidence. This judgment does not contain a recital of all the evidence and submissions I heard but I have taken these into account in coming to my decision in this difficult and finely balanced case.

Findings of Fact

4. As I observed in my earlier judgement, this case stemmed 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 case, this was a holiday which the father knew about and endorsed. Following a conversation with the father on 4 January 2020, the mother stated that she 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.
5. My findings about how P travelled to this jurisdiction were stark. I found that the mother removed P from Nigeria to the UK without telling the father and without seeking his consent. Moreover, I found that 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.
6. Likewise, my findings about the threats to P of FGM were clear. I found that, on 4 January 2020, the mother had not established on the balance of probabilities that the father threatened to have FGM performed on P. Equally, prior to 4 January 2020 and when living in Nigeria, the mother had not established on the balance of probabilities that the father threatened to have FGM performed on P.

Approved Judgment

7. A major feature of the fact-finding hearing was whether the parents' relationship was characterised by domestic abuse as defined by PD12J of the Family Procedure Rules 2010. My findings established a degree of controlling behaviour on the part of the father though these fell short of the wide-ranging case advanced by the mother. For the avoidance of doubt, I was satisfied that the father's controlling behaviour was abusive as defined in PD12J. My findings in that respect were as follows:
- a) 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;
 - b) Following P's birth, the mother had to seek the father's permission to visit her family;
 - c) 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;
 - d) 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; and
 - e) 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.
8. I made additional findings about the parental relationship which were relevant to P's welfare as follows:
- a) 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; and
 - b) 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.

Overall, I found that, in consequence of the above behaviour (including the behaviour I found to be controlling), the mother was unhappy in the marriage and felt isolated and unsupported.

9. In conclusion, I described the relationship between the mother and the father in this way:

“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.”

Events Since the Fact-Finding Hearing

10. At the conclusion of the fact-finding hearing, I acceded to submissions on behalf of the children’s Guardian to list this matter for a welfare hearing. I did so because there was a lack of clarity about the father’s practical proposals for P’s return to Nigeria and because it was hoped that, by early October 2022, there might be a decision of the First-tier Tribunal on the mother and P’s appeal against the Secretary of State’s refusal of asylum. Unfortunately, the hearing before the First-tier Tribunal at the end of September 2022 did not proceed as envisaged and, despite this court’s encouragement to the First-tier Tribunal to resolve the mother’s appeal as soon as possible, a hearing before the First-tier Tribunal was not practicable until 6 March 2023. I record that there has been disclosure of documentation from these proceedings to the First-tier Tribunal and vice versa so that each tribunal is informed about each other’s business as envisaged by the Supreme Court in G v G [2021] UKSC 9 (see, for example, paragraphs 167 and 170).
11. At a case management hearing on 21 October 2022, I agreed the instruction of Mr Nsugbe KC to report on Nigerian law in the event that P and the mother returned to Nigeria. I also agreed the instruction of an adult psychiatrist, Dr Van Velsen, to report on the mother’s mental health given what I was told about a decline in her mental well-being following receipt of the fact-finding judgment. I decided that this expert should also provide an opinion on the impact of a return to Nigeria on the mother’s mental health and parenting capacity.
12. P continued to live with her mother and to attend school. She also continued to have indirect FaceTime calls with her father each week. P also had some limited direct contact with her father at a contact centre whilst the father was in this jurisdiction to attend the fact-finding hearing. In August 2022, the mother referred herself to a therapy provider for psychological support and attended a telephone assessment where she presented with severe symptoms of depression and anxiety. In October 2022, the mother told the therapy provider that she continued to struggle with her mental health, and she reported escalating suicidal feelings. A referral was made to mental health services for a risk assessment, but this was not accepted and instead it was recommended that the mother should continue to be supported by primary care services. During her interview with the therapy provider, the mother said that P had picked up

Approved Judgment

on her emotions and had begun to fear going back to Nigeria and being away from her maternal family and from her friends. The mother herself viewed a return to Nigeria as a “*death sentence*” and feared being imprisoned in Nigeria or harmed by the father. The mother said she had experienced suicidal thoughts and felt certain she would act on them if a return order were made.

13. In late October 2022, the therapy provider referred the mother to the local authority for Family Early Help. At about the same time, P started to have counselling sessions at school because of concerns that she was struggling emotionally to understand what the dispute between her parents might mean for her. In November 2022, P told her counsellor that her parents were fighting for custody of her, and the court was going to decide whether she lived with her mother or her father. P said that she hated her father; did not want to live with him; and did not want to leave the UK. At a meeting of the Team Around the Family on 18 November 2022, all were concerned about P’s emotional well-being particularly because, during a lesson, P wrote on the whiteboard with reference to her father “*hate hate hate, I want him to die*”. The professionals were concerned about the impact of an adverse ruling requiring P to return to Nigeria on the mother’s mental health. These concerns were communicated to the children’s Guardian who alerted the court and, accordingly on 5 December 2022, I directed that P’s school should provide a short report about her welfare and that the local authority should disclose its records relating to P.
14. On 15 December 2022, a letter from P’s school reported that P had said her parents were fighting over custody of her and the court would decide if she lived with her mother or father. The letter confirmed that P said she hated her father; did not wish to live with him; and did not wish to leave the UK. P was nevertheless said to be doing well at school and to be otherwise settled.
15. Local authority records were received shortly before the hearing and confirmed involvement with the mother and P. At a home visit on 21 November 2022, P was reported to say, “*I don’t have a safe family*” and that her father wished her to return to Nigeria, but she did not want to do so and felt sad. P went on to say, “*my dad is naughty*” and then begged the worker not to include this in her notes because she thought it might lead to her having to return to Nigeria. The worker observed that P constantly checked with her mother by making eye contact before speaking and appeared to be trying not to say anything that would upset her mother. P was heard to ask if her mother was sad when she saw her mother looking at her phone. The worker advised the mother to avoid discussing the court case or anything relating to this in P’s presence. At a professionals meeting on 23 November 2022, those involved with the family concluded that there were significant concerns for both the mother and P in the event they returned to Nigeria.

The Legal Framework

16. All the parties accept that this is not a summary exercise akin to that undertaken by Baroness Hale in Re J (A Child) (Custody Rights: Jurisdiction) [2006] 1 AC 80 with a view to the Nigerian Courts taking over upon P’s return. This is a substantive welfare exercise which both parents intend will mark the end of all the litigation between them, this court having conducted an extensive investigation into P’s welfare in accordance with the suggestions made by Lord Wilson in In the Matter of NY (A Child) [2019] UKSC 49. In these circumstances, the legal framework is as follows:

Approved Judgment

- a) When exercising its powers under the inherent jurisdiction, P's welfare is the court's paramount consideration when determining any questions with respect to her upbringing. The court will have regard to the matters set out in section 1(3) of the Children Act 1989 (the "welfare checklist") and to the statutory presumption of parental involvement in a child's life as set out in s.1(2A) of the Children Act 1989;
- b) The court will undertake a global, holistic and multifaceted evaluation of the child's welfare, taking into account all of the positives and negatives, pros and cons of each option, before determining what best meets the child's welfare needs. The sophistication of the analysis will depend on the facts of the case. Each realistic option for the welfare of the child should be validly considered on its own internal merits because such an analysis prevents one option - often in a relocation case the proposals from the absent or left behind parent - from being side-lined in a linear analysis (see paragraphs 29-30 of *Re F (A Child) (International Relocation Cases)* [2015] EWCA Civ 882);
- c) Given the findings made about the father's behaviour, the court must apply paragraphs 35-37 of PD12J. In summary, the court should apply the matters in the welfare checklist by reference to its findings, and in particular consider any harm suffered and any harm the child or parent is at risk of suffering if an order is made. The court must ensure that the safety - both physical and emotional - of the child and parent is secured before, during and after contact and that the relevant parent is not subjected to further domestic abuse. Further, the court must consider the conduct of both parents towards each other and the child, and the impact of the same, together with (a) the effect of the abuse on the child, and on their relationship with the parents, (b) the motivation of the abusive parent, (c) their likely behaviour during contact, and (d) the capacity of the parents to appreciate the effect of past domestic abuse, and the potential for further abusive behaviour;
- d) Finally, the court must have regard to the parties' rights pursuant to Article 8 and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ("the ECHR"). P's rights as a child prevail in any balancing exercise. It is likely that an application for the international relocation of a child may require a proportionality evaluation because of the likelihood of the severance of the relationship between the child and one of her parents. That evaluation will inevitably focus on the welfare analysis of each of the realistic options and, in the words of Ryder LJ in paragraph 32 of *Re F* (see above), "*may amount to no more than an acknowledgement that one option is better than the other and that the preferred option represents a proportionate interference in the article 8 ECHR rights of those involved*".

The Parties' Positions at the Conclusion of the Evidence

- 17. What follows is necessarily a summary of the careful and thorough submissions made by each party.
- 18. On behalf of the father, Mr Hames KC accepted that, whatever my decision, there would be risks to P's welfare. However, he submitted that the balance came down decisively in favour of P's return to Nigeria. The only way for P to maintain realistic,

practical contact with her father was for her to return to Nigeria and live there. That was the magnetic factor in this case. Otherwise, all she would have would be indirect contact with her father via a screen and the possibility of a visit every couple of years, depending on the father's ability to fund the same and to obtain a visa to visit this jurisdiction. P also needed to be immersed in the culture, heritage and language of her home country. The only way in which P could stay in this jurisdiction was if her asylum appeal was allowed. That would mean she could not travel to Nigeria unless she was prepared to lose her status in this jurisdiction. The mother did not have a fallback position to advance to the court. If P's appeal was refused, she would be returning to Nigeria in any event. Mr Hames KC pointed to the advantages for the mother of living in Nigeria where she could work and maintain financial independence as well as care for P. Return to Nigeria would mean a more normal existence for both P and her mother.

19. Mr Hames KC accepted that the father's wholesale rejection of the findings of domestic abuse showed a complete lack of insight into the harm which this behaviour had caused P. The father was telling the truth as he saw it but his denial and disrespect for the court's findings did not mean that he was not telling the truth about what he planned **not** to do should the mother and P return to Nigeria. The father knew that, if he punished the mother or sought to control her, it would harm P. He was horrified that his oral evidence, namely that he would only pay half of what he intended towards the mother's expenses were she to live in Port Harcourt rather than Lagos, might be interpreted as him seeking to financially control the mother. Mr Hames KC submitted that there was little evidence the father would use court proceedings in Nigeria or his contact with P as part of a controlling strategy of the mother. Though the father had reported matters to the Nigerian police in January 2020, he had taken no further steps in that regard and neither had the police. The father was willing to attend and pay for a resource that might assist him to communicate better and to see things from the perspective of others even if he did not accept the court's findings of domestic abuse.
20. The father had always maintained that he did not seek shared care of P, but he sought a meaningful involvement in her life. He no longer advocated that P and the mother should live in Lagos and had accepted the view of the children's Guardian that the mother and P should be allowed to live wherever she wanted in Nigeria. Mr Hames KC made clear that the father would not challenge the essential architecture of P's life and would cede to the mother day-to-day decision-making in respect of health and education. Further, the package of financial support which was offered by the father reflected the reality when the parties lived together in Nigeria. The father had been squeezed financially and was dependent upon his parents to assist in funding the support available to P if the court were to order her return to Nigeria. The mother would have a lump sum upfront to allow her to find accommodation, furnish it and settle in with P. The father accepted responsibility for P's school fees, for her healthcare, as well as for her day-to-day maintenance. All of these financial matters together with the way in which the father's parental responsibility would be limited would be contained in a Terms of Settlement document approved by the Nigerian court.
21. On behalf of the mother, Miss Munroe KC submitted that the mother had suffered domestic abuse and controlling behaviour by the father. If she returned to Nigeria, she would be forced to facilitate contact in a country where she would be totally reliant on her abuser and his family. The father rejected the court's findings and his stance suggested that the work he might undertake with the counselling organisation based in

Lagos would be meaningless. The father's oral evidence implied that he might well use financial provision to control the mother. The expert legal evidence indicated that there was little protection for the mother because no undertakings given by the father would be enforced by the court in Nigeria. Even if the mother were to live in another part of Nigeria, she would be effectively isolated as her Lagos-based uncle was her only close relative in Nigeria. The mother and P would be alone with no network of family or friends upon whom they could rely on save for the paternal family who would be in a position of economic power over the mother. Incidentally Miss Munroe KC observed that the court had heard nothing from the paternal family to confirm that they were willing to finance the package advanced by the father. She submitted that the court should take seriously the mother's fear that she would be punished by the father and his family for having taken P from Nigeria and for having lied and deceived in order to do so. The father had used the word "*betrayed*" to describe how his family felt which gave some substance to the mother's fears. Above all, the mother was a mentally vulnerable woman whose difficulties were likely to be exacerbated by a forced return to Nigeria.

22. The mother accepted that the father's contact would only be indirect if P remained in the UK though Miss Munroe KC suggested that the father could travel to this jurisdiction for contact more readily than was suggested on his behalf. The financial burden on the mother in Nigeria if the father withdrew his support would be enormous and Miss Munroe KC noted that the father had yet to commence employment himself. The mother was likely to struggle to find a job commensurate with her qualifications and her uncertain financial circumstances would be psychologically stressful. Miss Munroe KC submitted that the sums described in the father's financial package were insufficient to meet the mother's and P's needs. Finally, Miss Munroe KC submitted that P was a child who was aware of and proud of her heritage and culture. She and her mother were integrated into a large Nigerian community in this jurisdiction and there was no question of P's identity being compromised if she remained in this jurisdiction.
23. On behalf of the children's Guardian, Mr Edwards accepted that this was a finely balanced and difficult case. In reaching her final decision to recommend P's return to Nigeria, the children's Guardian had considered six key issues. First, the allegation of FGM made by the mother had driven these proceedings together with the claim for asylum. The welfare consequences for P were enormous in that her welfare has been adversely impacted by delay in the legal proceedings, both in the family court and in the First-tier Tribunal. The mother did not accept the court's finding that the father had not threatened FGM to P and maintained that he and his family still constituted a risk in that respect. The mother's stance - if it continued - would be corrosive of P's relationship with her father particularly if she remained in this jurisdiction with extremely limited contact. Were P to return to Nigeria, P's direct contact with her father and his family would allow her to make up her own mind about whether her father was a threat to her. Second, the report of Dr Van Velsen described the mother as suffering from mild-to-moderate depression and noted that she had no current plans in relation to suicide. Though the mother's oral evidence suggested that she was at the end of what she could cope with, there were other matters which ought to lessen the court's concerns about what the mother might do. The mother was resourceful and would always put P first and, despite very difficult circumstances in this jurisdiction, the mother continued to function on a daily basis. Nigeria was her country of origin where she had lived for most of her life and where she was able to function well in that society. The mother had thought about her plans in the event of a return to Nigeria which was positive. Dr Van

Approved Judgment

Velsen had identified three main concerns impacting upon the mother's mental health, namely isolation; separation from P and potential prosecution. Accepting that the mother would be more isolated if she returned to Nigeria, the two other concerns were not made out on the evidence available.

24. Third, P's life in this jurisdiction was fraught with uncertainty. Though there were positives in that P had a family network here; was doing well at school; and had some links to the wider community, there were significant negatives in that she had no legal status in this jurisdiction. There was significant financial hardship because the mother was not entitled to benefits and the mother was unable to work which had affected her. Though her family were close by, the mother was relatively isolated within the community. The impact on P was negative given the emotional stress she was now experiencing, a stress born of her sense of responsibility for her mother. Unless there was a positive decision with respect to P's asylum status, it was hard to see how the situation would improve. Fourth, the father was likely to continue exhibiting controlling behaviour, but there were positives in his willingness to attend a course, motivated by his genuine desire to have a positive relationship with P. The ability of the father to control the mother would be limited if the mother was in charge of P's day-to-day care and contact between the parents was restricted. Fifth, the children's Guardian maintained that the change of circumstances could be managed because P was a resilient child who had adapted well to the move to London. The mother would rise to the challenge of a return because of the overwhelming focus and priority she put on P's welfare. The benefits to P of a full relationship with her father were significant and were demonstrated by the good quality contact, both direct and indirect, which the father enjoyed with P and to which he had shown commitment.
25. Finally, the children's Guardian supported the mother living where she wished to live and having responsibility for the day-to-day decisions with respect to P's health, education and welfare. Given the distance between Lagos and Port Harcourt where the mother wished to live, contact was unlikely to be frequent and could be managed by using a third party for handovers. Additionally, there should be a non-molestation order and an upfront financial payment to the mother to allow her to return and settle into a new life with P in Nigeria.

The Expert Evidence

26. **Dr Van Velsen's** report was dated 25 November 2022. No party required her to attend court for cross-examination. In the preparation of her report, she had access to the mother's mental health and GP records and was able to interview the mother on 8 November 2022. At the time she met with the mother, Dr Van Velsen noted that the mother described some thoughts of not wanting to be around but there were no active suicidal plans. The mother described low mood and symptoms of anxiety but, during the interview, her mood appeared to improve and she was able to engage with Dr Van Velsen and be open about her history. This suggested to Dr Van Velsen that the mother's symptoms were reactive to her situation. Dr Van Velsen concluded that the mother demonstrated symptoms of a mild/moderate depressive disorder with features of anxiety, including of a post-traumatic kind, in the context of a complicated and stressful situation. She did not meet the criteria for post-traumatic stress disorder and there was no evidence for a personality disorder. Her mental disorder impacted on the mother's ability to engage with her environment, for example, by developing a support network so that she was less isolated. Psychological counselling would be helpful for

Approved Judgment

her and the mother was on a waiting list to access this. Antidepressant medication might also be of some assistance. Dr Van Velsen suggested that the mother should develop other ties in the community and it was important that this intelligent and well-educated woman looked after herself.

27. Were the mother to return to Nigeria, the impact on her mental health would depend on what happened. Dr Van Velsen would be concerned at her isolation as her close family would not be there. If the mother were alone and anxious about what her husband and his family were going to do, then her depressive disorder could become more severe. Were the mother to be arrested and subject to criminal proceedings, this could also have a significant adverse impact. Without the support of her family, the mother's ability to prioritise P's needs in Nigeria might be limited because of the need to facilitate contact between P and her father. It was difficult to identify protective measures as these would be social rather than psychiatric.
28. Dr Van Velsen noted that the mother accepted some of the court's findings and was open about the way in which she had withheld information from the court at the time of the fact-finding hearing. She maintained however that her marital relationship was a turbulent and difficult one and that bringing P to the UK was the only solution she could see. Dr Van Velsen noted that the mother's symptoms - though based on self-report - seemed to have been corroborated to some extent by the mental health service which assessed her. In her opinion, it was significant that the mother did not present as much in crisis she had done previously.
29. Mr Nsugbe KC provided two reports, the first dated 10 November 2022 and the second dated 21 December 2022. He confirmed that orders of the English court could not be reflected in a mirror order obtained from the Nigerian court. Where the English court had determined the arrangements for the child and the parties agreed that these ought to be the subject of a consent order in Nigeria, the parties would need to enter what is known as "Terms of Settlement". This would be a formal document signed by the parties reflecting whatever it was that they had agreed upon with respect to the arrangements for the child. This document would then be filed in the family court together with any suitable background material and accompanied by a request for the court to make a consent order reflecting or incorporating the Terms of Settlement. Whilst the Nigerian court would conduct its own review of the child's best interests, a child arrangements order made by an English court on the basis of a full judgment was likely to have significant weight. The best court in which to make the application was the Magistrates Court of the Family Court Division in Lagos state. Mr Nsugbe KC confirmed that it would subsequently be an uphill task for either party to overturn a consent order reflecting the Terms of Settlement.
30. Mr Nsugbe KC confirmed that no state in Nigeria had the equivalent of the Domestic Abuse Act 2021. However, when considering an application in respect of the child, the Family Court would take into account the conduct of the parents to each other.
31. Mr Nsugbe KC gave brief oral evidence to the court. He confirmed that an application to the family court to convert Terms of Settlement into a court order would take 6-12 months because of court backlogs caused in part by the covid pandemic. If the parties were proactive and urged expedition on the court, it might take less than 12 months. The court was likely to require P to be seen (though this could be done remotely) and for a welfare report to be produced. At least one of the parties should be legally

Approved Judgment

represented and, if the mother could not attend by reason of her as yet unresolved asylum appeal in this jurisdiction, the court would be anxious to ensure that the mother consented. Finally, Mr Nsugbe KC confirmed that he was unaware of any cases in the Nigerian court involving coercion and controlling behaviour. He also confirmed that the Nigerian court had a wide discretion to make injunctive orders for the protection of the child and parent, including orders made without notice to the other party. He did not think the mother would be liable to arrest or prosecution for having taken P out of the jurisdiction.

The Lay Oral Evidence

32. **The Mother.** The mother gave her evidence to me with the benefit of participation directions as had been the case during the fact-finding hearing. In contrast to her somewhat guarded demeanour during the fact-finding hearing, the mother presented as more open and willing to engage with the difficult questions she was asked. Though somewhat hesitant at first, the mother became more animated in giving an account of herself and her fears for the future, just as she had warmed up during her interview with Dr Van Velsen. When assessing her evidence, I reminded myself of the adverse findings I had made against her which impacted negatively on her credibility as a witness. As the mother herself acknowledged, I consider that she would not have been honest with the court if she had not been found out and my findings had not been made. However, the mother was at pains to stress her regret and shame for what she had done and the lies she had told. She struck me as more willing to give an unvarnished account of her circumstances to the court. At the very end of her evidence, the mother apologised to the court for her behaviour and I observed her to be close to tears when doing so.
33. The mother acknowledged that she had forged the father's signature as a "*desperate act*" and bitterly regretted not only the lies she had told but also her failure to give an honest account of the difficulties in her marriage. She accepted that her lies and deceit to this court and to the immigration authorities had greatly extended these proceedings though this was not part of a conscious stratagem on her part. Nevertheless, the mother maintained that the father had threatened to have FGM performed on P both before she came to England and shortly after her arrival. She also confirmed that, contrary to my findings, she was asking the First-tier Tribunal to find that the father had threatened FGM to P as previously alleged.
34. The mother said she was not surprised to hear the father's rejection of the findings of domestic abuse, saying that this was his nature and he simply could not change. She professed herself to be fearful about what father would do in the future if P returned to Nigeria and was worried about prosecution and other legal proceedings to transfer the care of P to the father. Likewise, she was scared of what the paternal family would do because she had said things which had impugned the family's honour and might be punished for her behaviour. Despite those fears, the mother tentatively agreed that the father's sister and her husband might be able to assist with contact handovers in Nigeria. The mother's overwhelming feeling was a fear of isolation in Nigeria where she would be cut off from the direct support of her own family and of the father using either P or the ongoing financial support as a means of continuing his control. In that context, she said, "*It's just me against whatever he happens to do*" and said she did not know how she would deal with it. The mother was clear she wanted her divorce from the father finalised before her return to Nigeria. She expressed doubt about the father's ongoing

Approved Judgment

commitment to provide financially and about the levels of financial support presently on offer from the father.

35. The mother reported that she was awaiting counselling for her mental health difficulties and was taking medication to help her sleep. She noted that no health insurance policy would cover the cost of any psychiatric care or treatment she might need on her return to Nigeria and that she would have to fund this herself were it to be necessary. If she was required to return to Nigeria with P, the mother told me that *“I feel like I would be at the stage where I would not be able to help myself”*. She made that comment in the context of being asked about her suicidal thoughts and told me that she felt *“stretched to her limits”*.
36. The mother denied discussing the return to Nigeria with P yet eventually conceded that P had picked up on her low mood and was consequently worried about both the court proceedings and her father. She accepted that P was worried about being separated from her but she had reassured her that they would be living together in Nigeria if they returned there. The mother was unable to recognise any negative impact on P arising from her abrupt removal from Nigeria in December 2019. She said that P would adapt in time to a move but it would be very hard for her. The mother had little confidence that schools in Nigeria were adept at addressing and supporting a child who may have emotional difficulties.
37. The mother said that she wished to move to Port Harcourt, having studied there as an undergraduate. She had a friend who had lived there in the recent past who might be a source of useful information. She committed to keeping the father informed of P’s progress at school and general well-being. The mother was also clear that P should have a relationship with her father if this could be facilitated safely and accepted that P loved her father. She did not want to be involved in handovers for direct contact but was supportive of ongoing, regular indirect contact. There had been no contact between P and the wider paternal family since P had been in the UK. If P remained here, the mother was willing to facilitate direct contact between P and her father during the holidays as the father could use his brother’s home as a base to stay and have contact.
38. The mother was clear that P understood the Yoruba language but was not yet a fluent speaker. P attended a Nigerian church and ate Nigerian food. She had a Nigerian school friend and the mother described her as being proud of where she was from.
39. **The father.** As at the fact-finding hearing, the father’s evidence demonstrated a lack of insight into his behaviour together with a degree of complacency about what was required from him should P return to Nigeria. It was, however, clear to me that he was very anxious to have a positive and ongoing relationship with his daughter.
40. The father was emphatic that he did not accept the findings of domestic abuse and said he could not do so because he was speaking the truth as he saw it. At times during his evidence, the father used the phrase *“total fabrication”* to describe some of the findings I had made about his controlling behaviour. Though he expressed regret for his infidelities, the father denied any negative impact on P arising from his behaviour. He told me he would attend a counselling resource in Nigeria because he wanted to be a better father and to allay any fears about his behaviour. When pressed, he eventually conceded a need to address his communication skills with others but little more than that. He assessed that he would only need to be involved with the counselling

Approved Judgment

organisation for about a month. The father confirmed that the paternal family knew about the court's findings, including the one made against them. He described that all his family felt "*betrayed*", though he sought to resile from the use of that word when cross-examined by Mr Edwards. The father denied that, were she to return to Nigeria, the mother would be punished by his family for what had happened.

41. The father told me that he had an offer of employment which had been due to commence on 3 January 2023. He had told his putative employers that he could not start then because of the need to attend these proceedings. It was unclear from his evidence whether that job offer remained open to him. The father accepted that he was wholly reliant on his parents for money at the moment. In his cross-examination, the father accepted that the financial support he proposed for P and the mother was less than the minimum wage in Nigeria and it was plain he had an expectation that the mother would take on financial responsibility for her situation from the day she returned to Nigeria. In addition to paying maintenance for P, the father confirmed that he would pay for the return flights, P's education and for health insurance.
42. The father was very insistent that P should live in Lagos as this would make contact more convenient for him. He proposed monthly visiting contact, using his parents' home as a base. The father was also very clear that he would not cover all the mother's rent for 12 months if the mother lived elsewhere than Lagos. He told me that, in those circumstances, he would only meet half the cost. When challenged about this by Mr Edwards, the father denied that this represented any form of controlling behaviour towards the mother.
43. The father accepted that P was doing well at school and thought there would be no negative impact on P of a return to Nigeria. Though he acknowledged P would miss her family and friends in the UK, she would have support from him and his family which would mitigate any such losses. Finally, the father accepted that the care provided by the mother was excellent and that she was a good parent to P.
44. **The children's Guardian.** The children's Guardian accepted that this was an extremely difficult case with positives and negatives in either scenario, complicated by the concerns about the mother's mental health and P's emotional well-being. She confirmed that she did not recommend the mother should return to live in Lagos and stated that the mother should live where she wished because the children's Guardian saw value in the mother feeling secure about her place of residence. The mother's proposals about moving to Port Harcourt appeared sensible as it was a place she had some connection with and knowledge of. The children's Guardian maintained the conclusion in her final report that P should return to Nigeria. She accepted being troubled by aspects of the father's evidence such as his insistence that the mother should live in Lagos and his plans to alter the level of financial support if the mother lived elsewhere. Her worries in the long term about the father's financial control reinforced (a) the need for a court order made by the Nigerian court which contained protective measures and (b) the need for a substantial upfront financial payment to the mother so that she could set up a home in Nigeria and settle herself and P into their new life. She thought 6-12 months' money would be necessary and should be available to the mother before she left this jurisdiction. The children's Guardian was also clear that the mother should make the primary decisions about school and health though she should keep the father informed of important matters.

Approved Judgment

45. In cross-examination, the children's Guardian acknowledged that the father's wholesale rejection of the findings of domestic abuse was a worry. She was clear that he should engage with a counselling organisation and thought that a month was simply insufficient to address even those aspects of the father's behaviour he accepted needed some work. She recognised the risk that the father may not change his behaviour but thought he may do so as his main motivation was to have a good relationship with P. She confirmed that the father had not sought to use his contact with P to control the mother in any way. Finally, she acknowledged that the paternal family and their response was something of an unknown quantity.
46. The children's Guardian found the mother to be more positive in her presentation in oral evidence which made her a little more optimistic about the mother's mental health. She accepted that, if the mother were to return to Nigeria, she would lose the support of her immediate family and would feel isolated. However, she noted that the parents were in the process of divorcing and the mother would be returning to a different place away from where the father or his family lived. That represented a return to a place that the mother felt was sufficient to begin rebuilding her life in Nigeria. A firm structure of protective measures set out in the Terms of Settlement and eventually in a court order by the Nigerian court would also act as a protective feature for the mother and for P.
47. The children's Guardian thought P may need some pastoral support from her school if this was available. She stressed that P was a happy and healthy little girl but the dispute between her parents was causing her confusion, upset and sadness. When reflecting on the mother's failure to accept the findings in relation to FGM, the children's Guardian observed that any negatives the mother might communicate about that to P would be balanced by P's own experience of loving and good quality contact with her father.

Discussion and Analysis*The Welfare Checklist*

48. **The ascertainable wishes and feelings of the child concerned.** I must assess P's wishes and feelings in the light of her age and understanding. In that regard, I have been greatly assisted by the involvement of the children's Guardian with P set out in the three reports she provided to the court.
49. In summary, I am satisfied that P has an established and positive relationship with her father. P is, however, hostile towards Nigeria as a country but struggles to give reasons for this hostility. Her principal anxiety about Nigeria seems to be that she would be separated from her mother if she were to return there. I accept this anxiety stems from the mother's belief that P would be taken from her should they return to Nigeria.
50. In the first report of the children's Guardian dated 6 May 2021, P was clear that she wished to stay with her mother because she was "*the best*". P referred to Nigeria as being her dad's country not her mother's country because "*my mum not like my dad's country and my mum like me to stay here forever*". P said she would be sad if she went back to Nigeria even if that was to live with her mother and, when asked why, P said she did not want to stay "*at her daddy's place*". When asked about video contact with her father, P said she did not enjoy the calls but was unable to explain why.

Approved Judgment

51. In her second report dated 24 February 2022, I note that the children's Guardian had had the benefit of observing a video call between P and her father which informed her meeting with P. In conversation, P was clear that she liked both her parents and enjoyed the calls with her father but could not explain why this was. She told the children's Guardian that she wanted her father to come to London so that they could play together. P expressed the same hostility towards a return to Nigeria she had in 2021 but was unable to articulate in detail why this was. Interestingly, P said she would be happy to return to Nigeria for a holiday with her mother but would not want to go to Nigeria for a holiday with her father because she wanted to stay in London with her family and friends.
52. In the Guardian's final report dated 13 January 2023, P was positive about contact with her father but she did not want return to Nigeria, not even for holidays with her mother. P was anxious and fearful about being separated from her mother. The children's Guardian noted a deterioration in P's expressed views of her father between her second and final reports. In her opinion, P had internalised her mother's view that their future lay in England and that the father was a threat to that future. Though the local authority records indicated that P's knowledge and understanding of the proceedings had increased, this remained limited because P continued to equate a return to Nigeria with separation from her mother.
53. I have also had the benefit of scrutinising the local authority records which detailed P's involvement with a school counsellor. Those records indicated that P equated a return to Nigeria with separation from her mother and that P's behaviour in school gave rise to some concern, an example being the episode in which she wrote "*hate hate hate, I want him to die*" with reference to her father. I note that, when the children's Guardian explored this incident with P in December 2022, P could not remember why she did this. The local authority expressed understandable concern for P given the information they received, but its records needed to be treated with a degree of caution because the local authority did not carry out a full assessment; did not have access to the court papers (including the fact-finding judgment); and did not speak to the father.
54. Drawing the threads together, my assessment of P's wishes and feelings is as follows. First, she wishes to remain in the care of her mother wherever that might be. Second, she enjoys contact with her father. Third, she does not want to go back to Nigeria because she has become aware of the mother's anxiety about a return to that country and knows that her mother sees their future as being in England. I consider it likely P is burdened by both her limited understanding of the proceedings and her awareness of her mother's sadness and wish to remain in this jurisdiction. I do not think that the mother has discussed these proceedings at length with P, but I suspect that P has overheard conversations between her mother and members of the maternal family about a possible return to Nigeria. It is wholly unsurprising that a child of P's age would align herself with her mother's view about that prospect.
55. **The child's physical, emotional and educational needs.** P is a healthy, physically active and friendly child. She has a need for a loving, stable and secure home environment. Her relationship with her mother is loving and secure and her mother meets P's physical needs notwithstanding their difficult financial circumstances. P also has a need for a loving relationship with her father and enjoyed the regular indirect contact as well as the very limited direct contact with her father, made possible during his trips to this jurisdiction to attend substantive court hearings.

Approved Judgment

56. P is reported to be happy and confident at school and making academic progress. She has good relationships and school and is settled there. Her school have reported some concerns about P's emotional well-being in autumn 2022, when P became upset and expressed worries about these proceedings. I am clear that P needs decisions about her future to be resolved as soon as possible.
57. **The likely effect of any change in the child's circumstances.** P has already experienced significant change by moving - without preparation or warning - to this jurisdiction in December 2019. That move meant she lost contact initially with her father and the paternal family and, though there has been a restoration of some limited contact with her father, P has had no contact with her paternal family for over three years. P also lost contact with her friends at nursery and was taken from the country of her birth and its rich culture. She had no time to prepare for that move and to say her goodbyes. Though P is settled here, a return to Nigeria would mean further significant losses for her. She would lose her close relationship with her maternal grandmother, aunt and young cousin as well as her friendships and relationships at school and in the church community which she attends with her mother. A further move would be disruptive and stressful for P though I recognise it would be planned rather than sudden.
58. There are advantages to a return to Nigeria which is the country of P's birth and origin. P would have her father and wider paternal family and, to a very limited extent, her wider maternal family available to her. She would be able to enjoy a fuller relationship with her father whilst remaining in the care of her mother who is her primary carer. Nevertheless, there are considerable uncertainties about the return to Nigeria, a country in which P has not lived for a substantial part of her life. She is likely to return to a different part of the country where she has never lived and the arrangements for her accommodation and her schooling are unclear. She will be required to travel lengthy distances for contact with her father and the paternal family, most likely during the holidays. Emotionally, P will be aware of the strain on her mother as she re-establishes herself in Nigeria and may also become aware of difficulties, at the very least, in how the father and the paternal family regard her mother. Contact with her father and his family is likely itself to take some getting used to and may also expose P to adult conflict if handovers are not handled well. Though many of these uncertainties are likely to be confined to the short term, I cannot exclude the risk that P's medium and long-term emotional well-being and security will be undermined by a return to Nigeria.
59. Though P is apparently settled here, there are disadvantages to her current situation. Neither she nor her mother have legal status in this jurisdiction and they await the resolution of their appeals to the First-tier Tribunal. P and her mother have no access to financial support or gainful employment and rely on financial assistance from the maternal grandmother and on occasional assistance from a food bank. They are living in cramped accommodation and are reliant on goodwill of the couple whose home they share.
60. Though the children's Guardian and, to a lesser extent, P's mother told me that P would adjust if she were to return to Nigeria, I record some reservations about the effect of a return on this child's emotional well-being. Merely because P was resilient enough to cope with the unplanned move to the United Kingdom in 2019 does not mean that she would cope as well with a return to Nigeria as an older child, more acutely aware of what she is leaving behind.

61. **The child's age, sex, background and any characteristics of the child which the court considers relevant.** P is a six-year-old girl of Black Nigerian heritage who adheres to the Christian faith. She has no disability or special needs which may impact her development. It is particularly important that, wherever she lives, she has legal status in that jurisdiction. It is also important that her Nigerian heritage is fostered and promoted. I have no reason on the evidence before me to doubt that P is proud of her Nigerian heritage and is able to express that heritage at her church, with her mother, her maternal family and with her school friend. Nevertheless, were P to return to Nigeria, she would be immersed in Nigerian culture in a way which is simply impossible in this jurisdiction.
62. **Any harm which the child has suffered or is at risk of suffering.** P has suffered harm in the care of her parents when she was exposed to their conflicts and became withdrawn and needy of physical affection. P is also a victim of domestic abuse because she was exposed to the domestic abuse experienced by her mother which impacted her mother's well-being, emotionally and also, to a lesser extent, physically.
63. P was also harmed by her removal without warning from Nigeria in December 2019 which undermined her attachment to her father and severed her relationship with her extended paternal family. Despite the mother's anxiety, I am satisfied that P is not at risk of suffering harm from FGM if she returns to Nigeria and has contact with her father and the paternal family.
64. P is now an older child and increasingly aware of her circumstances. The impact upon her of any ongoing dispute between her parents is likely to be adverse and to compromise her emotional and psychological well-being. Anything which undermines her mother's parenting role is likely to be harmful to P as is the continuing attenuation of her relationship with her father.
65. **How capable each of the child's parents and any other person in relation to whom the court considers the question to be relevant is of meeting the child's needs.** P's primary carer is her mother and the two enjoy a close and loving relationship. The mother is capable of providing P with a loving and secure home and of meeting many of her emotional and psychological needs. However, the mother's ability to do so has latterly been compromised by her poor mental health, consequential upon the outcome of the fact-finding hearing in July 2022. The mother has been preoccupied with anxiety about the outcome of both these proceedings and those before First-tier Tribunal and has been diagnosed with mild/moderate depression. P has been affected by her mother's low mood and anxiety as is evident both from her behaviour in school and from the negative feelings she has expressed about a return to Nigeria and, to a limited extent, about her father. Were P to remain in this jurisdiction with her mother having been granted asylum, I have little doubt that the mother's mental health difficulties would soon resolve given Dr Van Velsen's opinion that the mother's presentation is reactive to her life situation.
66. However, were P and her mother to return to Nigeria, the impact on the mother's mental health – and by extension, P's emotional security - would be more uncertain. The mother would undoubtedly be isolated, at least initially, and bereft of the practical and emotional support given by the maternal grandmother and maternal aunt. If the mother was to fear arrest and further legal proceedings in Nigeria, this would have a significant adverse impact on her mental well-being, as would anxiety about and conflict with the

Approved Judgment

father and the paternal family. Though the mother told me that, if she had to return to Nigeria, she would be stretched to her limit and hinted at suicide as a solution, I am persuaded - on the psychiatric evidence and my own assessment of the mother - that she would do nothing to harm P and that there is likely to be an element of exaggeration in her response.

67. Much will be demanded of the mother if P returns to Nigeria. She will need to establish herself in another city, to create a home for herself and P, to settle P into a new school and community, and ultimately to obtain paid employment commensurate with her education and skills. The mother is an educated, talented and resourceful woman who has the ability to undertake all of those tasks and who is motivated by a profound love for her daughter. If a firm structure can be created to allow the mother to undertake these tasks, I consider it likely the mother will rise to the challenges despite her present frailty.
68. The father too loves P and his contact with her has shown him to be an enthusiastic and emotionally attuned parent. I accept the view of the children's Guardian that his position in this litigation is driven by a genuine concern for P's welfare. However, the father has caused harm to P and to her mother as set out in my findings yet does not presently accept responsibility for that behaviour. His attitude is clear and uncompromising, characterising some of my findings as total fabrications. Though the father accepts he needs to undertake some work to address his behaviour, it is plain that he regards this as being limited in scope and of very limited duration. I was troubled by his attitude to the financial support of the mother were she to live elsewhere than Lagos. Though Mr Hames KC sought to persuade me otherwise, the father's instinctive response struck me as an attempt to control the mother as he had done in the past. In closing submissions, Mr Hames KC rowed back from the father's position that P and her mother should live in Lagos and offered a variety of significant concessions to soften the impact on the mother and P of a return to Nigeria. Nevertheless, I am very clear that the father's attitude to the findings of domestic abuse underlined the need for the most careful scrutiny of any return to Nigeria.
69. Both parents are intelligent and capable but, presently, I consider that neither appreciates the need (a) to support the other and (b) to refrain from damaging criticism and conflict which would inevitably be emotionally harmful for their daughter. Both need support and work in this regard.
70. **Range of powers available to the court in the proceedings in question.** This court has a wide flexibility to make orders in P's best interests. Both parents accept the court's jurisdiction to do so and court orders will provide clarity for the parents about the arrangements for P's care. No order made by this court can be implemented until the outcome of the appellate process before the First-tier Tribunal is known.

My Assessment

71. There are two realistic options before the court: first, an order requiring P to return to Nigeria (the mother accepting that she would return with P if the court were so to order); and second, an order placing P in the care of her mother without requiring a return to Nigeria. The judicial task in this case is complicated by a number of features: first, an ongoing appellate process about the mother's and P's status in this jurisdiction; second, the absence until closing submissions of a **realistic** package of proposals (financial and

Approved Judgment

otherwise) from the father which would assist in any relocation; and third, the limited acceptance by either parent of the adverse findings made against them. When I contemplate the options before the court, both strike me as significantly flawed, but I am obliged to make a decision now based on the evidence before the court. No party suggested that this court should adjourn its decision until the conclusion of the appellate process about the mother's and P's status in this jurisdiction. In reality, this court must choose the least worst option for P yet she deserves so much more than that.

72. My analysis has been informed by the case law and by the application of paragraphs 35-37 of PD12J which lists the factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred. It has also taken into account my analysis of the welfare checklist.
73. Before I consider a comparative analysis of the two options before the court, I record the belated concession made by Mr Hames KC in closing that, were P to return to Nigeria, the mother would be free to choose wherever in that country she wished to live. Additionally, the father accepted the evidence of the children's Guardian that the mother should make both the key and the everyday decisions about P's care, education and health, though he wished to be informed of her progress from time to time and to perhaps attend the odd event at her school. Finally, accepting the recommendation of the children's Guardian, the father expressed himself willing to provide a lump sum to the mother amounting to approximately 2.167 million naira. This comprised rent for 12 months (500,000); a generator and furnishings (200,000); maintenance for 6 months (150,000); health insurance for one year (17,000); school fees for a year (300,000); air fares (1 million) and the as yet unknown costs of converting the Terms of Settlement into a Nigerian court order. The father also stated his willingness to pay ongoing maintenance for the remainder of P's minority at 25,000 naira a month; health insurance for the mother and P at 17,000 naira annually; and school fees annually for the remainder of P's minority in the sum of 300,000 naira. I also record that all the parties accepted the need for any return order made by this court to be converted into Terms of Settlement which would eventually be approved by the Nigerian Family Court. I was told that the father would fund this process with assistance from his family.
74. There are a number of positive features about a return to Nigeria. First, this will be a return to the country of P's birth and nationality where her status and that of her mother will be secure. Second, P's identity needs as a Nigerian child will be amply met and she will be immersed in Nigerian culture with all the positives this has to offer. It is to be hoped that, in due course, P will no longer view Nigeria as a place to fear. Third, P will be able to have regular visiting contact with her father and the paternal family. This is likely to be during school holidays given the distance between Lagos and Port Harcourt, the father seeking no more than a half share of the holidays because he is worried that P would miss her mother if she spent longer away from her during that time. Such contact, if well-managed by the adults involved, is likely to strengthen the father-daughter relationship and provide a more secure emotional foundation for this child. It may also serve as a counterbalance for P against the mother's belief that the father and the paternal family pose a risk of FGM to her. Finally, P will remain in the care of her mother who will have control over the arrangements for her care.
75. However, a return to Nigeria is not without disadvantages. It will entail significant losses for P once more and for her mother. P will be cut off from direct contact with her maternal grandmother, aunt and young cousin and her mother will lose the emotional

Approved Judgment

and practical support provided by her immediate family. I do not know whether the maternal family will be able to maintain direct contact with P and her mother by travelling to Nigeria but, even if they can, such contact will be significantly attenuated. I have concerns about how P's emotional well-being will be impacted by a fresh set of losses relating to family, school and friendships. Yet the mother will be returning to the country of which she is a citizen and where she lived until 2019. She has personal characteristics which would help in negotiating the transition and forging a new life in Nigeria. However, her mental health is compromised and P's wellbeing depends upon her mother being able to make a go of their new life. P has been acutely aware of her mother's fear and unhappiness, and her own emotional security may be compromised if the mother cannot rise above her own difficulties.

76. A return to Nigeria would allow the mother to seek employment commensurate with her talents and qualifications but this is likely to take some time. I suspect that such employment will help the mother's mental health problems and decrease her isolation. The mother will have a fund of money provided by the father to help her set up a new home and to settle P into her new school. Miss Munroe KC submitted that the sums outlined by Mr Hames KC were simply insufficient given rising inflation, and there may well be force in that submission. However, the paternal family resources are not limitless and the mother may well have to return to work earlier than she might wish in order to make good any shortfall. Significantly, the ability of the father to provide the financial package upfront remains uncertain. He has not been in employment for some time whilst studying for accountancy qualifications and his job offer strikes me as uncertain. I have had no recent confirmation from his parents that they will fund the sums required to allow the mother and P to re-settle in Nigeria without unbearable strain. The father's ability to provide financially in the future is also questionable and his family have not provided assurances that they will meet any shortfall in P's maintenance if the father cannot secure well-paid employment. Finally, I note the mother's fear that the father might use money as a means to control her in the future. Though I made no finding that the father financially controlled the mother in the past, his behaviour was characterised by a need to exert control over the mother in a number of respects. In circumstances where neither are living together and where he does not accept the court's findings, I cannot exclude the possibility that the father would use ongoing maintenance as a means of controlling the mother.
77. The other disadvantage of a return to Nigeria is the father's rejection of the court's findings of domestic abuse. His commitment to any intervention to address his abusive behaviour is uncertain though he has at least found a course he can attend. He is however committed to a good relationship with P and appears to have belatedly recognised that bad behaviour to the mother in future will be undermining and destructive of his relationship with P.
78. Turning to life in the UK, this has some advantages. Both P and her mother will remain in an environment which is familiar to both of them and where they have access to practical and emotional support from the maternal family. There are some community links via their church but little else and the mother is comparatively isolated. The mother and P have access to free mental health support which, in Nigeria, would have to be privately funded. Direct contact with the father – if it were to take place – could be managed via a third-party handover with relative ease. Indirect contact between P and her father would continue as before.

Approved Judgment

79. However, there are real disadvantages to remaining in the UK. Neither the mother nor P have legal status here. The outcome of the appellate process before the Tribunal is uncertain. Their lack of status constitutes, in my view, a serious impediment to their overall security in this jurisdiction. The mother cannot work and she and P are reliant on the charity of others. This is simply not sustainable. In my assessment, it is not difficult to see how this might exacerbate the mother's sense of hopelessness and contribute to her low mood and relative social isolation. That is something which P has already picked up on and which, if sustained, is potentially damaging for P's own emotional wellbeing. P has already, in my view, taken on a degree of responsibility for her mother, who she believes is sad and to whom she looks to check what she is saying. Further, P's relationship with her father cannot develop as it should if she remains here. Her contact with him, both direct and indirect, is enjoyable but P will be denied a full relationship with her father if she stays here. The father has shown commitment and sensitivity to P and is motivated to sustain and improve his relationship with her. There is real uncertainty whether the father would gain an entry visa to permit him to travel here for contact though I think he would be able to fund at least an annual visit here because he would not be paying any monies for P's maintenance. Additionally, P's identity as a Nigerian child is unlikely to be as fully developed if she remains here and regards Nigeria as a place to fear. Finally, unless there is a positive asylum decision, it is hard to see how any of these disadvantages might be overcome.
80. Drawing the threads of this comparative analysis together, I have, on very fine balance, concluded that P should return to Nigeria. That return will be on the basis of some stringent conditions which I will outline below. In my analysis, the advantages of a return to Nigeria, though qualified as I have outlined, outweigh the advantages of remaining in this jurisdiction. The magnetic welfare factors are P's meaningful relationship with both her parents; her secure legal status in Nigeria and her identity as a Nigerian child. The disadvantages arising particularly from the father's attitude to this court's findings and the mother's anxieties can, in part, be sufficiently ameliorated by the conditions which will be attached to any return.
81. Given my findings of domestic abuse, I have given anxious consideration to paragraphs 35-37 of PD12J. I observe that the findings I made would not preclude this father having contact in this jurisdiction, subject to him engaging with a programme orientated on providing him with insights into his behaviour and promoting behavioural change. This is because I could be satisfied that P's emotional and physical safety as well as that of her mother would be secured before, during and after contact and that the mother would not be subjected to further domestic abuse. In that regard, this is also the reality of the mother's position before me in that she accepted that, subject to a third-party handover and despite the father not yet having engaged with any behavioural change programme, P could see her father unsupervised in this jurisdiction without this being a threat either to P's welfare or to her own.
82. Can I be satisfied on the balance of probabilities that this would also be the case in Nigeria? The opportunity for the father to behave abusively to the mother in Nigeria would be very much reduced by physical distance given that, on her current plans, the mother will be residing some 8/9 hours away from Lagos. The Terms of Settlement, endorsed by the Nigerian Court, would require direct contact in the holidays to be facilitated via a third-party handover which would prevent the parents from coming into direct contact with each other. Further, the mother would have a "*lives with*" order in

Approved Judgment

respect of P and would also be in control of the arrangements for P's education, healthcare and so on, subject to informing the father. This would significantly limit the father's ability to use these matters as a means of controlling the mother as he did in the past. Additionally, the financial arrangements for P will be settled by an upfront payment of the monies outlined by Mr Hames KC to permit the mother to establish a home for herself and P in Nigeria without being initially beholden to the father for a monthly payment. Thereafter, maintenance payments from the father will be secured by a court order. The father will be obliged to submit to orders about how he conducts himself towards the mother (non-molestation) and must take steps to rescind any complaint he has made to the Nigerian police about the mother. Finally, the father must undertake a programme of behavioural change work before the mother and P return to Nigeria so that this court can be assured he means his commitment to P to be a positive one. The combined effect of all these measures would permit this court to conclude that the conditions set out in paragraph 36(3) of PD12J were met.

83. Miss Munroe KC sought to persuade me that I could have little confidence that the Nigerian court would enforce any undertakings given by the father relating to non-molestation. What I intend should happen is rather different. The father will be bound by injunctive orders regulating his behaviour towards the mother and I note from the evidence of Mr Nsugbe KC that the Nigerian court is well accustomed to making injunctive orders to protect a parent and child. In those circumstances, I see no reason why the Nigerian court would not enforce its own orders if the father should be in breach of them.
84. For the avoidance of doubt, I am quite clear that, grounded in the comparative analysis above, my preferred option of returning P to Nigeria represents a proportionate interference in the Article 8 ECHR rights of both P and her mother.

The Order

85. The order for return will be subject to:
 - a) the outcome of the appellate process before the Tribunal;
 - b) a lives with order in the mother's favour;
 - c) a spends time order for P to have contact during half the school holidays and term time contact each month if the father notifies the mother he wishes to take this up, any such notification being given at least 28 days before this contact takes place;
 - d) contact handovers to be facilitated by a third-party;
 - e) indirect contact;
 - f) an order permitting the mother to take decisions about the arrangements for P's care, education and health and for the mother to inform the father about major decisions in this respect and to give him information from P's school, subject to redaction of P's home address;
 - g) the parents each to communicate about P via a dedicated email address;
 - h) non-molestation orders against the father for the mother's protection;

Approved Judgment

- i) confirmation that the father has withdrawn all complaints about the mother which he has made to the Nigerian authorities;
- j) an upfront payment of money to allow the mother to re-settle in Nigeria. The amount suggested by Mr Hames KC will be the minimum that is required;
- k) ongoing maintenance to be secured by a court order;
- l) the father shall pay for and undertake the process of converting this court's order into Terms of Settlement acceptable to the Nigerian Family Court, such process to be transparent and respectful of the mother's rights to participate in any legal proceedings required in the Nigerian Family Court;
- m) the father should begin work with the counselling organisation he has identified as soon as possible on the basis that this organisation receives a clear and agreed letter of instruction from the parties; and
- n) the parents' divorce must be finalised.

There may be other ancillary matters which need to be addressed in my order, I direct that there should be a hearing listed before me as soon as possible after the decision of the Tribunal is known.

- 86. Prior to the next hearing, I direct that the paternal grandparents and the father's sister should be given a copy of this judgment and my fact-finding judgment. I ask them to reflect on the contents and to consider how best they might commit themselves to ensuring P's emotional wellbeing on her return to Nigeria. I would be interested in hearing from them how they might do so.
- 87. I have observed that both parents need support and work to promote good quality contact for P and to refrain from damaging criticism and conflict which would be harmful for her. The father will soon have access to such work via the counselling organisation in Nigeria, but the mother does not appear to have a ready source of assistance in this respect. I hope that the children's Guardian can help in identifying a resource which might help the mother prior to any return to Nigeria.
- 88. That is my decision.