IMPORTANT NOTICE

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 child[ren] and members of their [or his/her] 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.

Date: 17, 18, 19, 20 and 26 January 2022

IN THE FAMILY COURT

Before :

RECORDER MOYS

- -

Re: A and B (Child Arrangements: Parental Alienation)

- -

JUDGMENT

- -

Overview

1 I am concerned with the welfare of two children, A, aged 10, and B, aged 7.

2 The mother has been represented at this hearing by counsel, Ms Elizabeth Selman.

3 The father was represented by specialist family lawyers at a senior level throughout the proceedings up until very recently and including by leading counsel at a pre-trial review (PTR) that took place before Recorder Hellens on 20 December 2021.

4 By the time of the hearing commencing before me on 17 January 2022, the father had chosen not to continue to instruct his legal team and so appeared (briefly) before me as an unrepresented person on 18 January 2022, in circumstances I will come on to describe in detail in the course of this judgment.

5 Having heard the evidence, but before having had an opportunity to prepare and deliver a full judgment, I made interim orders on 20 January 2022 requiring the father to return the children to the jurisdiction and to ensure they attend their schools in England. I gave a separate extempore judgment setting out my reasons for making the interim orders.

6 I dealt with an additional mention hearing on 26 January 2022 which I had listed in order to be provided with an update as to the implementation of the interim orders.

7 By the time of the mention hearing the father had re-engaged his solicitors and was represented by leading counsel, Andrew Bagchi QC, who had also prepared a detailed position statement on the father's behalf. The father pursued a number of applications at that hearing, including a request for permission to appeal the decision to proceed in his absence and to appeal the interim orders. I dealt with those applications in a second extempore judgment. Insofar as it is necessary for me to refer to those applications (and my reasons for refusing them) in the course of this judgment, I shall do so.

8 I received closing written submissions from Ms Selman on 24 January 2022.

9 I gave the father until 4pm on 31 January 2022 to provide his closing written submissions, to give him time to consider and respond to those of Ms Selman (and also taking into account that I had made orders requiring him to arrange travel for the children back to England which I expected him to prioritise complying with). Unfortunately, I was only sent the father's submissions via Ms Selman on 7 February 2022 as they had been prepared by the father in person and then sent to a court email address rather than provided to me directly by his solicitors (and despite the fact the father has English solicitors – Cordell & Cordell - on the court record, as they filed a notice of acting on 26 January 2022). I make no criticism of the father personally for the late receipt of his document.

10 The father's brief closing submissions are set out in four paragraphs and revisit the same themes that had been raised by Mr Bagchi QC in his detailed position statement for the hearing on 26 January 2022. In short, that the father considers that it was unfair for the hearing to have proceeded on 18 January, or for interim orders to have been made, and he asserts that it is 'abusive' to oblige the children to return to England.

11 I originally circulated judgment in draft on 4 February 2022. When Ms Selman sent me the father's further document on 7 February 2022 I indicated that I required further time to reflect on the content of that document and I delayed finalisation of this judgment to do so. In the event, it transpires that there is in fact nothing new in the short document prepared by the father, and the arguments contained in that document had already been raised by him at the hearing on 18 January 2022 and/or by Mr Bagchi QC at the hearing on 26 January 2022.

Background summary and parties' positions.

12 There is a protracted and complex background to this case.

13 In summary, the mother alleges that the children have been subjected to a process of alienation by the father over a considerable period of time following the parties' separation (she says, since at least the summer of 2020), that this alleged behaviour was both deliberate and calculated (and continues to be so), and that the father has caused the children serious emotional harm through his actions which have resulted in the children (particularly A) expressing a strong hostility towards their mother and not wanting to spend time with her.

14 The mother says that the father's hostile views about her are entrenched, that he is not capable (currently, at least) of changing his – and by extension the children's – attitudes towards her, and that he acts in a way that is calculated to destroy her relationship with the

children. She considers that the situation will not now improve unless the children move to live with her.

15 The mother accepts it is likely that if the Court decides the children should move to live with her further expert evidence will be necessary in order to advise the Court about how the impact of any move on the children should be mitigated, including whether the children require a 'bridging' placement with kinship carers (or, as a last resort, local authority intervention). The mother has issued a Part 25 application with regard to that expert evidence which I am invited to determine as part of my deliberations.

16 At the PTR Recorder Hellens had adjourned the Part 25 application to the conclusion of the hearing before me on the basis that he determined that the application could be granted in order to advise the court as to the implementation of any transfer of residence but that the evidence was not necessary in advance of this hearing.

17 Notwithstanding the outstanding Part 25 application, the mother's position is that I have sufficient evidence at this stage on which to make findings about her allegation of alienation, the impact of any such alienation on the children (including whether they have suffered serious harm), and to consider whether either parent is able to meet the children's needs.

18 She invites me to conclude that the father is not able to meet the children's needs and that, in principle, their welfare requires that they move to live with their mother, underpinned by expert advice and support (including therapeutic support).

19 The father denies the allegation of parental alienation and says he has always promoted the children's relationship with their mother and encouraged them to have contact. He makes a number of counter allegations against the mother and claims that she alone is responsible for the way the children are responding to her.

20 The father disputes the expert and professional evidence and says I should place significant weight on the views of A and B themselves, both children having consistently told professionals they wish to live with their father and don't want to see their mother. The father is of the view that the children are not being heard and that obliging them to have direct contact with their mother, contrary to their wishes, will be traumatic and damaging for them.

21 The father relies on the fact that the children are now in Australia and have, he says, now told him that they never want to return to the UK. He says their views are so strongly held, and they are so traumatised by their experiences with their mother, that they cannot physically be transported on a plane to England and that they would be harmed by being returned to the UK at all, let alone into the care of the mother.

22 The father says the mother should engage with family therapy, that the children require counselling, and that he would be prepared to find what he described to me in court as a "mediated solution".

Australia

23 The reason the children are in Australia at the moment is that, without the consent of the mother (and without even telling her about the trip in advance), the father travelled to

Australia with them on either 28 or 29 December 2021, arriving in [A city in Australia] on 29 December.

24 The father told the court and the allocated social worker, SW, that this was for the purpose of a short holiday, as well as to visit his mother, whom he alleges has been unwell recently.

25 The mother asserts that the father took the children to Australia in circumstances that were both calculating and manipulative, and that he has retained the children in Australia in an effort to further alienate them from her, and also because he knows the weight of the professional and other evidence in this case supports the view that the children should move to live with their mother (or, at the least, there should be a shared care arrangement) and he wants to avoid enforcement of any orders made in this court.

26 It is not disputed that the father told the children's schools on 5 January 2022 that they would be arriving back in the UK on 8th January (a Saturday) so they could attend school on Monday 10 January. These travel plans meant the children were already late for the start of the school term. Neither the mother's nor the school's permission was sought before he booked a holiday trespassing into school term time.

27 The father did not return the children on 8 January and now refuses to do so.

28 The father's position has evolved somewhat over the course of the last fortnight or so. Initially, his case was that having gone to Australia for a holiday (and, he says, fully intending to return), the children then told him they did not want to come back to England and were suffering distress at the thought of coming back to England. He said that he had concluded they were not fit to travel as a consequence of their anxiety, and he relied on medical certificates obtained by him in Australia to this effect. The father's position, initially, was that the children were therefore enjoying an extended holiday in Australia.

29 When the allocated social worker SW (concerned for the welfare of the children) spoke with the father over a video call on 19 January, the father told SW he saw 'no need currently' to return to the UK, telling her that the children were *"…happy [in Australia], and have a support circle of friends and family"* there.

30 At the mention hearing on 26 January 2022, Mr Bagchi QC confirmed that it is now the father's position that it is in the children's interests to reside *permanently* in Australia, and that he has no intention whatsoever of returning the children to the jurisdiction despite the orders for the return of the children that I made on 20 January. He has no intention of complying with English court orders and considers that the court in Australia is now best placed to make decisions concerning the children.

31 Against this backdrop, the issues I have considered in the course of this judgment are, broadly, as follows:

(i) Why has the children's relationship with their mother deteriorated?
(ii) Does the father hold hostile views about the mother, have those views been expressed to the children (either deliberately or unconsciously), and have the children been 'alienated' from their mother by the father, whether deliberately or through exposure to his views about their mother?;

(iii) Alternatively, can the dynamic between the children and their mother be explained by the mother's own behaviour towards the father and/or the children, or by a combination of (other) factors?;

(iv) Have the children suffered harm in the care of either parent, and how capable are the parents of meeting the children's needs, including their need to have a relationship with the other parent?;

(v) What weight should be given to the wishes and views of each of the children, assessed both in light of their ages and levels of understanding but, also, in the context of any findings about alienation or adverse parental influence?

(vi) In light of my decision as to (i-v) above, and considering the children's welfare as a whole, what are the appropriate future living arrangements for the children and do I need any further expert advice or input in this regard?

Evidence

32 I have read and considered the written evidence contained within the electronic bundle for this hearing which extends to 637 pages and includes lengthy statements from each parent accompanied by a number of exhibits, extensive social services documentation, the s.7 report of the children's allocated social worker SW dated 17 September 2021, the first report of clinical psychologist Dr S of 10 June 2021, Dr S's addendum report of 29 July 2021, and a second addendum report of Dr S of 17 January 2022 (which was produced in response to written questions that were raised by the mother's solicitors after it became apparent the father had taken the children to Australia and not returned them).

33 Ms Selman informed me that after the hearing before Recorder Hellens, during the process of drafting and agreeing the directions order, those representing the father had inserted into the draft order a proposed direction for police and social services disclosure that had not been sought at the PTR or prior to then. Ms Selman said the mother did not object to the insertion of §19 and §20 into the draft order, albeit neither did she consider the disclosure necessary. Ms Selman pointed out that neither party was seeking an express finding about whether the father had shown the mother guns kept in his home in December 2019, or whether the father had assaulted B prior to May 2020, or whether the mother had physically restrained B in January 2021, and that had this disclosure been necessary it would have been sought in advance of the parties preparing their statements.

34 Nonetheless, the order was not opposed, it was made by Recorder Hellens, and compliance was required. It has not been complied with in full because although the social services documentation *has* been provided the police disclosure has not. Neither party's solicitor chased the police for the disclosure or sought to return the matter back to court to address the lack of compliance.

35 Whilst the father did not invite me to adjourn the hearing to enable the police disclosure to be obtained, as he has represented himself (and as he chose not remain in the hearing) I have nevertheless considered of my own motion whether the outstanding disclosure is likely to be of such relevance that a fair hearing could not proceed without it. I have concluded that it is not:

i. Re the incident on 17 November 2021 the facts are largely undisputed. It is accepted that B ran away from his mother during contact and that he placed himself at potential risk of physical harm by doing so (because he walked back to

his father's home barefoot, crossing roads by himself, and could not be located for a short period). The mother took hold of A's coat hood, firmly, to prevent her running off. The father says A is now repeating to him that she was hurt by her mother in the incident. The police were called by the mother who reported B missing. Contact has not taken place since this incident because the father has stopped contact.

ii. Only a week after the incident there was a statutory meeting convened by the local authority. I have the minutes of that meeting at [626] onwards. Both parents were at the meeting where the facts surrounding the incident were discussed in some detail and the allocated social worker shared her views with the parents. Neither parent suggests this record is inaccurate. I do not see how obtaining the police logs takes the issue (of whether the father was reasonable to stop contact) any further, and as far as any interviews of the children are concerned it is not even clear that the children *were* interviewed by police. Certainly, the police have not taken any action against the mother.

iii. The mother is not seeking a finding about the type of gun/s the father had at home in December 2019 which the police investigated in the summer of 2020 or whether he caused her to be intimidated. There is no suggestion that any gun he did have was held illegally. In the context of all the other issues in this case I do not consider it proportionate to investigate whether the mother 'falsely' accused the father of intimidating her in 2019. The court has to focus on the key issues in the court time available and the parties are not entitled to have every single allegation tested in court just because they want to.

iv. In all the circumstances, it is disproportionate to adjourn and relist this hearing because of the outstanding police disclosure. It was not felt to be necessary in advance of the PTR and the court did not give either party permission to file any further narrative evidence commenting on it. I have sufficient independent evidence in the local authority documentation (along with the undisputed facts), and in the parties' statements, to form a view about what happened on 17 November.

36 During the course of the hearing I was provided with correspondence between the father and the children's schools regarding his intention to return the children to England, as well as WhatsApp messages exchanged between the father and the mother at around the time the mother learned that the children were in Australia.

37 I gave permission for the mother to rely on those documents, copies of which were provided to the father and to Dr S and SW in order that they had all the updating evidence before giving oral evidence.

38 I heard very brief oral evidence from the father (due to his reluctance to participate in the hearing or answer any questions).

39 I heard comprehensive oral evidence from the mother, Dr S, and SW. As had been agreed at the PTR, SW was permitted to sit in court to listen to the evidence of Dr S before giving her evidence. SW was also accompanied and supported in court by a team manager from the Local Authority.

Legal principles when considering and evaluating the evidence

40 It is neither possible nor desirable for me to refer to every single piece of evidence I have heard or read, as that would make this judgment unwieldy. I will refer to pertinent facts as I go along in order to explain my reasoning; where it has been necessary for me to resolve a disputed factual issue, I have set out my findings below on the evidence on the balance of probabilities.

41 I have reminded myself that it is the person making an allegation that has the burden of proving that allegation to the requisite standard and that findings must always be based on evidence (taking into account inferences that can appropriately be drawn from that evidence) and not suspicion or speculation.

42 The purpose of the Family Court in proceedings of this nature is not to establish guilt or innocence (in a criminal or moral sense), or to 'punish' parents, but to establish the facts insofar as they are relevant to inform welfare decisions about the children; it is trite that it is the welfare of A and B that is my paramount consideration and I have kept their welfare at the forefront of my mind throughout this hearing.

43 I have the benefit of both the expert evidence of Dr S and a s.7 report from the allocated social worker. Both have given their opinions about the cause of the breakdown in the relationship between the children and their mother and given their professional advice to the court. I have been careful to remember that I am not bound to accept the evidence of an expert or professional witness and that I must have regard to all of the evidence before reaching a conclusion.

44 I have reminded myself of the so-called 'Lucas direction'[1] concerning lies (discussed recently in *Re A,B, and C (Children)* [2021] EWCA Civ 451). If a court concludes that a witness has lied about a material matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons: for example, out of shame; humiliation; misplaced loyalty; panic; fear; distress; confusion; emotional pressure; or simply in an attempt to place themselves in a more favourable light.

45 In the context of the particular circumstances of this case, I have taken into account the fact that these proceedings are protracted, and emotions are running extremely high, with the parents having been required to participate in parallel children and financial litigation over many months, as well has having participated in a final hearing in respect of financial matters relatively recently at the end of November 2021 at which they both had to endure cross-examination (judgment having been handed down by HHJ Reardon on 2 December 2021). Certain adverse findings were also made against the father by HHJ Reardon which may have been difficult for the father to hear and which may have exacerbated any existing fears about giving evidence at this hearing.

46 Currently, the mother is faced with a stressful situation in which the children are on the other side of the world, she does not know when they will be returned to England, and she does not even know the address where they are staying. The father is also enduring a stressful situation because he is facing the prospect of litigation in Australia as well as participating in these proceedings.

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[1] *R v Lucas* [1981] Q.B. 720

47 Each party has had to prepare statements for both sets of proceedings, they have each made allegations against each other, they have each participated in expert assessment and ongoing investigation by the Local Authority, and on 17 November, there was the distressing incident I have alluded to when the police were called because B had left his mother's home on his own. All this will have taken its toll on the father and the mother and may have affected the reliability of their recollection of events.

48 With this backdrop in mind, I acknowledge that the process of litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a high stake in a particular version of events. Both parents in this case have a considerable stake in the outcome because their positions are polarised, with each blaming the other for the breakdown in the children's relationship with their mother, and each seeking an order that the children live with them and not the other parent. As such, each has a considerable interest in portraying themselves in a favourable light or as the 'wronged' party, and I have borne in mind these powerful and competing motivations as part of my overall assessment of their evidence.

49 With regard to the allegation of alienation, I have paid regard to the definition used by Cafcass, and in particular the following:

i. While there is no single definition, parental alienation is recognised by Cafcass as involving a situation when a child's resistance or hostility towards one parent is not justified and is the result of psychological manipulation by the other parent;

ii. Alienating behaviours present themselves on a spectrum with varying impact on individual children; this requires a nuanced and holistic assessment;

iii. Both men and women can demonstrate alienating behaviours. While alienation can be demonstrated solely by one parent, it is often a combination of child and adult behaviours and attitudes, with both parents playing a role, that lead to the child rejecting or resisting spending time with one parent;

iv. While not restricted to alienation, behaviours and indicators can include: a parent constantly badmouthing or belittling the other; limiting contact; forbidding discussion about them; and creating the impression that the other parent dislikes or does not love the child;

v. They can also include spurning, terrorising, isolating, corrupting or exploiting, and denying emotional responsiveness. These tactics can foster a false belief that the alienated parent is dangerous or unworthy. Children may adapt their own behaviours and feelings to the alienating parent to ensure that their attachment needs are met (Baker, 2010).

vi. Even the most alienated child will hold strong views of their own in addition to those they may have been coached to hold. Where a child is being alienated, it may be in their interests for the authority of the court to be used to work towards restoring the relationship. The court must carefully balance its decisions to ensure that both children and adults are kept safe, and to ensure that children are able to maintain relationships with both parents where this is safe and in the child's best interests.

The father's refusal to continue to participate in this hearing and my decision to proceed in his absence

50 Before going on to summarise the evidence I have heard and the conclusions I have reached, I must explain how it came to pass that the father decided to refuse to continue to attend this hearing. I must also explain my decision to carry on with the hearing (i) initially with the father attending via video link from Australia; and (ii) ultimately in the father's absence when he left the hearing and would not return.

51 This hearing was originally listed as a final hearing with a time estimate of four days. The final hearing was listed as long ago as July 2021 [155 §14(a)] and the listing was confirmed at the PTR by Recorder Hellens, who also made a number of ancillary case management directions to ensure the effectiveness of this hearing, including in respect of witness attendance.

52 At the PTR, the father (through his leading counsel) sought an adjournment of the impending final hearing in order to explore family therapy. That application was refused by the Judge [204 §14].

53 The court also refused to accede, at the PTR, to the father's application [C2 at 157 dated 18/11/21] that the mother's contact with their children should (from that point on) become professionally supervised. The father relied on the incident on 17 November 2021 when B had run away from his mother in support of his case that unsupervised contact with the mother is not safe. This is not a view that was (or is) shared by the children's social worker and the court was unimpressed with the father's application.

54 I have been provided with an attendance note of the decision of Recorder Hellens of 20 December regarding the father's application for an interim variation of the contact order which was prepared by the mother's solicitor. Although I do not have a transcript of that hearing (and Recorder Hellens had not been invited to approve the note) I am satisfied that the note accurately reflects the substance of what Recorder Hellens told the parties at the PTR, even if it is not verbatim. It accords entirely with the terms of the court order Recorder Hellens subsequently made.

55 Recorder Hellens made it plain to the father at the PTR that (i) the order of DJ Jacobs would not be varied on an interim basis; and (ii) it would be open to the Judge at the final hearing to conclude that contact was being 'withheld unreasonably' by the father (if the evidence, taken as a whole, supported that conclusion). Recorder Hellens warned the father - in no uncertain terms - that any such finding (if made) would likely be relevant to welfare decisions, bearing in mind that the mother claims the father is implacably hostile to her contact with the children.

56 It is therefore the case that (i) the interim contact order remained in force after the hearing on 20 December and is still in force to date; (ii) the father was under no illusion that if he was found to be not complying with that order without a reasonable excuse that would likely play a part in the trial judge's decision. It was open to the father to resume compliance with the order and it was the local authority's view that he should do so.

57 At the end of December 2021/beginning of January 2022 all contact had been stopped by the father who was refusing to comply with the order (on the basis he considered that he

had a reasonable excuse but contrary to the view of the court on 20 December and the view of the local authority). The mother initially proposed to the father (through their respective solicitors) that the final hearing be dispensed with on the basis that she would be prepared for the children to continue to live with the father and for her contact with the children to be rebuilt gradually, with therapeutic options being explored.

58 The draft order prepared by the mother's solicitor provided, *inter alia*, for there to be direct contact between the mother and the children in the February half term and for the parties' respective applications to be withdrawn. That direct contact was to be unsupervised. Significantly, in my judgment, the basis of the agreement included the father withdrawing his application for supervision of contact.

59 When the mother gave oral evidence to me at this hearing she told me that she had become desperate for a resolution that would enable her to spend time with the children, telling me: *"At the time, it was something I hadn't tried with [the father]. I thought if I gave him everything he wanted, he would stop, and I could have a relationship with the children".*

60 Whether or not that was, objectively and in the light of all the evidence as it appears now, the right approach to take, I accept that the mother's initial change of heart following the PTR was in good faith and with the children's interests in mind.

61 I take into account the significant toll on the family that these proceedings are taking, and I accept that the mother was and is desperate to see her children, and at a loss as to how she can improve the situation. For example, only in December HHJ Reardon (who was dealing with financial matters between the parties) recorded the extreme distress of the mother, noting *"She is clearly distraught at the breakdown in her relationship with the children"* [451 §58].

62 I do not accept that in initially proposing to withdraw the court applications the mother was thereby conceding that she does not have the ability to meet the children's needs or was accepting the allegations made against her by the father. After all, the agreement was for direct, unsupervised contact and required *both* parties to withdraw their applications against the other.

63 The proposed draft consent order was sent to the father on 5 January 2022. The draft order has never been approved by the court and has always remained an unapproved draft. The court has an independent duty to consider whether orders for child arrangements (whether said to be by consent or not) are safe and in the best interests of the children concerned, by reference to the paramountcy principle and having regard to the welfare checklist. Parties who wish to withdraw s.8 applications in respect of a child also require the permission of the court to do so (FPR r.29.4).

64 Ultimately, the mother withdrew her consent to the proposed arrangements anyway because the father removed the children from the jurisdiction to Australia and retained them there.

The circumstances of the trip to Australia

65 I am entirely satisfied the father did not ask the mother to agree to a holiday in Australia in advance of leaving the jurisdiction, and nor did he inform her of his plans in advance.

The mother found out about the trip only on 30 December 2021 *after* the father and the children had arrived in Australia.

66 I have been provided with a WhatsApp message exchange between the parents which shows that on 29 December 2021 the mother sent a message to the father asking to have telephone contact with the children ("*Can I call the kids now?*"). On 30 December the father wrote a message to the mother which said "*Hi. Kids calling now. We're in Aus. I had to come and see my mum. We're returning on the 8th*".

67 Had the father discussed the trip with the mother in advance it stands to reason that she would have already been aware that they were in Australia and he would have had no need to inform her of that fact in the message sent on 30 December. The language used by the father is consistent with the mother's account and does not support an interpretation that the mother knew about the trip beforehand or that her consent had been sought.

68 Whilst the mother had initially told me in her oral evidence that she had found out that the family were in Australia in a telephone call with B, it is clear from the content and timing of the WhatsApp message that the phone call and the message from the father happened contemporaneously and in short succession (i.e. the father responded to the mother's message, informed her the children were in Australia, and agreed she could call the children, which she then did).

69 The mother may have muddled the precise order of events in her mind, but this does not affect her credibility on the issue as the substance of her account is supported by the documentary evidence.

70 Moreover, A's British passport had expired on 21 November 2021 (the mother's solicitor was able to confirm this because she has a photocopy of the relevant pages). The father was asked on more than one occasion to confirm on which passport A flew to Australia, and on 20 January 2022 I made an order against the father for disclosure of the children's passport details, with a penal notice attached. This information was ordered to be provided by 12 noon Australian time on 21 January 2022 but was not provided in the timeframe I had ordered.

71 The information had still not been provided by the father by the time I received his closing submissions on 7 February 2022 (dated 31 January 2022). As such, Ms Selman was not able to comment on the documents in her closing submissions, and nor did I have the benefit of any explanation from the father about the documents or the timing of any passport renewal.

72 After circulating the draft judgment, at 13.17pm UK time on 9 February 2022, and with no explanation for the delay and lack of previous compliance with the order, the father's English solicitor finally sent me the details of the flights the father had booked for the children as well as copies of the children's passport pages. The booking email for the tickets is not attached to the document the father provided and so it remains unclear precisely when the father booked the tickets.

73 What is shown is that A's British passport was renewed by the father some time before 9 December 2021 as the issue date on the copy of her British passport is 9 December 2021. I find that the father obtained a British passport renewal for A, and that he hid this fact from the mother. He made no effort to obtain her prior consent despite her parental

responsibility and the existence of these proceedings. It is irrelevant, for the purpose of this judgment, whether the passport agency/ies were prepared to issue a passport/s without a signature from both parents because the father knew he should have obtained the mother's consent in advance and informed her of his intentions. He acted unilaterally and in disregard of her parental responsibility. He was indifferent to her views.

74 On 5 January 2022 the father emailed A's school (it is significant, in my judgment, that he did *not* copy in the mother into this email despite her being the mother of the children) to say that the children would be coming back to England on 8 January 2022 so as to attend School on Monday 10 January 2022 (school term having already started on 6 January).

75 The school realised the mother should have been kept in the loop because they then specifically copied her into their response to the father.

76 I note the father had given the mother the same guarantee about a return date of 8 January in the WhatsApp exchange on 30 December.

77 SW has since told me in her oral evidence that the father told her in a video call on 10 January 2022 that he had been 'unaware' he had to tell the mother about the trip in advance and that he had only taken the children for a 'quick holiday'. Whilst the father refused to remain in the hearing long enough to answer questions from Ms Selman about this point, the evidence does not support the father's claim:

i. As Ms Selman pointed out, there has already been an occasion earlier in these proceedings when the court had to deal with the question of whether the father could take a holiday with the children outside of the jurisdiction, and a discussion of the steps that should be taken by the parents regarding proposed holidays. When the father proposed to take the children to Barbados in August 2021 he knew he needed to seek the mother's permission in advance because, on the face of the order at [154 §8(g)], it is recorded that the mother 'agreed' to the trip (i.e. the father knew her agreement should be sought for an overseas trip). The father also knew he was required to give the mother full details including dates and flight arrangements because this was also set out on the face of the court order.

ii. There is no good reason why, having known in the summer of last year that he should seek the mother's agreement before taking the children abroad and provide certain details about the trip, the father would have assumed a trip to Australia was any different, particularly bearing in mind it involved the children being away from school during term time.

iii. There is a contact order in place that requires the father to make the children available for weekly contact, including in school holiday periods. The holiday arrangements would have required an agreement to amend the contact arrangements which, very obviously, necessitated a discussion between the parents. No discussion was even attempted because the father went ahead and booked a holiday unilaterally, and flew the children out of the jurisdiction, waiting until he was already there before telling the mother.

iv. The fact that the mother had at one time been prepared to compromise the final hearing (by virtue of the proposal contained in the letter of 5 January 2022) could not, in my judgment, have reasonably led the father to assume he no longer needed to speak

to the mother before removing the children from the jurisdiction. In any event, the draft consent order was sent to the father on 5 January, but the father had already booked the holiday at some point in December and not mentioned it to the mother. By the time the consent order had been sent to the father the children were already on the other side of the world.

78 Once in Australia, and despite his reassurances to the mother and the school, the father did not in fact return the children to the jurisdiction on 8 January 2022, or thereafter. The children remain in Australia to date (and in breach of an order that I made on 20 January 2022, with a penal notice attached, that required the father to return the children to this jurisdiction by 4pm on 23 January 2022).

79 Unsurprisingly, given this development, upon realising that the children had not been returned to the jurisdiction on 8 January 2022, the mother's solicitors wrote to the court on an urgent basis on 10 January 2022 to inform the court that (i) the mother no longer agreed that the court should approve the draft consent agreement reached between the parents; and (ii) raising her concern that this was an abduction/wrongful retention, and confirming that she wished the final hearing to go ahead. The mother's solicitors informed the court that proceedings had been initiated in Australia seeking the summary return of the children under the Hague Convention.

80 I make no criticism of the mother for waiting until 10 January to write to the court and for still trying to reach agreement with the father until that date. The mother had only found out that the father and the children were in Australia over the Christmas holiday, on the day before New Year's Eve. It was reasonable for her to assume, initially, that this was a short holiday because that was what the father had told her, the school, and has subsequently told the allocated social worker.

81 Whilst I am clear that the father should have informed the mother of the proposed holiday in advance, there was very little the mother could do about the failure to do so once he and the children were already there (something, in my judgment, the father was well aware of). Once it became clear that he was not intending to return on the day that he had said he would, the mother promptly issued proceedings seeking the children's return. It was unsurprising that in those circumstances the mother no longer viewed the draft consent order as being in the children's best interests and also no longer believed that the father had any intention of cooperating with her in order to improve the children's relationship with her.

82 The father wrote to the court directly, via email, on 10 January, enclosing the draft consent order of 5 January (which only he had signed), and asking the court to still make a final order in the terms of that draft consent order and to vacate the final hearing, disposing of the proceedings in those terms.

83 The issue was placed before me in 'box work' on 11 January 2022. Having considered the parties' written representations, I made an order on that same day refusing to vacate the final hearing, directing both parties to attend the hearing, and making it clear that orders (including final orders) could be made in the absence of a party if they chose not to attend.

84 Given that the father was still in Australia, I directed that if it was to be his case that he needed to attend the hearing remotely by video link he must formally make any such request in advance of the start of the hearing, supported by independent documentary

evidence (e.g. if it was going to be said that he was unable to travel back to England, for example due to the coronavirus travel restrictions in place at that time, or for any other evidence-based reason). I directed that I would consider any further issues regarding the mode of hearing/effectiveness of the hearing on day one of the trial if applicable.

85 Therefore, the father had 6 clear days between 11 January and 18 January (when I began to hear the evidence in the case) to fly back to the jurisdiction with the children, bearing in mind that he had himself told the children's schools just four days before then that he was intending to be back in England by 8 January and had told SW that he was only in Australia for a 'quick holiday'. As I have already pointed out, there was a court order in place under which the father was obliged to make the children available to spend time (directly and unsupervised) with the mother each week and the father would have been unable to comply with the order if he remained in Australia.

86 In his final submissions document dated 31 January 2022 the father asserts that he has been 'advised' that any orders requiring him to *"…perform or not perform any actions…'* whilst he is Australia are a *"…troubling overreach of jurisdiction and should render such orders invalid"*. The father takes particular objection with any order *"…requiring me to leave my own country…"*, submitting that any such order is *"…deeply inappropriate"*.

87 It seems to me that in this complaint the father has wrongly conflated the issue of whether a fair hearing in this court could and should proceed, with the (incorrect) suggestion that he was personally ordered to fly to England for the hearing. A final hearing was listed to take place in England commencing 17 January 2022. This was always listed as an attended final hearing and the father has known about the listing for some time. The court has never vacated the hearing. The father chose to fly to Australia just before the hearing and chose not to return for the hearing despite the fact he knew it was going ahead. By continuing with the hearing the English court has not made any order requiring the father to leave Australia; but by the same token, the father has always had the option to come back to England for the hearing and if he refuses to come back then the most that the English court can reasonably do is to make such adjustments as are possible to mitigate the impact of the time difference on the father whilst extending him the opportunity to participate in the hearing via video link.

88 SW has since confirmed in her oral evidence to me that the children were also due a statutory visit under the Child in Need (CIN) plan in early January and that the father was well aware of this. The father had not told the local authority he was taking the children to Australia in advance. SW told me that she was concerned and surprised when she texted the father to arrange a home visit to check on the children and received no reply because this was out of character. She had to send him two emails before he replied to her, the second email warning him that the local authority were (by then) concerned for the welfare of the children and that if he did not reply to her then she would be contacting the equivalent child protection services in Australia to arrange for a social worker there to undertake a welfare check.

89 This second email prompted a terse response from the father who told her (SW) that she needed to apologise to him and that he intended to make a complaint against her to the local authority. It is clear to me that the father did not share the local authority's (reasonable and legitimate) concerns and was dismissive of them, threatening SW with a professional complaint.

90 It has since transpired (from evidence sent to me by Detective Sergeant M of the Metropolitan Police during the course of the hearing) that the father had a return flight booked for himself and the children -which he also at some stage checked in for – that was due to arrive at [a UK airport] via Doha on 9 January 2022, but that he chose not to board the flight. It is not clear at this stage when it was that the father checked in for the flight and at what point he chose not to board the plane.

91 I made an order for disclosure from the father of various details surrounding his booking of the trip to Australia with the children.

92 On 13 January 2022 the father emailed the court to inform me, *inter alia*, of the following:

i. He claimed that the children were now refusing to fly back to England and asserted that they had 'repeatedly' told the mother that in phone calls;

ii. He enclosed two 'medical certificates' purporting to support his position that the children were 'unfit to fly';

iii. He referred to the existence of the Hague Proceedings issued by the mother and asserted that the fact the mother had issued such proceedings must mean that, in his perception, "[*the mother*]..*believes that [Australia] is the correct forum…"* to determine welfare issues pertaining to the children;

iv. He complained that proceeding with a hearing on 17 January 2022 would breach his right to a fair trial, in view of the fact he was no longer instructing a lawyer, had caring responsibilities for the children, and because there is an 11-hour time difference between England and [A city in Australia];

v. He reiterated his view that the English Court should make a final order that the children live with him and conclude the English proceedings.

93 I did not vary my case management order of 11 January 2022. However, in view of the issues raised by the father regarding the time difference and the fact he was choosing to be unrepresented, I informed the parties that I would move the start time of the hearing to the morning (UK time) of 18 January 2022 instead of the afternoon of 17 January 2022 and I made arrangements with the court's listing team to move other matters in the court list to accommodate the change.

94 This enabled the father to have a whole day on 18 January (because the morning in the UK is the evening in Australia and vice versa) prior to starting the hearing to prepare himself and arrange childcare. This also meant that the hearing could start at a more sociable hour for the father, albeit a slightly less sociable hour for the mother.

95 I made these changes to assist the father and despite the fact that the father had chosen to remain in Australia in the knowledge (for over a week) that a court hearing was proceeding on 17 January 2022. To that extent, the fact the father may have to stay up later than he might prefer to in order to attend a morning hearing in England over video is a situation entirely of the father's own making, but I nonetheless made reasonable adjustments – insofar as practicable – to mitigate the impact of the time difference on the father.

96 I also made a direction that the father and Ms Selman should have a discussion in advance of the start of the hearing and to attempt to narrow any issues, including regarding the format of the hearing. I ensured that there was enough time provided to enable a conversation to take place, taking into account the fact Ms Selman and the father were in different time zones. These efforts meant a delay to the start of the hearing (losing half a day of court time) and other cases in the court list had to be moved, with the concomitant impact and inconvenience for the litigants in those other cases.

97 The father refused to speak with Ms Selman, telling her that he would only have discussions with her if such discussions were agreed to be 'without prejudice', by which I understand that the father did not agree I should be told anything about the content of them. The father did, however, cooperate in preparing the schedule of issues/position document that was provided to me on 18 January where his position regarding this hearing and the orders sought by him were set out.

98 The father also attended the hearing on 18 January before me briefly via video link from Australia. He had no difficulty accessing technology to attend remotely (he was on a laptop in a hotel room in [A city in Australia] with a stable and fast internet connection) and he had been provided with an electronic copy of the bundle. He had seen all the papers in the bundle before, and most of them would have been in the bundle prepared for the PTR.

99 The father initially told me that he agreed that the final hearing should go ahead, saying *"I believe you can deal with it [making a final order] now"*. His more nuanced position was that I should either make the final child arrangements order sought by *him* and dispose of the proceedings without hearing any oral evidence, or, alternatively, vacate the hearing on the basis he did not have a lawyer, it was late in the evening in Australia, and he had childcare commitments.

100 When I made it clear that I was not prepared to make a final order without hearing evidence, the father became obstructive, parroting a 'script' in which he maintained that his right to a fair trial was being breached by the court; claimed that he needed to be represented by the specific leading counsel (not Mr Bagchi QC) whom he had been represented by at the pre-trial review in December; informed me that he wasn't prepared to answer any of the court or Ms Selman's questions without a lawyer/further legal advice; and asserted that he needed to attend to the needs of the children. At one stage, the father claimed the children were crying out for him in a hotel room next door and suggested those of us in the court room could hear them crying – I confirm at this juncture that no noise could be heard by the court and it was not possible to verify whether the children were even at the hotel as the father alleged.

101 I did not agree to adjourn the hearing and I gave brief reasons for my decision on 18 January 2022. I said that I would keep the witness template under close review in order to make adjustments for the time difference and told the father he would be given regular breaks and to tell me if he felt tired. I told Ms Selman I would limit her cross-examination to an hour initially so that the father would not be kept up late on that day, but that if she was unable to complete her cross-examination in that time we would take stock at the end of the hour and I would permit additional questions the next day.

102 A and B have already been the subject of these very difficult proceedings for a year and a half in a context in which they are aged 10 and 7 respectively. As a general principle,

reinforced by statute (Children Act 1989 s.1(2)), delay in resolving questions pertaining to the children's welfare is likely to prejudice their welfare ('the no delay principle').

103 Over the period of these proceedings the court has received expert evidence in the form of a report, addendum report, and now second addendum report of Dr S in which Dr S has raised repeated and increasing concern about the children's current welfare in the care of their father [477 §5] and advised that, in his opinion, their mother is being denigrated to the children by their father [477] and the children are being deprived of a relationship with their mother [505] with the father portraying the mother negatively and as an abusive person. This is a view which is now being echoed by the children [506]. Dr S was advising as long ago as July 2021 that the welfare of the children required what he described as an 'urgent' intervention [519 §10], such intervention (in his opinion) now needing to involve either an immediate transfer of residence to the mother or a transition to her care [518 §6].

104 In a second addendum from Dr S prepared very recently on 17 January 2022, Dr S advised the court that he considered the father's actions in retaining the children in Australia to be 'very concerning' indeed and that his professional concern for the children was now 'considerable'.

105 Whilst the father challenges the opinion of Dr S, and strongly disagrees with his conclusions, there was at the outset of this hearing *prima facie* independent evidence before the Court, from a very experienced expert who is well-known to the family Court, and who had interviewed the children and the parents pursuant to the order of the Court, that the situation regarding the children was 'urgent' and that the children were suffering harm and would continue to suffer harm as time went on if nothing changed.

106 In those circumstances, in my judgment, it was clear that delay in resolving this case would very obviously be harmful to the children because *if* the conclusions of Dr S about the children being exposed to harm in their father's care were later accepted by the Court, further and considerable delay resolving the case would mean a lengthy period of time over which a harmful and emotionally abusive situation for the children would continue unmitigated.

107 Moreover, *if* the children are being alienated from their mother by their father, the longer that process is allowed to continue and to develop, the more difficult it will be for the Court and those professionals tasked with supporting the children to resolve it and to 'undo' any damage that has been done to them.

108 I have reminded myself of the guidance of Lord Justice Jackson in *Re S* [2020] EWCA Civ 568 at §11 in which His Lordship emphasised that:

"…the more distant the relationship with the unfavoured parent becomes, the more limited [the court's] powers become…[the court] must, in short, take action when and where it can do so to the child's advantage."

109 As McFarlane LJ said in Re A (Intractable Contact Dispute: Human Rights Violations) [2013] EWCA Civ 1104; [2014] 1 FLR 1185 at 53:

"The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But, courts and judges do have a responsibility to utilise such

substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective."

110 Jackson LJ in *Re S* [*ibid*] at §12 also cautioned (with my emphasis) that:

"Unhappily, reported decisions [in cases of alleged parental alienation] tend to take the form of a post-mortem examination of a lost parental relationship".

111 The case law therefore emphasises that the court and those tasked with providing advice and support to families and children have a duty to 'grasp the nettle' in cases of this nature, and to take appropriate and timely action in the best interests of the children's welfare. The impact of delay in cases of alleged alienation is, in my judgment, particularly significant because there may come a point at which so much time has passed that the relationship between a child and a parent cannot be saved.

112 As Ms Selman pointed out, Dr S first characterised this case as 'urgent' in the summer of last year. Six more months have elapsed and the situation for the children has, if anything, deteriorated.

113 The children have now, very recently, been taken to Australia without the prior agreement of their mother and retained there after the commencement of the school term. They are in a foreign country away from their friendship networks, home, school and from their mother.

114 To find another listing of four days' duration (in circumstances where it is not known when, precisely, the children will be returned to this jurisdiction) could take many months. Four-day hearings in the Family Court are currently being listed in the Autumn 2022 and beyond. As it is, I have had to prepare this judgment in my own time and hand it down remotely as there was no court time available within an acceptable timeframe for me to do so. The children simply cannot wait another six months or more for issues deemed 'urgent' in July 2021 to be resolved.

The Hague Proceedings

115 There is, at the moment, uncertainty about the timescales for hearings and a decision by the Australian courts on the issue of return of the children to England, and I have been told that despite chasing by the mother's solicitors, no initial directions hearing has yet been listed.

116 I do not accept the father's argument (developed, for the first time, by Mr Bagchi QC on 26 January 2022 at the 'mention' hearing) that the Hague proceedings should take place first and reach a conclusion and that the English court should stay the Children Act proceedings pending a decision by the courts in Australia.

117 First, as to jurisdiction, the children are, without question, habitually resident in England. They were habitually resident in this jurisdiction when the father took them to Australia at the end of December (without notice to their mother) and were still habitually resident when he retained them there in breach of a child arrangements order, contrary to the wishes of their mother, and now in breach of my order of 20 January 2022.

118 Indeed, the draft order the father *himself* invited me to make on 18 January (under which the children were to live with him) stated at §3 "the Court declares it is satisfied it has jurisdiction in respect of the children based on the children being habitually resident in England and Wales" (when I pointed this out to Mr Bagchi QC on 26 January 2022 he conceded that the children were habitually resident in this jurisdiction at the time I decided to proceed with the hearing). There is clearly jurisdiction for the English court to make Children Act orders in respect of A and B.

119 Whilst it was not framed this way by the father on 18 January 2022, Mr Bagchi QC sought to develop an additional argument that the Court should in any event stay the proceedings here to await the outcome of the proceedings in Australia on the basis that the father is likely to be arguing before the Australian court that A and B would be at grave risk of psychological harm or otherwise placed in an intolerable situation if their return to the UK were ordered (i.e an Article 13b defence). He invited me to revisit my decision to proceed with the hearing on the basis that the father has indicated he now intends to argue that the children should remain in Australia permanently and that the proceedings in England are, in his words, 'redundant' because it may take many months before the children are returned and they may not be returned at all.

120 I reject those arguments.

121 The English court was seised of proceedings regarding the children on 23 September 2020 [12] and has gone on to make numerous court orders, including child arrangement orders, regarding the children to date. These are, in short, children that are already well-known to the English court.

122 This court has received extensive evidence about the welfare of the children, and the wishes of the children, both from the parties themselves (in the form of their narrative evidence) and also the allocated social worker who has prepared a s.7 report and the SJE Dr S who has interviewed the children and their parents and prepared no less than three reports on the family situation.

123 The children have their home here, their schools here, their friendship networks here and are subject to a CIN plan under which they have an allocated social worker in this country who knows them well and conducts regular visits.

124 The mother has the benefit of a child arrangements order made by this court, as does the father.

125 The case has been ready for a final hearing since December with all evidence prepared and filed including the parents' statements. The children are only in Australia because the father took them there for, in his words, 'a quick holiday' and has subsequently refused to bring them back in breach of Court orders. England is without question the appropriate forum for welfare decisions to be made regarding the children.

126 Meanwhile, in Australia, no welfare orders have been made and the Australian court has not yet even listed a first hearing. The proceedings in Australia are intended to be summary in nature. As Moylan LJ said in *Re B (A Child) (Abduction: Habitual Residence)* [2020] 4 WLR 149, at [63]:

"One of the purposes of a prompt return is to remedy what might otherwise be the consequences for the child of one parent's unilateral wrongful act, namely their separation from their other parent and from their existing family life with the progressive establishment of a new life in the new state, the longer it takes to procure their return. This appears, for example, from the Explanatory Report, at [40], when it states that the "Convention is designed as a means for bringing about speedy solutions so as to prevent the consolidation in law of initially unlawful factual situations, brought about by the removal or retention of a child."

127 Whilst I acknowledge that it is unclear precisely when the children will be returned, and that the father is entitled to defend the proceedings in Australia if he chooses to, that should not preclude the English court from considering the evidence filed to date and dealing with such issues as it is able to and without delay (FPR r.1.4(2)(j).

128 This includes determining the disputed factual circumstances, examining (and analysing) the expert evidence, and reaching a conclusion about why it is that the children's relationship with their mother has become so very difficult and strained, what each party's role has been in that, and whether any steps can and should be taken now to remedy the situation in the interests of the children.

129 The existence of the Hague Convention proceedings in Australia is not a reason, in my judgment, for these very important issues to be put off indefinitely. Indeed, I very much hope that the findings and conclusions set out in my judgment, which are based on a review of the extensive evidence gathered over many months, will be of some assistance and benefit to the court in Australia and I intend to give the parties permission to rely on and refer to this judgment and my findings in those proceedings.

Legal representation

130 I also do not accept that the father was unable to return to England for this hearing or unable to secure legal representation for this hearing.

131 The father has known since 10 January 2022 that the mother wanted the hearing to proceed. If he had any doubt whatsoever as to whether the hearing would go ahead (due to the drafting of the proposed consent order whilst he was in Australia), he was made aware of my clear decision that it would proceed as long ago as 11 January 2022.

132 The father also gave me vague and non-committal answers when asked about what efforts he had made in that time to secure representation. His main complaint was that he was unable to re-engage the services of the same counsel that represented him at the PTR.

133 However, as Ms Selman pointed out, the father had solicitors on the record as recently as 6 January 2022 when the Notice of Change was served and who have acted for him throughout and who are fully appraised of the evidence and issues in this case (they also prepared his statement for him which is signed 15 December 2021).

134 It is reasonable to assume that his solicitors could have found someone else suitably qualified and experienced to act for him, or attended themselves on his behalf, at relatively short notice had the father wanted them to. In any event, the father has not provided any independent evidence to corroborate his assertion that he has not been able to find *any* suitable lawyer in time for the hearing.

135 I also observe that the mother was in the same position herself because, until she realised the father had retained the children in Australia, she, too, had hoped it might be possible to resolve the proceedings by consent. After the father retained the children, she instructed counsel for the hearing. She had, in other words, the same timeframe as the father in which to prepare for this hearing.

136 I also note that the father *was*, in fact, able to re-engage his solicitors and instruct leading counsel at short notice for the mention hearing on 26 January and that Mr Bagchi QC had also been able to prepare a very detailed position statement on the father's behalf as well as pursue a number of (new) oral applications.

137 It also transpired at the mention hearing that the father had arranged, on 12 January 2022 through Australian based lawyers acting for him, a referral to an Australian psychologist and that he saw that psychologist himself on 13 January 2022 to give the psychologist his account of events before then taking both children to see the psychologist on 20 January 2022 (in breach of a prohibited steps order in place since February last year).

138 This led to the production of a report from the psychologist prepared and dated 26 January 2022 which is written in such a way as is clear it was prepared for use in legal proceedings.

139 It is obvious that when the father wants to do so, he is entirely capable of instructing lawyers to act on his behalf, including at short notice, and of conducting litigation on his behalf.

140 Moreover, when the father addressed me on 18 January 2022 under oath, he told me that he had only just been made aware of the Hague Proceedings and *"…intended to instruct a lawyer…"* in Australia. He gave me the impression that he had no lawyers acting for him in Australia as yet, a claim that is now shown to be demonstrably untrue by the existence of the psychological report of 26 January 2022 which had been commissioned by his Australian lawyers on 12 January, i.e. six days *before* the father told me he did not yet have a lawyer in Australia.

Childcare commitments

141 With regard to the father's claim that childcare commitments prevented him from properly participating in a court hearing, the father is no different to the many parents in family proceedings who are expected to (and do) arrange supervision for their children during court hearings.

142 The father himself told me that on 17 January 2022 the children were being looked after by his mother. His claim that she was then unable to look after them on 18 January 2022 when he was due to give evidence because it was 'too short notice' was not independently corroborated (I also record that by the time the children spoke with the social worker by video on 19 January 2022 they were said to be in the paternal grandmother's home so there was apparently no issue arranging childcare on 19 January. This makes the father's claim about having problems on 18 January inherently improbable).

143 In any event, an unexpected benefit of the time difference to the father is that the English hearing was taking place at a time when it was reasonable to expect two children of 7 and 10 to be in bed and not to require much in the way of active supervision.

144 The childcare situation is also, again, a situation entirely of the father's own making. A and B should be at school in England during the court day but have not been returned for the start of the school term by the father. Had the father returned to the jurisdiction on the day he told the mother and the social worker he was going to, and also returned the children to their schools for the start of term, he would not have been without childcare for the hearing.

145 SW later told me that B's school even offered to provide the father with educational activities for him to undertake whilst in Australia to keep B occupied and so that B would not miss out on his education but that the father has refused the offer from the school on the basis that it is the summer holiday period in Australia and so he sees no need for the children to be doing any school work. Again, it seems to me the situation the father finds himself in is entirely of his own making.

The medical certificates

146 The father also claims that the children cannot fly back to England because they are medically unfit to do so, relying on two documents described as 'medical certificates' dated 4 January 2022 (A) and 7 January 2022 (B) respectively.

147 The documents are letters from two separate private doctors (who do not have prior knowledge of the family or access to the children's medical records), contain scant information contained in just a single sentence each, and it is not possible to tell from the content of the letters whether either doctor physically assessed the children before deeming them unfit to fly.

148 B's letter records that B cannot fly due to a 'medical condition' and due to a 'familial issue'. A's letter says she is suffering from 'severe anxiety with family issues'. There is no note of what the father told the doctors when procuring the certificates.

149 In the absence of the father having supplied any evidence to the contrary, it is reasonable to assume that neither doctor was aware of the very complex background in this case and of the opinion of Dr S. It is also reasonable to assume that whatever the doctors were told was filtered through the sole perspective of the father, who was found by HHJ Reardon to have a "deep-rooted anger" at the mother [450 §54] and whose evidence to the Court [209 §13] is that it is "unsafe" for the children to spend any unsupervised time with their mother at present (despite this view not being supported by the allocated social worker).

150 Moreover, if the children *were* assessed, no permission was sought from the English court in advance, despite the prohibited steps order of DJ Stone of 23.2.2021 that prevents either party taking the children to be seen or assessed by professionals. This earlier order had been made by DJ Stone because, earlier in proceedings, the father had taken the children for counselling without the agreement of the mother and the court considered that there was a risk to the children's emotional welfare from being seen by numerous professionals or 'fed' a narrative by one parent about the other parent that could then become embedded in the minds of the children.

151 Mr Bagchi QC on 26 January 2022 told me that the father had not thought that he needed permission to take the children to see the Australian doctors in early January or the Australian psychologist on 20 January because the father's perception is that the 'tentacles'

(his word) of the English court could not reach him in Australia and also because he felt the (medical) situation for the children was 'urgent', relying on the medical certificates.

152 As Ms Selman pointed out, *after* the time the father took the children (or at least A) to see a doctor (but before the medical certificates, or the fact the children had been taken for a clinical assessment, were disclosed to the court) the father still told the school he was intending to come back to England on 8 January. In other words, either the father never had any intention to come back to England such that what he told the school was a lie, or the father had obtained the medical certificates to bolster his position, keeping them up his sleeve in the event that he later decided not to return.

153 Moreover, to have been able to take the children to see a doctor between 4 January (A) and 7 January (B) the father must logically have formed a plan to make such an appointment almost *immediately* on his arrival in Australia on 29th December. It is instructive that 4 January 2022 was the very first working day after the children arrived in Australia.

154 I consider the medical certificates to be entirely self-serving documents obtained unilaterally by the father from clinicians who were unaware of the background and history of the children in this case, and which were obtained by the father out of a strategic desire to enhance his position should he decide not to bring the children back (rather than motivated by a genuine concern for their welfare or a genuine and objectively held belief that they would not be able to get on a plane). I place no weight on them as evidence that the children are physically or psychologically unable to return to England.

155 The same goes for the psychological report of 26 January, which was also obtained unilaterally, from psychologist FT. FT is not an expert whose instruction was sanctioned and overseen by the Court, is not appraised of all the relevant information (including the reports of Dr S) that she would need to see in order to provide reliable evidence to the court, and she has not provided a report that is FPR Part 25 compliant. Further, she does not appear to be an expert in the field of parental alienation (her specialism being stated as 'relationship and divorce counselling').

156 I find that this evidence, too, has been obtained by the father strategically. I add that had the father genuinely felt that the children really were too psychologically fragile to fly, and that such assessment of them was necessary, there is no good reason why he could not have asked the English court for permission for an assessment so that this court could have overseen the identity of the expert and ensured that the mother had an opportunity to be involved in the content of the instruction.

157 In my judgment, the father is very obviously building a case in Australia that the children are too traumatised to return to England to bolster his position in defending the Hague Proceedings, and he has deliberately ensured that the mother has had no ability to be involved in the instruction of an expert in Australia because she would have insisted that any such expert be fully appraised of all the facts, on a neutral basis, before reporting. The father has paid no regard to the potentially damaging impact on these children of being taken to see numerous different clinicians until he (the father) gets the answer he wants to hear.

158 On 9 February 2022, after judgment had already been circulated to the parties in draft, the father's English solicitor emailed me two further 'medical certificates' for the children

dated 3 February 2022 and in which it is asserted that due to 'extreme anxiety' neither child is now fit to fly until 3 May 2022.

159 The existence of these documents shows the father made a further appointment to take the children to see a doctor despite me making it absolutely clear to the father, in the presence of his leading counsel on 26 January 2022, that there is a prohibited steps order in place that prevents him from taking the children to be assessed without the court's prior permission. I restated the prohibited steps order at §9 of my order of 26 January 2022 with a penal notice attached and ensured that the father understood exactly what he is prohibited from doing and why, as well as the potential consequences for any breach. The order contains the requisite warning notice, and was an order drafted and agreed between counsel directly after a hearing at which the father attended and was represented.

160 The father acted with impunity by taking the children to be assessed (yet again) for alleged anxiety, by a clinician that was not sanctioned in advance by the court, and with complete disregard for any adverse impact the process might have on the children.

Proceeding in the father's absence

161 Having given the parties my decision that I intended to proceed with the hearing, the father initially answered some limited questions posed by Ms Selman.

162 On a number of occasions the father cut across counsel or myself in order to tell me that he had an 'important statement' to make, and then proceeded to tell me that he was asking for the court's 'mercy', imploring me to show compassion for his situation.

163 Having explained to the father that I would very much like to hear what he had to say in response to Ms Selman's questions, that it was important he take up the opportunity afforded to him to tell me his version of events and what he would like to happen with regards to the arrangements for the children, and that if he did not wish to respond then I would have to draw my own conclusions on the evidence available to me without the benefit of his answers (reminding him of the possibility that my conclusions could be adverse to him/his case and that it was very important he take up the opportunity to have his say), the father abruptly disconnected from the hearing link and refused to participate further.

164 I decided to continue with the hearing in the father's absence. I am satisfied that I can conduct a fair trial of the issues in this case regardless:

i. The father had the means and ability to attend the hearing but absented himself and refused to participate;
ii. The father has had sufficient time to prepare for this hearing (and to instruct solicitors if he wanted to);
iii. The father's written evidence has already been filed (and is signed with a statement of truth) and stands as his evidence in chief. I know what his evidence is, and what his case is, and am able to take all of that into account as part of my overall assessment even if the father will not assist the court by fully participating in the hearing;
iv. The father prepared a position statement for the hearing on 13 January 2022 with his updated position (i.e. the position since he has been in Australia) and did attend briefly at the outset;

v. The father cooperated with Ms Selman to prepare a written position on issues I had asked them to discuss on 17 January 2022;

vi. Whilst the father's non-attendance denies the mother the chance to cross-examine him, the mother did not invite me to adjourn and is content to make observations based on the written evidence and on the basis I can assess how much weight to give to that evidence taking into account the father's refusal to continue with cross-examination;

vii. Even after the father disconnected from the hearing, I offered for him to still send me written cross-examination questions so that I could ask questions of the witnesses on his behalf, but he has chosen not to take up that offer.

165 I have endeavoured to explore the father's case on his behalf, where necessary, to ensure the evidence before me has been appropriately tested, and mindful of the family court's quasi-inquisitorial function and the paramountcy of the children's welfare.

166 At my request the mother's solicitors have emailed the father every day of this hearing to keep him appraised of the evidence being led in court and of the timings and made clear to him he was welcome to re-join the hearing at any time and that I encouraged him to do so.

167 As often happens, legal and factual issues have developed in the course of the hearing as the case has progressed. I have endeavoured to ensure that any new/different information is always provided to the father in a timely manner so that he can reflect on it, comment on it, and to afford him a continuing and open opportunity to reflect on his decision to refuse to attend and to change his mind should he wish to do so. Unfortunately, the father has declined to take up any of these opportunities.

168 At the mention hearing on 26 January 2022 Mr Bagchi QC invited me to revisit my decision to proceed in the absence of the father on the basis, *inter alia*, that the procedure was *"…riddled with procedural unfairness…"* to the father and claiming he was only 'able' to attend part of the hearing.

169 I reject that characterisation. Numerous adjustments, compromises, and offers of assistance have been extended to the father who has ultimately refused to take up the opportunities given to him. It would make a mockery of the right to fair trial if parties who have had an application to adjourn a hearing refused by the court are then able to obstruct the hearing and prevent the court from making necessary and appropriate welfare decisions in respect of children by simply logging out of hearings, refusing to re-join, and then trying to procure another adjournment (or a revisiting of the decision) after the event, in reliance on their own behaviour.

My assessment of the evidence of the father

170 I have had limited opportunity to observe the father as a witness for the reasons set out above. I have been cautious, in any event, not to place undue reliance on the 'demeanour' of any of the witnesses bearing in mind what are now understood to be the limitations in relying too heavily on the subjective interpretation of a witness's presentation or body language.

171 I have focussed where possible on the consistencies/inconsistencies in the documentary evidence and identified objectively verifiable evidence where it exists (see, eg, *R (on the*

application of SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391).

172 What I was able to observe of the father was that he was a person who was at pains to impress upon me his apparent concern for the welfare of the children and to portray himself as a reasonable and loving father who wanted to reach agreement with the mother, but that his words were often inconsistent with his actions.

173 For example, when Ms Selman asked the father to provide the court with the address in Australia where the children are staying, the father replied *"if [the mother] were to ask I would happily provide it"*, giving the impression that the mother was overreacting because she could have just asked him and he would have readily and gladly volunteered the information.

174 However, these assurances were completely contradicted by the father's refusal to then *actually* supply the requested information. The father has failed to provide details of the children's whereabouts to the mother and also failed to comply with a court order for disclosure. He further refused to do so during the mention hearing on 26 January 2022 when he was represented by Mr Bagchi QC.

175 This contradictory approach is echoed in his written evidence. For example, the father's position at §10 onwards of his statement [209] is that the children should have regular, unsupervised contact with their mother on alternate weekends. However, he also says in the same statement that this can only be an 'intended' arrangement until such time as either the parents agree the arrangement is 'safe' or a therapist agrees in writing that it is safe.

176 The father claims at §37 that he *"…respect[s] and appreciate[s] the effort [the mother] invested when the children were young and I fully understand and appreciate that is a difficult and important role"* but then (from §52) onwards goes on to make a number of extreme criticisms of the mother's parenting of B when he was younger, including alleging that the mother claimed on 'many occasions' she wished B had not been born and found him impossible to control.

177 The father not only made no effort to assist the court in answering questions, but I am sorry to say that I found he went to considerable lengths to avoid answering even the simplest of questions, whilst all the while maintaining the façade of a concerned parent.

178 An example of this was when Ms Selman asked the father when he had first decided to take the children to Australia and he said he 'didn't know', although later said the departure date was 'either 28 or 29 December'. Given the importance of this issue and the fact that it involves events that took place very recently, it is implausible that the father does not know the answer to such a basic question. I found him evasive.

179 The father was very reluctant to be pinned down about whether he had already booked the flights when he attended the PTR before Recorder Hellens (the implication being, if he had done so, he would need to explain why he hadn't mentioned the trip to anyone at that hearing). He tried to wriggle out of answering (giving what might be described as a 'politician's answer') by saying he had booked them after the hearing *"to my greatest recollection"*. When Ms Selman pressed him on that, the father said he was now *"…very confident…"* this was the case, but he could not answer definitively.

180 When he was asked whether he would agree to send the mother and the court a copy of the booking email so that the issue could be objectively clarified once and for all (the father

was, after all, seated right in front of his computer at the time with access to his emails), the father said he would need to 'take legal advice' about whether he could provide those straightforward details.

181 I do not understand why the father would have anything to be concerned about in respect of disclosure of a booking email, unless he was worried that the date on the email would be inconsistent with his chronology of when he had booked the flights.

182 My impression was that the father was trying to be as difficult as possible about disclosing the information because he was worried about being 'caught out' in a lie about when he booked the trip.

183 Moreover, the father feigned shock at learning about the Hague proceedings and said he had not yet instructed a solicitor in Australia. He relied on that assertion in support of his claim to be disadvantaged in the hearing and in asking me to 'have mercy' for his situation. As I have set out above, it transpired at the mention hearing that the father *did* in fact have solicitors in Australia by that stage and that he had even instructed a psychologist to see the children, despite not informing me about any of that when he gave evidence on 18 January.

184 I have reminded myself that the father was representing himself at the hearing and that this may have contributed to his wariness or defensiveness about answering questions. I have also taken into account that he may have been concerned about the legal impact of his answers on the proceedings in Australia and that his dishonesty about having instructed lawyers in Australia does not, without more, mean he is generally a witness not worthy of belief.

185 However, even giving the father latitude for the stress of the proceedings and those other factors, I did not find the father to be a credible witness and I have treated his uncorroborated evidence with caution. Where there is a dispute of fact between the parents that cannot be corroborated by independent evidence, I have preferred the evidence of the mother.

My assessment of the evidence of the mother

186 The mother was calm and softly spoken in court but was also very obviously concerned about where her children are, how they are feeling, and how they are being cared for. The level of worry she is carrying was etched on her face; during the evidence of Dr S she was visibly tearful and I had to draw this to the attention of her legal team who could not see her from where they were sitting.

187 What struck me throughout her evidence was the fact that, despite recent events, her focus was on the needs of the children and she did not use angry or hostile language about the father at any point. She described to me how difficult it has been attempting to have conversations with B and A over video from Australia and that when she has asked to speak to A, B will parrot the words *"no, because you hurt A, you need to apologise"*.

188 I found the mother to be a thoughtful witness who was able to prioritise the needs of the children above her own intense desire to see them; for example, at §25 of her statement she asked the court to address the root cause of the difficulties (what she sees as the children's alienation from her) *"…before anything else can change"*. This concern has informed

her decision to issue an application for further expert involvement and I found her to be realistic about the impact that a change of residence would have on the children. She is sufficiently attuned to their needs to understand that she and the children would need professional support if such a change were ordered.

189 When B ran away from the mother on 17 November, I note that it was the mother who telephoned the police and that she also informed the father straight away; in other words, her actions focussed on the safety and wellbeing of B rather than any concern about how the incident might be interpreted by the father (ultimately, he reacted by unilaterally suspending her contact) or how it might be viewed by the Court.

190 Overall, I found the mother to be a helpful and credible witness who is motivated by concern for her children and their needs.

The evidence of Dr S and SW and the breakdown in the children's relationship with their mother

191 Both Dr S and the children's allocated social worker SW are of the view that B and A have been alienated from their mother by the actions of the father.

192 In his report at [477] Dr S explains that the children have formed a view *"…that their mother is self-interested and abusive and does not care about them"* and this is a view *"largely held by the father and echoed by the children"*. SW at §24 of her report at [539] describes the children's behaviour in terms of an 'unwarranted' rejection of their mother in response to the attitudes of the father.

193 SW observed in her s.7 report at §12 [535] how her discussions with the children around their contact with their mother has *"…remained to be a composition of the following statements; 'we want to live with daddy'; 'we hate mummy'"* and that, in her professional view *"…I am worried that the children have been positioned [by the father] into the narrative that their mother is not their mother at all, and therefore there is no role for the mother"*.

194 SW further described at §13 [535] how the children will continually intone the adult-sounding phrase *"Mummy left the family"* and that B will repetitively express that he 'hates' his mother but, at the same time, remain consistently close or 'clingy' to the mother during contact, for example following her around the house *"…in an attempt to remain by her side."* [536]. She described how B's behaviour showed, in her opinion, the conflict between his love for his mother and his *"…loyalty to his father's views of [the mother's] role in the family"*.

195 When SW observed contact between A and her mother for the purpose of advising the Court in these proceedings *"…on each occasion…A refuse[d] to speak to the mother and face[d] the wall"* [536 §15].

196 Supplementing his three written reports, Dr S told me that what had struck him about how he experienced the family was that *"from the moment the children came into the room"* for their assessment by him, their attitude and presentation towards their father (it was the father who had taken them to their appointment) was *"performative"*.

197 Dr S also described his surprise and concern at the way the children demonstrated a need *"…to make [the father] entirely central, [to show him] how much he is loved"*. He described how they

repeatedly told the father they loved him, would not sit on their own chairs (sitting on the father instead), and would be constantly trying to reassure the father.

198 Dr S said his initial thought when observing this behaviour was to ask himself *"What has been said to the children by their father before they entered the room?"*.

199 Dr S further described how, as soon as the father left the room, the 'denigration of the mother' by the children started and that this denigration was, in his opinion, 'severe'. He said it was instructive that the allegations made by the children contained very little in the way of concrete details and instead comprised repetitive phrases which *"…resonated between the children and their father…",* an observation that, in my judgment, is consistent with the observations of SW who has worked with the children for some time and conducts regular home visits, as well as the information that has been received from their schools about the phrases parroted by the children.

200 I accept Dr S's analysis that the behaviour of the children in that meeting, and the language they use, supports Dr S's overall conclusion that the children know exactly what their father thinks of their mother and have been continually and deliberately exposed to alienating behaviour to the point where they are now conditioned to want to 'please' their father by echoing his hostile beliefs.

201 Both Dr S and SW have voiced their professional opinion that the children's rejection of their mother and the breakdown in the relationship is as a consequence of alienating behaviour by the father. I accept their analysis.

202 Whilst the father complains that the children were only assessed by Dr S once in May 2021, I accept that in addition to meeting the children Dr S's assessment was based on the whole canvas of evidential material available to him including five interviews with the parents in May 2021, and the documentary material in the hearing bundle including the detailed narrative statements of the parents. In my judgment Dr S had considered all of the documentary evidence with great care and his written and oral evidence was comprehensive, sensitive, and balanced.

203 Dr S addressed the father's concern directly, telling me that everything he had read – including the updating evidence -was *"…very much in line…"* with the concerns he held about the family and that he was still *"…quite confident…"* in his assessment despite the passage of time. Indeed, he said that his concern about the father's ability to meet the children's emotional needs and of the impact on the children had *increased* since his initial report (in other words, the fact the children are now saying that they don't want to see their mother and don't want to return to the UK has made it even *more* necessary, in his view, that they move to live with their mother as soon as practicable). He told me:

"…what worries me greatly, I look at myself, I think was I strong enough in my first report? I said, in the immediate term, father would do psychotherapy, and change his thinking. There could be some sort of shared care. Otherwise, a residence change. This is such a highly defended man. This change isn't possible certainly in the short to medium term. The children ought to be with their mother. If there is no intervention, I think this [the alienating behaviour by the father] is not going to stop."

204 Dr S pointed out that whilst he had hoped that the father would make the necessary changes to his attitude and thinking, that he would promote contact, and that there would be a shift such that a shared care arrangement might work, there had been no such change

since the summer of last year. Dr S's view is that in the circumstances an immediate removal of the children from their father's care (and influence) is now required and that nothing less will do.

205 Whilst the father blames the mother for the stance adopted by the children, I find there is no independent, reliable, evidence to corroborate any of the allegations that the father has made about the mother being 'abusive' to the children or which might objectively justify their extreme rejection of her as being anything other than caused by the behaviour of the father.

206 For example, the father alleges in his statement at §116 that the children told him the mother would 'regularly criticise' the children when they spent time with her, including making remarks about *"…their hair, their diet, the time they went to bed and the list went on"*. The only person who has made this allegation is the father, and there is no independent evidence to corroborate the suggestion the children have said any of those things about their mother. They have not made that complaint to any of the other professionals they have spoken to, despite being quite willing to tell professionals that they 'hate' their mother. As Dr S observes, they do not give any details about these allegations of generalised bad conduct by their mother, resorting instead to repeating set phrases about how much they dislike her and how they believe that she has treated their father.

207 Regarding the allegation that the mother 'coached' B to allege that his father had hit him (the allegation that led to social services becoming involved with the family in the early summer of 2020), I note that unlike the generalised allegations made about the mother, the allegation B repeated to social services in July 2020 (that he had been hit on his stomach on 26 May 2020 by his father when he refused to close a tent zip when they were camping, and that his dad sometimes hits him when he misses a "tennis hole [*sic*]", and that his dad sometimes grabs him) were specific and detailed and have a consistency to them because they all involve the father being 'hard' on B for getting things wrong. The allegation was corroborated at the time by A and the CAF assessment records that in an ABE interview (which I have not been provided with) B told the interviewer that his dad hits him when he gets a maths question wrong [555].

208 I note that the father himself accepts that he is a competitive person who worked extremely hard at his studies and in his successful career, and who says that after he and the mother separated he changed his work pattern so as to be 'constantly' [§62] involved in the children's activities (something that represented a significant change to the previous family dynamic where it had been the mother who was primarily responsible for the children whilst the father worked long hours).

209 The father told the social worker in July 2020 that B's behaviour at that time had been *"…cited by many people as being challenging"*, referring to using (non-physical) chastisement of B when B *"…has hurt his sister"*.

210 In November 2019 [435] the father was spoken to by B's school (prior to and entirely independently of the allegations in May 2020) and the conversation is recorded in disclosure from the school at [435]. The record says *"…We told [the father] about the things B had said regarding his dad getting angry when he was reading with him and squeezing him a bit hard in tennis. Dad acknowledged he can be hard on B because he is ambitious and competitive for him, especially at tennis"*.

211 It is further recorded that *"…he admitted he finds some of B's behaviours more challenging than [A's]…Miss K agreed that B was competitive and wanted to win - just like his dad"*.

212 In other words, there is evidence independent of either parent that B had told school staff in 2019 that his dad could get angry with him and the father himself accepted when this was discussed that he can be hard on B. I consider that it is likely that the father has allowed his own competitive streak to influence B and that whilst competitiveness can be a positive quality, the father has likely expressed frustration to B when he has not lived up to his high expectations for his achievement.

213 On the other hand, regarding the allegation of physical abuse, I have not been provided with copies of the ABE interviews, the CP medicals that took place did not show any evidence of abuse, the local authority investigated the matter and did not consider that there was a risk of physical abuse, and at no stage in the proceedings has the mother invited the court to make an express finding that the father hit B.

214 Whilst I find that the father has expressed frustration with B I am unable to reach a conclusion on the evidence available to me about whether the father was also in the habit of using (excessive) physical chastisement against B, including hitting him, and I do not make such a finding. However, nor do I find that the evidence supports a finding that the mother has deliberately 'fabricated' this allegation to 'destroy' the father (or for any other reason).

215 In the context of the other negative 'adult' phrases that I find the father has exposed the children to, I find it more likely than not that the phrase used by B that he *"…does not want mummy to make me tell lies"* has come directly from the father rather than being evidence that the mother *did* ask him to tell lies about his father. As the mother invites me to find in her statement at §43 [394], thereafter the father has consolidated the false narrative in the minds of the children that the mother is a person who tells lies about their father and wants to 'destroy' their father.

216 Since at least December 2021, B has now informed the mother on the phone that A does not want to speak to her mother at all because she 'hurt' A and that she needs to 'apologise' for what she has 'done' to A. This stems from the incident on 17 November 2021 when B ran away from his mother's care and the mother says she took hold of the hood of A's coat in order to prevent her from running into the road.

217 The father in his statement at §151 [230] claims that A said her mother had 'strangled' her by pulling violently on the coat and goes on to describe how this led to his 'urgent' application (rejected by Recorder Hellens) to suspend unsupervised contact. In my judgment, if A was using extreme language like 'strangle' to describe her mother holding on to her coat (even firmly or roughly) to prevent her running off then the father had a responsibility to assess the situation calmly and objectively rather than escalating or exaggerating the risks and then exposing A to those views.

218 I have seen the minutes of the CIN meeting dated 8 December 2021 during which both parents were present, as well as the headteacher and deputy headteacher of the children's schools and a school therapist. Despite what the father claims in his statement, A's headteacher did not tell the local authority that A had been saying at school that she had been 'strangled'. In fact, Ms X told the meeting that A had been using phrases including *"god will punish [my] mum"* and *"[my] mum destroyed the family"* and that when talking about the

incident she showed *"..no emotional intelligence"* [628] about the risk to B in running off or how B's challenging behaviour should be viewed. I am very concerned by the content of the phrases used by A. In my judgment they are adult in content and strongly suggestive of the father's influence.

219 The shared view of professionals, including school teachers working with the family, was that contact should not become supervised and that they saw no risk-based justification for supervising the contact. The fact that A (and now B) appear to be repeating a line that their mother has hurt A and 'needs to apologise' can only sensibly be explained by my finding that the father, far from taking on board professional opinion and de-escalating the situation, has deliberately stoked the flames both in the words I find he has himself used to describe the incident, and also by issuing an application to try and suspend unsupervised contact (in the face of the advice of the local authority who had canvassed the views of the children's schools).

220 From the point at which he issued his application the father stopped all direct contact. This stance continued even after the court refused to accede to his application to suspend contact. There can, in my judgment, have been no stronger a negative message conveyed to the children by their father that their mother is an unsafe person than stopping their contact altogether.

221 Whilst I agree that B running away on 17 November was a distressing incident for both parents and that they were right to be concerned about B's safety, a responsible and concerned father would have sat down with B and explained that running away from his mother was wrong and risky. Instead of showing a 'united front' with the mother, the father has used the incident on 17 November to advance his narrative that the children are not safe with their mother and has encouraged the children to believe they do not have to have contact with her.

222 Dr S told me that the children are identifying strongly with the negative feelings the father holds towards the mother and that this had led them to experience a 'split' (by which I took Dr S to mean polarised) reality where they identify their father with 'good' and their mother with 'bad'.

223 Dr S's first report describes how, even in the context of a meeting with the Single Joint Expert for the purpose of informing the court proceedings, the father was unable to restrain himself from repeating a number of negative comments about the mother.

224 I highlight a selection of these set out in the first report as follows: (i) claiming that the contact difficulties had arisen because of the mother 'choosing' not to see the children [479]; (ii) suggesting the mother's cosmetic facial surgery had got in the way of contact (insinuating that she had prioritised improving her appearance over spending time with the children) [479]; (iii) suggesting that the mother had had breast enhancement surgery and a 'nose job' at around the same time he had begun seeing his new girlfriend, making a link between the fact his girlfriend is only 24 years' old and the mother choosing to have cosmetic surgery (I could not see the possible relevance of this to the welfare of the children and this sort of commentary seemed to me to be indicative of general negativity and unpleasantness towards the mother); (iv) alleging that the mother had 'laughed' when they got divorced because she was happy she would not have to see as much of B [481].

225 The father statement is littered with negative commentary about the mother's parenting despite the fact that by all accounts the mother appears to have been the primary carer of the children prior to the parties' separation, and to have been perfectly capable of meeting their needs at that time, such that the father's position at the end of 2019 when the parties' separated was that he and the mother should co-parent the children under a shared care arrangement.

226 SW observed in her report at §22 [538] that *"…in my opinion the father remains focussed on all the things[the mother] is doing wrong, not identifying that the behaviours of the children need to be addressed by both parents"*. She gave an example as being what happened when the local authority suggested to the father that it might help to encourage A to have contact with the mother if she were to go straight to see her mother from an after school club rather than be taken to contact by the father. Instead of being prepared to trial this arrangement, the father refused to consent to A going to the club and told the social worker it was 'wrong' of the mother to try to 'make' A do something she 'didn't want to do', using the phrase *"she [the mother] was the one who decided to leave [the marriage]"*.

227 I note that HHJ Reardon, when hearing the parties give evidence at the final hearing in financial proceedings, also observed that the father was a person unable to hide his deep-rooted anger at the mother from view [§54 450].

228 I accept SW and Dr S's professional opinions that the vocabulary and actions of the children - now so extreme that they refer to their mother by her first name rather than as 'mum' – are an echo of the views held by and expressed to them by the father.

229 The children's language is adult in content ('mummy left us') and their extreme rejection of their mother cannot, in my judgment, be adequately explained by the father' alternative hypotheses that the children have been upset by the fact the mother did not want them to spend time with his new girlfriend or his claim that she has fabricated allegations about him or said negative things about him.

230 That the children's language is, in its content, an extension of the father's belief that the mother 'chose to leave the marriage' is consistent with Dr S and SW's assessment that the children echo or parrot the views they are hearing from their father.

231 The mother had been the main carer of the children for their entire lives up until the parties separated in December 2019. In January 2020, the mother agreed to a shared care arrangement with the children spending a week with each parent on an alternating basis, a fact that in my judgment supports the views of the professionals that the mother is a person who values the role of both parents in the children's lives and who wanted the children to spend time with their father. If the mother's 'attitude' towards the father changed in March 2020 as the father alleges, this does not logically explain why contact between the children and the mother in fact only broke down after the father refused to return the children to the mother following contact in August 2020.

232 The father's evidence that the relationship between the parents soured in March 2020 and that her behaviour from that point began negatively impacting the children is also inconsistent with what the father told children's services in July 2020 (when they were completing their Child and Family Assessment) that *"…until recently they have managed contact arrangements in a polite and pragmatic way"* [558].

233 I find that the timing (end July 2020) of the allegation made by B and the father's subsequent anger at the mother, blaming her for the instigation of the social services investigation, is more likely than not the real reason why relations worsened and the father kept the children in his care at that time.

234 Between August 2020 to date, the children have also gradually seen less and less of their mother, to the point where they have now not seen her at all since 17 November (aside from one short visit on 22 November when SW was present and a handful of video calls with B which have been, at the most, a minute's duration). A last appeared on screen with her mother on 13 December 2021.

235 At the same time that the children have become steadily ensconced in the sole care of the father, their rejection of their mother has increased to the point where A refuses to even speak to her mother. In my judgment, there is an obvious link between the reduction in the time the children have been in their mother's care and the increase in their hostility towards their mother.

236 I have no doubt that over the course of the time the children have been in their father's sole care (i.e. since August 2020) they have been regularly exposed to his hostile and negative views about the mother.

237 I note, for example, that in a letter prepared by the legal department for Children's Services at [the Local Authority] [511] on 6 July 2021 (by which point the proceedings had been taking place for almost a year) the court was informed that *"…the social work team remains concerned about the father's lack of insight into the impact of emotional harm, following the divorce, on the children. The children are still using the same language as the father such as 'mummy left us'; 'mummy left the family'; and since the expert assessment [of Dr S] the children are [now] stating 'mummy is going to take us away'"*.

238 It is implausible that the children's rejection of their mother is as a consequence of *her* behaviour as the reality is that their father has been effectively solely responsible for their upbringing since August 2020 due to the way in which he has gradually eroded the influence and involvement of their mother, taken decisions for them without her input (such as taking them to see the therapist Dr Q in October 2020 without asking her and with no regard for her parental responsibility), and ultimately suspended all contact with her.

239 In his oral evidence Dr S told me that there is a spectrum of behaviours that can loosely be described as 'alienating' and that, in his 23 years undertaking expert reports for the family court, this case was at the extreme end of that spectrum. He told me *"….. Sometimes there are carers and children, where carers don't realise what they're doing………I'm not sure it's the case here…This is not [a] case where you can argue that the father has negative feelings. It is much more calculated"*.

240 From all I have read and heard I have sadly come to the conclusion that this is not simply a case where a parent has inadvertently allowed their own hurt and upset at the ending of a relationship or the behaviour of the other parent during the relationship to leech into their interactions with the children. Even if this did not start off as a campaign to alienate the mother from the children, I find that the father behaviour has certainly evolved into one, such that he is now making a concerted, calculated and deliberate effort to erode the mother from the children's lives.

241 In addition to the assessment of Dr S there is an abundance of evidence to support this conclusion. I highlight the following from the evidence:

i. As identified, at the end of August 2020, the father refused to continue to follow the pattern of shared care and retained the children in his sole care, thereafter applying to the court for a sole 'live with' order and making unfounded allegations against the mother of 'erratic' behaviour and suggesting she had 'bipolar disorder' in the absence of any formal diagnosis or, indeed, any evidence in support;

ii. Around the same time, B told a member of school staff on 8 September 2020 [424] that he was going to be moving to Australia. When questioned, he told the staff member *"…don't tell dad I have talked about it…"* as it is *"…private stuff"*. I am satisfied that by September 2020 the father was privately discussing with the children the possibility that they would live solely with him and that they would move to Australia;

iii. When, in October 2020, the local authority asked the father to commit (in a working together agreement) to the children enjoying a minimum level of regular contact with their mother [588], the father refused to sign the agreement without objective justification;

iv. The same month, the father took the children to see Dr Q without asking the mother whether she agreed. This is indicative of a lack of regard for the importance of the mother's opinion, as a mother to the children, about whether taking them to see a therapist (and, if so, which one) was in their best interests;

v. As discussed above, in November 2020 the father refused to agree to A going into an after school club to facilitate contact handovers [534];

vi. The father ignored professional advice by suspending direct contact in November 2021;

vii. The father booked a trip to Australia in December 2021 with no reference to the mother;

viii. The father has retained the children in Australia without the mother's agreement, and taken them to a psychologist again without her consent (a mirror image of what had happened in October 2020) and in breach of a Court order;

ix. The father refuses to bring the children back to England even when ordered to do so, and refuses *even to tell the mother where the children are staying*. I have since been informed that the father has not paid the children's school fees for this term, no doubt because he does not intend for them to go back to their school.

242 The father's behaviour is emotionally abusive and has caused the children significant emotional harm. As Dr S sets out at §14 [520] in his first addendum report, it is crucial for a child's development that a child of divorcing parents is still able to be able to identify themselves as being the child of two parents that each love the child and are each able to meet the child's needs. As Dr S advises, this enables a child to be able to love both parents at the same time, without feeling that they can only love one parent by excluding the other.

243 Dr S expanded on this in his oral evidence, telling me that the children's present state (in which they see everything connected with their father as 'good' and everything connected with their mother as 'bad') is *"…really damaging for their emotional development"* and that the children are not 'allowed' to say when they want to see their mother because they are in a 'straitjacket' under their father's control where they have learned to behave according to The father's wishes.

244 Not only are the children suffering direct harm at the moment by not being able to enjoy a healthy relationship with their mother and holding warped ideas about her, but (as Dr S says) if the children are allowed to grow up believing that their mother is an abusive person who does not love them this is likely to have a seriously deleterious impact on their future relationships with peers and partners as they grow older and to prevent them from developing into emotionally healthy and well-adjusted adults.

245 Unfortunately, there is already evidence of a significant and tangible effect on the children's wellbeing of the emotional abuse they have suffered as a consequence of the father's behaviour.

246 Whilst the father told me in his oral evidence (as he did in his written evidence) how 'well' the children are doing in school, in fact the evidence from the children's schools of the children's emotional wellbeing makes for very worrying reading.

247 B is described as 'attention seeking' in his behaviour, wanting hugs from his teacher whilst also becoming anxious and upset and repeating the theme that his mother *"lied to us"* and is trying to *"steal us from dad"* [545]. The school were pointing out as long ago as June 2021 that it would be beneficial to B for his relationship with his mother to be restored and about the *"..severe impact that continued acrimony between the parents will have on B's mental health in the long term"* [546].

248 As far as A is concerned, her presentation at school has markedly deteriorated such that she is now described as an *"introverted child that is sometimes reluctant to participate in activities or conversations"* [547]. Her teachers have said they are 'very concerned' by the phrases and vocabulary that she uses *"…as they are not the words usually used by a child of her age"* and are also having a *"…negative impact on her relationships with peers as they cannot comprehend why she does not want to see her mum, especially as they have known her mum for many years and know that they [A and her mother] previously had a very good relationship"*. Like B, A's school also voice their concern about the impact of this on A's mental health both now and in the future and say it is 'imperative' A's relationship with her mother is restored.

249 As Dr S said in his oral evidence, A's insistence in facing a wall for the entirety of the contact with her mother and refusing to say a word is extreme and abnormal behaviour and I am satisfied it is indicative of the emotional abuse she has suffered from her father.

250 I am extremely concerned to hear that since being in Australia A has refused to even be seen on a video call by her mother, and by the evidence of SW that when she observed A over video A appeared to be holding back what she wanted to say, appearing *"red in the face and on the verge of tears, as well as being really angry"*.

251 I find it incomprehensible that a child who has lived (essentially) her entire life in England, and who is described by her school as having secure relationships with her peers, should be heard by SW on a video call shouting that she 'hates the UK' and is 'never coming

back'. SW, who knows the children well, told me, she has *"…never heard anything of the sort"* from A before. I conclude that A's sudden refusal to return to the UK is, again, an extension and echo of the father's refusal to come back to the UK and is a product of the alienation she has suffered rather than evidence of a reasoned or objectively held wish to start a new life in Australia.

252 Whilst SW had been of the view in her s.7 report in September 2020 that a shared care arrangement was workable, SW conceded in her oral evidence that having heard the evidence of Dr S, and in view of the evolution of the landscape between when she wrote her report and when she gave her evidence to me (not least, the lack of any progress in re-establishing contact; the fact contact has stopped when it is the view of the local authority that it should 'urgently' resume; and the fact the children have now been retained in Australia) she is now of the view that the children should move to live with their mother.

253 SW told me that, in her assessment, the father is not able to focus on the children's needs and is not in a position to be able to meet their emotional needs. She told me the father had displayed a lack of empathy and insight into the children's need to have a relationship with their mother; indeed, when asked about his plans to return to the UK the father glibly told SW that the children are *"…happy where they are"*, seemingly without any concern whatsoever about the need for them to have a relationship with their mother or as to how the mother herself might feel about not being able to see her children.

254 I personally observed this lack of empathy at the hearing on 26 January when I asked the father to tell me where the children are. He told me that he would tell me only if I agreed not to tell the mother, later claiming to be concerned that if she knew his address she would 'harass' him (there is no evidence whatsoever to support such an allegation or to justify the father' demand that the mother give an undertaking not to 'harass' him).

255 The father was unable to appreciate just how worrying and distressing it must be for the mother to currently have no independent evidence of where her children are, knowing only what the father has been prepared to tell her, which is that they are at an undisclosed address in [A city in Australia] , and in a context in which the father has made it quite clear he has no intention of returning the children and is apparently unconcerned about when and whether they have contact with their mother again.

256 Dr S's view is that, even leaving aside the issues surrounding the trip to Australia, there is compelling evidence that the father has not promoted and will not promote contact between the children and their mother, that he continues to criticise and undermine her, and that he has limited (if any) insight into his behaviour and his responsibility for the breakdown in the children's relationship with the mother. I agree with his assessment.

257 In his oral evidence he amplified the view expressed in his second addendum report by telling me that he was pessimistic about the prospect of the father effecting any real shift in his views in the short to medium term, saying *"…for the time being – [the father] thinks he is right about what he does. To put it dynamically, as long as we all suffer, and he doesn't, there is no motivation for him"*.

258 I entirely share this view. I consider it telling that instead of engaging with the opinion and advice of Dr S and being prepared to come to court and listen to it or ask questions of Dr S, the father has instead chosen to take the children to Australia without their mother's

consent and to get another (unilateral) assessment of the children in breach of the court order, no doubt in the hope that a different psychologist will agree with him.

259 When advised by the Local Authority that they did not agree to the need for supervision of the mother' contact, the father stopped the contact altogether. All the evidence suggests the father holds the firm view that he alone can meet the children's needs, that the mother is of no import in the lives of the children, and that all the professionals involved in this case are wrong and he alone is right. I have no confidence that the father will genuinely promote contact between the children and their mother because this requires him to make an immediate and dramatic shift in his thinking about her role and importance as a parent, something he is not presently motivated to do.

260 I am of the view that the father will continue to alienate the children from the mother such that, without swift intervention, there is a risk that (particularly in the case of A) the damage will be too great to undo and before long the children will lose the chance to have a healthy and meaningful relationship with their mother, something that they will carry with them for the rest of their lives.

Outcome

261 For the reasons above I agree with Dr S and SW that urgent intervention is required to restore the children's relationship with their mother.

262 I therefore set out my decision by reference to the welfare checklist as follows:

a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)

263 A and B have consistently said that they 'hate' their mother and want to live with their father. However, my finding is that these views are not objectively justified views (i.e. held because of anything the mother has done or said to the children). The same goes for A's view that she 'hates' the UK and does not want to come back here. The children's views are the product of deliberate emotional manipulation by the father and there is also a disconnect between what the children say they want to happen, and their actions (for example, B following his mother around the house during contact and A claiming to be happy not seeing her mother but her presentation deteriorating at school).

264 I have also taken into account that B is only 7 years of age, that A is only 10, and that whilst A is described as an intelligent child she has also been described as lacking in emotional intelligence in certain circumstances. That she would not be capable of sufficient emotional maturity to understand the complex family dynamic and to realise that her views are being manipulated is entirely understandable given she is only ten and has been subjected to almost two years of conflict between her parents and 16 months of the most limited contact with her mother. Whilst the children's views are important, the weight to be placed on their views must be assessed in the context of my finding of alienation and there is a difference between what the children say they want to happen and what is, objectively, in their best interests.

(b)his physical, emotional and educational needs;

265 Both children need to be able to enjoy a 'normal' relationship with their parents where, as Dr S said, they are made to feel secure in the knowledge that both parents love them even if the (separated) parents do not love each other anymore, and where they are free to enjoy time with each parent without being made to feel that by doing so they are betraying the other.

266 The children also need a stable home, and to be attending school regularly. It is of enormous concern that the father removed them in the circumstances that he did, and that they have missed the start of the school term, are out of formal education, and are not able to see any of their friends.

(c)the likely effect on him of any change in his circumstances;

267 I agree with the assessment of Dr S that there is a significant risk if the children were to move directly from the care of their father to their mother (without any form of therapeutic support), especially in light of the time they have spent in Australia being further conditioned to their father's way of thinking, that they will reject their mother initially.

268 This could lead to the children being exposed to a risk of physical harm, for example running away and being hurt in the process, and it is likely to be extremely difficult for them to cope emotionally with the change in the short term. However, I also agree with Dr S that the children's likely reaction to a move is also difficult to accurately predict, that B may manage a move better than A, and that there is also evidence that both children had good and strong attachments to their mother generated through all the years she spent caring for them when they were younger and that the anger the children feel towards their mother and the erosion of their attachment to her is reversible.

269 I am heartened to hear Dr S's view that, even in the case of A, the attachment she has to her mother is still there, albeit eroded. Dr S was firm about this: *"[A] has been so damaged by [the father's behaviour]…and what you see in B you can't quite see in A [but] it is in A too. This mother was there [for the children] in the first five or six years, it is not gone, it can't be gone, it is all there."*

270 Moreover, if the children's circumstances are not changed, the effect on them will be a perpetuation by the father of the emotional abuse they are being subjected to and an exacerbation of the damage that is causing to their relationship with their mother. The longer they remain with their father without change, the harder it will be to repair the damage that has been done.

(d) his age, sex, background and any characteristics of his which the court considers relevant;

271 The children are of a young, vulnerable and impressionable age where they are still heavily reliant on their caregivers to meet all of their needs, and where they do not have the emotional capacity to properly understand the complex situation they have found themselves in or the maturity to cope with it. However the fact they are young and that they do still have attachments to their mother also means that I am satisfied they will cope with a change to their living arrangements with appropriate support.

(e)any harm which he has suffered or is at risk of suffering;

272 I have set out throughout this judgment the harm the children have suffered. This harm will continue if they remain with their father and are denied a meaningful relationship with their mother.

(f)how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

273 For the reasons set out in my judgment I do not consider that the father is able to meet the emotional needs of the children at present and I do not consider that he will be able to do so in the future unless he is able to evidence a demonstrable shift in his thinking about the mother and thereafter undertakes regular, targeted psychotherapy with an expert possessed of the appropriate qualifications (as advised by Dr S) and over an extended period.

274 I agree with Dr S that the father's approach thus far (in terms of the counselling/therapy he has accessed) is that the father does not think he has done anything wrong and so he simply seeks out therapists that he thinks are likely to endorse the views he already holds, rather than demonstrating any genuine motivation to change.

275 As far as the mother is concerned, I accept that she is, in principle, able to meet the children's needs in the round and in the long term, including their need to have contact with their father, although I also consider that the extreme reaction displayed to her by the children over the last year and a half along with the total breakdown in contact has taken a considerable emotional toll on her and caused her to lose confidence in her ability to manage a transition of the children from their father's care to hers and that she would need professional guidance and support to manage the situation.

276 Dr S at [518] in his addendum report raised a question about whether the mother can be too passive and display a 'lack of urgency' in the need to take action to rectify her relationship with the children. I consider that the mother will need a structured framework for the transition of the children to her care that has been professionally advised and that she will require the support of a suitably qualified family therapist to help her manage what will undoubtedly be an emotionally difficult period for the children and herself as well as to advise how future contact arrangements with the father are to be managed. However, I find she has the capacity to meet the children's needs with such support.

(g)the range of powers available to the court under this Act in the proceedings in question.

277 This is a complex case in which I accept that there is no easy or quick solution and I must balance the short-term harm to the children of being removed from their father with the long-term harm to them in remaining where they are. However, I have reached the firm conclusion on the evidence that the children cannot stay with their father and that a shared care arrangement is also completely unworkable at present because the father has not changed his views, will not promote contact, and any attempt to repair the relationship will be undone during the time the children spend with the father.

278 Whilst these proceedings have been ongoing since September 2020, and I would have liked to be able to make orders finalising the children's arrangements once and for all, I agree with Dr S and SW that the priority must be securing the return of the children from Australia and then assessing them on their return in order to make a recommendation as

to how a transition into the mother's care should look and whether, particularly with A, there is a need for a 'stepping stone' placement between a move from her father's care to her mother's, either by her staying for a very short time with a relative or, as a last resort, a local authority foster carer whilst, as Dr S advised, being 'weaned' back into contact with her mother. I make it quite clear I do not take such a suggestion lightly and that it is very much a last resort, but I consider that all options need to be explored in order to repair the children's relationship with their mother.

279 If the children are being exposed to significant emotional harm in the care of their father such that they need to be removed from his care as soon as possible (as I have found to be the case), but there is a high risk that they would reject an immediate move to their mother (as I have also found to be likely), then I accept Dr S's view that there is a continuing role for the local authority in supporting these two very vulnerable and emotionally damaged children.

280 It is in the interests of the children that I am provided with further evidence from the local authority about the support that can be provided to the children and whether, in view of the findings I have now made, and in view of the ongoing retention of the children in Australia, the local authority are now of the view that they should apply for care or supervision orders for the children, provide services or assistance to the family, and/or take any other action with regard to them. I make it clear that I have found the father's behaviour to be abusive, to have caused the children significant harm, and that they are continuing to be harmed in his care.

281 I therefore order as follows:

i. I make an order that the children shall live with their mother, such order not to be implemented until the Court has approved the plan for transition of the children to her care;

ii. I grant part of the mother's Part 25 application, in that I give permission for the parties to jointly instruct MR, psychodynamic psychotherapist and systemic family therapist, to prepare a report dealing with how best to implement the change of residence for the children, including the need for any stepping-stone placement, the contact arrangements between the father and the children during the transition and in the longer term, and recommendations for ongoing therapeutic support. I consider such evidence to be necessary in order to inform the court as to the appropriate framework of support for the transition so as to mitigate the impact of the change on the children and to reduce the risk of the children rejecting their mother and the placement breaking down. I will invite the mother's solicitors to provide me with an update as to MR's current timescales for reporting. It seems to me that whilst MR is highly likely to need to meet with the children (which is difficult in the current circumstances) it is possible for the letter of instruction to be sent to her now in any event and for her to be provided with a core bundle of relevant documentary material and this judgment.

iii. I direct that pursuant to s.37 of the Children Act 1989 the local authority should investigate the current circumstances of the children and provide the court with a report confirming whether they intend to apply for public law orders for either or both children as well as identifying support/other action that they propose taking in respect of the children. This should include outlining what liaison has taken place to date with children's welfare services in Australia, what contact the allocated social worker has been able to have with

the children (and what her current assessment of their welfare is in those circumstances), their knowledge of the children's current whereabouts (and what they are doing to ascertain their whereabouts), and what support they are able to provide in the event that MR advises that a stepping-stone placement is required for either or both children.

iv. I order that neither parent shall communicate my decision to the children until such time as (i) Dr S has been invited to provide advice as to the best method of communicating the decision to the children, including timing and a suggested form of wording; and (ii) I (or another Judge of the English family court) has approved the course of action. For the avoidance of doubt, this is a prohibited steps order and I am attaching a penal notice to my order in this regard.

v. The father must file a statement (within 21 days) setting out whether he accepts the findings of the court. I consider that evidence will be helpful to MR when she comes to consider the nature of any future therapy for the family, and whether the father is motivated to engage in that therapy. I urge the father to reflect carefully on this judgment and the findings I have made for the sake of his children who deserve to grow up having a healthy relationship with both of their parents.

282 For the benefit of the local authority, I summarise that I have made the following findings:

i. The father is angry and hostile towards the mother due to the breakdown of their marriage and the fact she had an affair;
ii. The father does not acknowledge the importance of the mother's role in the children's lives;
iii. Since at least the summer of 2020, the father has sought to marginalise the mother's role in the children's lives and to remove her from their lives altogether;
iv. In December 2021 the father removed the children from the jurisdiction to Australia without the mother' knowledge or consent or a court order, and he has retained them there to get them away from the mother and to obstruct the court's ability to make and enforce orders safeguarding the welfare of the children;
v. The father's views are engrained and have not changed since the reports of Dr S and SW;
vi. The children love the mother and their statements about, and behaviour towards, the mother do not reflect their true feelings and are in line with (i) The father's unjustified narrative and (ii) his own need to denigrate her importance to them;
vii. The father shows no insight into the impact on the children of his views of the mother and his behaviour;
viii. Contrary to his assertions, the father has not genuinely supported and encouraged contact;
ix. Since 17 November 2021 the father has been in breach of the court's contact order of 08 July 2020 without reasonable excuse;
x. The father has caused the children's unjustified rejection of the mother and has alienated them from her.
xi. The children's fundamental emotional and psychological need for a relationship with the mother is not being met whilst they are in the father's care, and he has caused them serious emotional harm.

283 I have not directed a psychological risk assessment of the father by Dr S (or anyone else) at this stage. First, I think it is unlikely the father will consent to submit to such an assessment. More importantly, I do not consider such assessment necessary in order to inform welfare decisions regarding the children at the current time. I have sufficient

evidence already that the father is not meeting the children's needs, will not promote the children's relationship with the mother, lacks insight, and is resistant to change. In the event that MR considers that such an assessment is necessary in order to inform her views about future contact the issue may be reconsidered.

284 I have also not considered it necessary that Dr S see the children on their return from Australia to assess their welfare if they also going to be assessed by MR. I do not consider it in the children's interests to be assessed by two experts on their return to the UK, bearing in mind the stressful situation they are currently in, the harm they have suffered, and the fact they have also been taken (unilaterally) to see two additional experts by the father. In the event that an immediate update is required in respect of their welfare on their return to the jurisdiction, the allocated social worker seems to me to be the appropriate person to see the children initially, bearing in mind what I have said about the continuing need for the local authority to remain involved and in view of my s.37 direction.

285 As far as future hearings are concerned, I agree that there will need to be a further hearing to consider the report and recommendations of MR and the s.37 report. My intention is that the local authority should report within 8 weeks and that they should ideally also have had MR's recommendation prior to reporting, but I appreciate that this timescale depends on what has taken place in the court in Australia and whether the children are back in England by that time.

286 For the time being, I will list the hearing on the first available date in April with a time estimate of a day, before me if available. I am not going to reserve that hearing to myself as a part-heard extension of this hearing because of the additional delay that will cause and also because of the impracticality of trying to list a hearing at short notice if the children are returned to England before then and it is necessary for a hearing to be convened immediately on their return.

287 A copy of this judgment should be provided to the local authority forthwith, and I also give permission for the parties to refer to this judgment in the Hague Convention proceedings.

288 After I circulated this judgment in draft an issue arose between the parties as to whether the mother should have permission to rely, in the Australian proceedings, on the reports of Dr S, the s.7 report, and any other documents filed in these proceedings that the Australian court considers relevant. I was told that the father objects to disclosure of those documents although he has not been able to provide me with any reason for the objection.

289 Given that there has been no objection to this judgment being disclosed in the proceedings in Australia it seems to me appropriate that the parties should also be able to refer to the underlying evidence that was before me and which this judgment refers to and quotes from. There is no good reason to prevent the Australian court from having sight of the full reports of Dr S and SW or other materials filed in these proceedings that may be relevant to the determination being made in that jurisdiction. The Australian proceedings are between the same parties and involving the same children and it is in the interests of justice that the Court in Australia has the full picture, both to enable that Court to understand the context of my decision and the evidence on which it is based, and also to assist the Australian Court when making its own decisions.

290 That is my judgment.