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Case No: FD13P01547

Neutral Citation Number: [2015] EWHC 1693 (Fam)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/06/2015

**Before :**

**MR JUSTICE COBB**

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**Between :**

**RC (mother)**

**Applicant**

**- and -**

**AB (father)**

**Respondent**

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**Re R (Permanent Leave to Remove to Angola)**  
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**Mark Jarman** (instructed by **Levison Meltzer Piggott**) for the Applicant (mother)

**Anne Ratcliffe** (instructed by **Morrison Spowat**) for the Respondent (father)

Hearing dates: 2-5 June 2015  
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**Judgment**

## **The Honourable Mr Justice Cobb:**

### ***Introduction***

1. These proceedings concern an 8-year old boy, R, born on 19 March 2007. He is the only child of RC (hereafter ‘the mother’) and AB (hereafter ‘the father’); the parents never married, and lived together only briefly early in R’s life. Having been born in London, R has spent the majority of his life living in this country with his mother. In 2013, the mother removed R from this jurisdiction to the Republic of Angola where they have lived for most of the period since, though both are (and have been for a number of weeks) currently in England. The mother now applies to the court for permission to remove him from the UK to Angola to live there permanently. The father opposes that application, and applies for a Child Arrangements Order to define the time R spends with him in England.
2. In determining those cross-applications, I read with care the witness statements and reports filed; I heard oral evidence from the mother and father, from the mother’s new partner, from the paternal and maternal grandmothers, and from the Children and Family Reporter (Cafcass). An officer from the Metropolitan Police has observed the proceedings in court; the mother is currently on police bail having been arrested on suspicion of committing the criminal offence of abduction in relation to the 2013 removal to Angola. Both parents have been very ably represented by experienced counsel.

### ***Background facts***

3. In outlining the background history, but more specifically the history of recent events, inevitably I touch on disputed evidence on which I am required to make findings of fact. I will indicate my findings throughout this narrative, bearing fully in mind that it is for the party who makes an allegation to prove it. In relation to disputed issues of fact, the standard of proof is the ordinary civil standard: see *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 at §2:

“If a legal rule requires a fact to be proved (a ‘fact in issue’), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. . . The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened”.

And at §12 (*ibid*):

“... there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not”.

4. The mother, who is now aged 26, was born in Angola and spent the first four years of her life there before moving to South Africa to escape the devastating civil war. In 1997 the mother's family moved to England, when the mother was eight years old; she remained living here until August 2013. The mother is from a large family, with a sibling, half-siblings, nephews and nieces all of whom continue to live exclusively or predominately in Luanda, Angola's capital. That said, her mother (the maternal grandmother) owns a property in SE London which she routinely visits; the maternal great grandmother rents a neighbouring property. The mother's step-father has children from a previous marriage in England and spends about a quarter of the year here, staying at his wife's London property. So, although based in Angola, the maternal family retain strong links in this jurisdiction.
5. The father is from a black Caribbean family, though was born, and has lived all his life, in London; he too is 26 years old. He has a reasonably large extended family largely based in SE London, and has a younger half-brother only three years older than R. The paternal family appear to be close. The father has parental responsibility for R as his name appears on R's birth certificate.
6. The parties met in England in 2004 at school when they were both in their early teens. They lived together 'on and off' from 2006, and R was born in 2007 when the parties were still only 17. In 2008 (when R was about 18 months old) the mother left the father and formed a new relationship, returning to the father in early 2009. The couple finally separated in 2012.
7. It is obvious from all that I have read that the parents' relationship was an unstable and highly conflictory one, borne in part I suspect of their immaturity (the mother accepted when recently interviewed by the police that the parties had a "childish" relationship, which in my view accurately depicts it). The parents take issue with each other as to the extent to which their relationship was a physically violent one; the mother asserts that the father was violent to her since early in their relationship, in 2005, and has deposed in her various statements to recurrent assaults upon her over the years since then. The father denies the mother's accounts. Objectively there is little corroboration for the specific acts complained of, however the father has a conviction (dated 2008) for an offence of criminal damage of property belonging to the mother, and the mother has a caution for criminal damage to property of the father (2009).
8. It appears that R was sometimes caught up in adult conflict; from time to time, the father allegedly removed R from the mother's care, or from nursery, without notice to the mother let alone her agreement, causing the mother distress. In 2010, the parental relationship appeared to have ended, and in October of that year the mother obtained a non-molestation injunction, and prohibited steps order, against the father. The mother applied for those orders to be discharged some 5 weeks later when the parties agreed terms. The parties reconciled briefly, but this did not last. Almost exactly two years after the first injunctions had been obtained, the mother applied for and obtained further non-molestation and prohibited steps orders against the father.
9. The complaints of violence were reported to the police who charged the father more than once with criminal offences, but these charges were never pursued and never resulted in convictions. The last criminal prosecution was discontinued when the mother failed to attend court to give evidence in support of her complaint in January

2013. The police involvement with the family over a period of time caused a referral to be made to Lewisham Children's Social care in 2011 but no action was taken.

10. Although this couple have accessed the family courts on numerous occasions between October 2010 and March 2013 (with non-molestation and/or prohibited steps and/or contact applications), there has never been any fact-finding hearing in relation to the allegations of early domestic abuse; one might well have expected such a hearing to have taken place, having regard to the provisions of *PD12J* of the *FPR 2010*. Indeed such a hearing would probably have been helpful at that time to inform the way in which contact could be safely arranged. When the father applied for a contact order (November 2012) arrangements were in fact agreed by the mother. Many years on from those initial allegations, with memories having faded and contemporaneous records scarce or non-existent, I regard it as unlikely that I would be in a position to make confident factual findings in relation to these historic complaints of physical violence, and I was not in fact asked to do so. I am not indeed sure how relevant such findings would be to the question of contact now given the extent to which water has passed under the bridge.
11. More recent allegations of abuse and harassment, since 2014, have been ventilated in this hearing; I am much better able to consider these, and do make findings in relation to them, weighing them in the balance in considering R's best interests (see [23] below).
12. Pausing there, I wish the parents to learn an important message from this history (and from the more recent history to which I shortly turn). They should realise that domestic abuse and parental conflict is directly harmful to R; abusive and conflictory behaviour played out in front of R puts him at risk of harm. It is just as harmful to R if he witnesses one of his parents being violent or abusive to the other, as that he is subjected to violence or abuse himself.
13. In reaching conclusions in this case, I must be satisfied that any contact ordered for R with a parent who may be found to have perpetrated abuse is safe, and in his best interests (see *PD12J FPR, para.6*); I must consider the effect of any proven domestic violence or abuse on R (*para.37 ibid.*), and the capacity of the parents to appreciate the effect of past violence or abuse and the potential for future violence or abuse (*ibid.*). In light of any factual findings, I have been asked in this case to consider whether it would be suitable to refer the father to a Domestic Violence Perpetrator Programme. I return to this below (see [47]).
14. Returning to the chronology, as I mention above, the parents only ever lived together 'on and off' during R's life; there was plainly no continuous period in which they established a family life together. That said, the father and the paternal grandmother played a significant role in R's life from his birth and for the first six years, assisting with his care particularly while the mother studied; for a period of time, the paternal grandmother took R to school and collected him from school. The mother maintains (to Cafcass) that the father's contact with R in the period prior to the summer of 2013 was "inconsistent"; I suspect that to some extent it was but he did enjoy regular (albeit at times unscheduled) contact with R. After November 2012 the contact was regulated by court order: the father would see R on Mondays after school and on Sundays for the day. Parental tensions which surfaced around contact handovers were mitigated by the assistance of members of the paternal family. Staying contact took

place at the paternal grandmother's home occasionally, while the father was residing there. In December 2012 the mother took R to Angola for a holiday for a month, returning in early 2013; the father had earlier unsuccessfully applied to court to prevent the trip.

15. During the years from 2010 to 2013 the mother was undertaking a course at University, in Business Management and Human Resources. She graduated in June 2013. The father apparently worked.
16. On 9 August 2013, the mother and R travelled to Angola. On the mother's account, this was to visit a grandmother who was said to be critically ill, and at the end of her life ("the doctors did not think that she would last another week", "only hours or days to live"). The mother said that she tried to contact the father by telephone to tell him she was leaving, but could not (she maintains) reach him before she left, managing to do so only when she had arrived at her destination. The mother's case is that she had "no pre-meditated plan to move to Angola permanently", but that as soon as she had arrived in Angola in 2013, she was (she says without any solicitation on her part) 'head-hunted' out of the blue for high-paid work; when the offers rolled in, she seized the opportunities. She enrolled R in fee-paying school, and settled in. It appears that she was interviewed for full time employment with a number of distinguished multi-national companies on the basis of either temporary or permanent contracts within a matter of days of arriving. She in fact took work with a bank in late-September 2013, and worked for them until May/June 2014 (beyond the temporary length of the contract: 6 months), and then moved to her current employer, an energy company, in July 2014. The mother remained in Angola until February 2015, returning to this jurisdiction on her own, leaving R in the care of her mother. On her return to this country she was arrested and questioned by the police in relation to a possible offence of child abduction. Pursuant to further court order of 6 March 2015, R was returned to this jurisdiction on 5 April 2015.
17. The father takes an altogether more cynical view of the mother's actions and motives in travelling to Angola in August 2013. He strongly asserts that she should have informed him of the proposed trip, and sought his consent, given that he had parental responsibility for R. He is sure that she had been planning the trip for some time, and had taken preparatory steps to execute it. He points to the fact that shortly before leaving this country she had completed her studies (graduating in June 2013), she had formed a relationship with a man resident in Angola in early 2013 (whom she now plans to marry), she had surrendered her tenancy in London prior to departing (the tenancy terminating on the 9 August) and had moved to her mother's London property, had sold significant items of furniture, and made arrangements for the care of her cat; when in Angola he points out that she wasted no time in setting up a new life for herself and R (including enrolling him in school). The mother herself (police interview) referred to the fact that she had spoken to R's school in London at the end of the summer term (presumably in July 2013), indicating that she was "planning to take about 3 or 4 months" away visiting family in Angola, because of the grandmother's illness. The father says that while he was contactable throughout the day on which the mother left (9 August) as he was due to collect R for contact, he received no communication from the mother, and could not understand why she did not succeed in contacting him. The father had heard on the grapevine that the mother was actively searching for work in Angola as soon as she arrived.

18. I do not believe the mother's account of events surrounding her move to Angola in 2013 (see [16] above); in this respect I reject her evidence, and consider that the father is essentially right in his contrasting analysis (see [17] above). It may be that the mother's grandmother was indeed unwell in Angola in the summer of 2013 (although I have seen no evidence to corroborate this; indeed, the grandmother is still alive today, some 22 months later) but in my judgment this illness was not the reason, or the predominant reason, for her journey there in August 2013. I find that the mother had planned the trip for some weeks or months, and could have advised the father of her intentions. I do not accept that she made proper attempts to contact the father prior to her departure for fear that he would seek to frustrate her endeavour, the mother in interview indicates that if she had needed the father's consent "I wouldn't have been able to get out of the country with his son". I find that having completed her degree here, the mother saw her future back in Angola where her new partner was planning to make his life. She acted high-handedly in making the unilateral decision to leave.
19. The mother told me that when in Angola, was unable to negotiate any time off work under her temporary contract to return to England in the period since August 2013; again, I do not accept this. She says that there was no scope for any travel here in the interregnum between the two jobs, yet I note that she managed to spend three days in Portugal for a friend's wedding in this period, evidently prioritising this over a trip which could have facilitated a visit between R and his father.
20. During the time that the mother and R were in Angola (August 2013-February 2015), the father had extremely limited contact with R. It has amounted in my judgment to no more than about a dozen phone calls. I reject the mother's evidence that the phone calls were every month, and consider that the father and the paternal grandmother were more accurate in identifying about 8-12. The paternal grandmother told me (and I accept) that the mother had sent only one photograph of R in the whole period, and then only a week before she returned to this country. While in Angola, the mother and R resided with her mother (R's maternal grandmother) and partner in rented accommodation, but she refused to give the address at which R and she were living to the father for all the time that she was living in Luanda. She said that if the father had shown interest in R she would have provided him with the address; I do not accept this. She even opposed the father having the address when requested to provide it at a hearing in March 2015 before the court in London only finally providing it to the father by court order (6 March 2015) in the teeth of her continued opposition.
21. I find that the mother did not respond to reasonable requests for contact from the father and paternal grandmother; her case is that she never received text and other messages, but I consider it likely that they were successfully sent. Ms Ratcliffe rightly described the level of quantum facilitated by the mother in this period as 'piteous'; I agree. Once back in this country, the mother was interviewed by the police in relation to the possible charge of criminal abduction; I am satisfied that the mother deliberately evaded some of the questions, failing to co-operate as fully as she could with the police investigation (for instance she declined to give her home address in Luanda, pretending – so I find – that she could not remember it).
22. The mother's unilateral action in relocating to Angola prompted the father, appropriately, to seek the relief of the English Court; he applied for an order warding R, which was granted by Hayden J. on 21 August 2013. In September 2013, he

sought practical advice from Reunite, an organisation which has assisted him in his quest to secure the return of R in the period since. He reported the mother to the police for child abduction. In 2014 the police contacted the mother in Angola to inform her that they were investigating the circumstances of her removal of R.

23. Alongside consideration of the events surrounding R's removal to Angola in 2013, I have been invited to consider and make findings relating to mother's more recent complaints against the father, as follows:

- i) On 7 May 2014, the mother's twenty-fourth birthday, the father (or a "close friend" on his behalf) posted on Instagram (social media) an explicit and intimate photograph of the mother taken from behind, as she crouches on the floor naked from the waist down; this was accompanied by an extremely offensive message directed to the mother which ends with the words "bring back my child". Even if he did not personally post up the picture, the father (ultimately in his oral evidence) took responsibility for this. I find that the father was directly involved in the posting of this photograph as a deliberate attempt to distress and embarrass the mother on her birthday; he achieved completely his desired objective; he acknowledges (without deliberate understatement) that "I could have been more grown up about the situation";
- ii) On 12 March 2015, the mother and father met for a meeting at the mother's behest; she wished to see if agreement could be reached about the future for R. The meeting lasted approximately three hours. The father chose a venue in public where there would be CCTV recording of the meeting, lest the mother make allegations about his conduct towards her. The father reports that the mother apologised to him for having removed R to Angola in 2013, I find that it is likely that she did. The mother then facilitated a Skype discussion between R and the father during the meeting (the first such communication since R had left in 2013). The mother alleges that the father was difficult during the meeting, and threatening. The father denies that he threatened the mother; I do not find that the father threatened the mother but am satisfied that the discussion is likely to have been tense and not altogether cordial.
- iii) On 5 April 2015, R returned to this jurisdiction. Both parents attended the airport to greet him; this predictably caused ructions between them and the police were called. The police described the parents as both "emotional and agitated", and feared a breach of the peace and violence. The mother complains that the father was very aggressive towards her, although the police reports do not corroborate that. The police defused the situation by taking R and his grandmother directly to a police station from where his mother collected him. Agreement had previously been reached that the mother would collect R. I do not attach particular blame to the father for attending the airport; the agreement did not preclude him from being there, but their joint presence at the airport was entirely predicted to cause conflict;
- iv) On 17 April 2015 (the same day as one of the court hearings), the father posted up a message on Instagram in which he threatened to publicise a video recording in his possession (this corresponds with a comment which he had apparently made at the 12 March 2015 meeting). He told me in evidence that this message referred to a video recording of his infant daughter 'dancing', but

concedes that his message was drafted deliberately ambiguously so as to encourage the mother to believe that he was on the point of releasing an intimate video of them having sexual intercourse taken by them some years earlier (probably in 2012); he says that he recognised that she would believe that the message was about her, and intended her to think this. He ultimately (after some probing) recognised that the mother would find it upsetting to receive this threat. I am satisfied that the mother was (and is) deeply distressed by this threat, and in my judgment she is justified in being so;

- v) On 5 May 2015, the father encountered the mother and her partner taking R to school; the father unwisely approached them. The mother complains that the father shouted and swore at her. The father gives a more muted account of a conversation in which he asked the mother's partner not "to be childish". I do not consider that the father has given me a truthful account of this event. R spoke to the Cafcass officer about this incident, and described the father as shouting; the Cafcass officer told me that R was "worried and frightened" when reporting this, saying that he was "scared" when the father shouted. I accept the mother's and R's account, and that R was upset by his father's conduct.
  - vi) On 13 May 2015, the father posted up on Instagram another photograph, this time of an old group photograph which included himself the mother and two friends; on this photograph he had superimposed upon the mother's face a devil's 'emoji icon' mask; he explained that the photograph had been posted up in order to encourage users to follow his friend, and he had tampered with the photo in the way described in order to be "cheeky" and humorous. I don't accept his explanation. I am satisfied that the father deliberately posted this picture and/or tampered with it in the way described in an attempt to upset the mother (or careless as to whether she would be upset).
24. The incidents described in [23(i),(iv),(v) and (vi)] have, I find, been harassing and upsetting to the mother; the father accepted that he has behaved badly towards her in this regard. He has plainly been in considerable anguish over the disappearance of his son, but has not channelled his emotions in an appropriate way; he can be an intemperate man, who is easily provoked. An indication of his recent loss of temper was provided by a police report that the father was "aggressive and unreasonable" with officers in 2014 when they were trying to assist him in the investigation of the potential criminal offence of kidnap; he had to be told to "stop shouting and swearing" at them. All of the events described above, reinforced by the father's appropriate concessions, reveal that the father has not been able to curb his anger at the mother, and has deliberately and knowingly set out to hurt her.
25. Since returning from Angola, R has enjoyed contact with his father initially two nights per week; by order of this Court, the contacts have included some overnight visits. In light of the Cafcass report (19 May 2015) on 22 May 2015 the mother made an application to suspend the contact. Moylan J rejected the application but reduced the quantum to limit it to one overnight per week. It is acknowledged on both sides that the contacts between the father and R have been successful, and R has plainly enjoyed them (as he told the Cafcass officer). The mother maintained that R had complained that his father had been absent for some of the contact visits, leaving R in the father's partner's care, but I do not conclude that he was for any length of time.

On one occasion, R spent the night at the home of the father's partner in breach of the court order; I accept that this was a genuine misunderstanding as to the nature of the order. The father has been late in returning R to his mother, which has not helped their relationship.

26. As is apparent from the above both parties now have new partners. The mother's partner (NL) is Angolan, although he has lived for much of the last 12 years in this country. NL is currently in the UK studying for a Masters degree in a specialist field of digital technology, with an assured and interesting job to return to in Angola. The father has partner by whom he has a daughter, aged 18 months; they do not live together.

### ***The mother's plan***

27. The mother wishes now to return to live in Angola, where she and R have lived for the majority of the last two years. She retains a good job with an energy company, which pays her the equivalent of about £60,000p.a.; this enables her to contemplate purchasing an apartment in a condominium in a desirable quarter of Luanda, with the assistance of her employer as part of their 'Employee Housing Assistance Program'. She has been privately educating R at one of the most highly regarded schools in the city, where he appears to be doing well; he is a bright and engaging boy. He partakes in a wide range of curricular and extra-curricular activities. He has a secure place back at the school. The mother's partner will return to reside in Angola with effect from September 2015 when he completes his Masters degree.
28. The mother's wish to live in Angola is not new. In a statement filed in the earlier injunctive proceedings, the father described how the mother had, since they first met, consistently declared her wish or intention to return to Angola once her education was complete here, given that (as she told him) all her extended family were there and the civil war had ceased. When their relationship was happier, she had invited him to accompany her to live there; in more difficult times, the issue had (as the father told the police) been the subject of arguments between them.
29. The mother proposes that if living in Angola, R would travel back to England, three times per year for contact with his father; she proposes that he returns for four weeks in the winter (December or January) during R's long school holiday (including alternate Christmases), and for a week in May and August. The mother proposes to fund at least two of these trips. The mother proposes regular contact by Skype and Facetime, and the facility for the father to visit R in Angola as and when practical. Prompted by my enquiry, the mother filed with the court an opinion (dated May 2015) which she had obtained (and had previously served) from Dr. Heraclito Pedro at the Faculty of Law at the University Agostinho Neto, in Luanda. He confirmed the following:
- i) That foreign judgments concerning the private rights of the parties are generally recognised in the courts of Angola;
  - ii) The Angolan courts recognise the benefits to the parties of respecting court orders made in foreign competent jurisdictions;
  - iii) There is well-established comity between the nations;

- iv) The Angolan courts will check that the orders made abroad do not offend against fundamental principles of its own state laws;
- v) Any order made in this jurisdiction will need to be “reviewed and confirmed” by the courts of Angola; in reviewing the decision, the courts of Angola will consider whether this decision has been taken in conformity with our own laws;
- vi) There is no mirror order.

The mother offers to facilitate the process by which the courts of Angola would ‘review and confirm’ this order, so that it could be enforced there. As it happens it appears (according to the mother) that the Angolan Court has already made R the equivalent of a ward, of their own volition

- 30. The father, while fundamentally opposed to the relocation, and sceptical of the mother’s good faith, nonetheless graciously and sensibly acknowledged that the mother’s proposal for contact was in all the circumstances reasonable. His concern is whether the mother will deliver upon it, given her track record since August 2013, and her opposition to staying contact as recently as April 2015.
- 31. In order to test the mother’s stance on contact, I asked her what her proposal would be for contact if her application to relocate R was unsuccessful; she proposed that R spend all of each alternate weekend with his father in term time with additional days in the holidays. This too seemed to me to be reasonable.
- 32. The mother acknowledges that her summary removal of R to Angola in 2013 was not appropriate, and told me in her oral evidence that with the benefit of hindsight she would have done things differently. With apparent sincerity, and through a wall of tears, she explained that she would have liked the ability to discuss issues concerning R with the father. She said (my note):

“I would have liked to have a better relationship with [the father]; it would have been better for us to have had put aside our own feelings in order to discuss what was best for R. I would have liked to have had mutual ground... I would like to have tried to reach an agreement. I would have liked him to see R in Angola. He would have seen it, and how well he is doing. And I would have liked R to have travelled here [over the last two years] when I could not travel [because of work].”

### ***The father’s position***

- 33. The father currently resides with his mother, the paternal grandmother. He has restarted work in the last two months, and is said to earn approximately £33,000 per annum. He has not made any regular maintenance payments to the mother for R, but it is acknowledged that he has spent not insignificant sums on R in the two months since R has been back in this jurisdiction.

34. The father wishes to have regular time with his son; he was, in my view, genuinely grief-stricken when R left London in 2013, and has been delighted to see R back here in the last two months. As indicated above, his grief turned to anger and spite, which did not serve his cause with the mother, and sometimes the authorities, well.

### *Cafcass*

35. By Order of 6 March 2015 Cafcass was directed to prepare a report in relation to R; the remit of the report was to advise on who R should live with, and what time he should spend with the parent with whom he did not live. Having undertaken the basic enquiries, and read the material, the author opined that R should live with his mother (an uncontested conclusion as between the parties), and that direct contact between R and his father should be, for the time being, suspended as it is not “safe”.
36. The author of the report gave short evidence before me. I regret that in only limited respects was Cafcass’ contribution in this case of assistance; it provided me with a fleeting but direct glimpse of R himself, enabling me to receive his wishes and feelings (which I have discussed elsewhere in this judgment). I was further assisted by some of the background narrative from the parties. However, the report was defective in at least three major respects:
- i) The report had been predicated on the basis that the allegations of domestic abuse going back many years were essentially all true; the Cafcass officer refers to domestic violence being “a regular occurrence”, notwithstanding that there is no confirmation or judicial finding of this fact; he refers to the father having a criminal record which “highlights concerning behaviour including violence and aggression towards [the mother]”, when the criminal record shows no such thing. The Cafcass officer postulates that R is “likely to be at risk of physical harm” from his father, but does not rationalise this conclusion. The Cafcass officer considers that the father needs to address “his violent tendencies towards others particularly females”, whereas there is in fact no evidence of a propensity to assaults on females;
  - ii) The recommendation was that direct contact between R and his father should be suspended forthwith. As is apparent from my narrative above, direct contact between R and his father had only just re-started after a 22 month gap, and had very recently become staying contact. The reporter recommended that the father should undertake a domestic abuse perpetrator programme and that R should not see his father for this period. There was no indication in the report as to how long the suspension of contact should be effective, and (perhaps more significantly) it was not adequately explained in my judgment how R himself would be helped to rationalise or understand this further hiatus in his relationship with his father; the Cafcass officer had not observed any contact between R and his father.
  - iii) The report was defective in failing to give any attention to the range of matters contained in the welfare checklist of *section 1(3)* of the *1989 Act*.
37. The report provided me with no guide on the main issue of permanent relocation of R to Angola. This is not a criticism; this issue had not been formally ‘on the table’ at the time of the instruction, and Cafcass’ advice on this had therefore not been sought.

### ***Legal principles and their application to the facts of this case***

38. All cases in the family court, including international relocation cases, are fact-specific. It is trite to say that such cases are all unique; when a relocation application falls to be determined, a wide range of facts need to be considered. The principle (“the *only* authentic principle”: per Black LJ in *K v K* see below) which governs resolution of such an application is what is best for the child, in this case R (see *section 1* of the *Children Act 1989*). In considering this important question, I am steered by the factors set out in *section 1(3)* of the *1989 Act*, and by R’s (and his family’s) powerful rights under *Article 8* of the *European Convention on Human Rights*.
39. In applying the welfare test, I have had regard to the guidance offered by the Court of Appeal in *Payne v Payne* [2001] EWCA Civ 166 and *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793 [2012] 2 FLR 880. I have considered carefully whether the mother’s application is genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child’s life. There is room for suspicion about the mother’s motivation on these facts; her actions in 2013 indeed strongly suggest that she wanted to escape the influence of the father and/or was indifferent to the consequences of the substantial eradication of the father’s involvement in R’s life. However, I consider that time has moved on; the mother I believe does recognise the importance of the father in R’s life, and having experienced life in Angola over the last two years the mother does have a genuine desire to return there and build a life for herself. I am persuaded that she is genuinely remorseful for having acted so high-handedly two years ago. The mother’s plans are realistic; they are practical and, given that she has lived in Angola for most of the last two years, they are evidently well researched.
40. I regard the father’s opposition to the proposed move to be entirely legitimately motivated by a reasonably held concern about the inevitability of a diminished relationship with R in the event that he is removed from this country permanently, and (in light of the events in 2013 and thereafter) the risk that the mother will not comply with the order of the court for R’s routine returns here for contact visits. The father and paternal family are obviously important in R’s life, and in weighing up the plan for relocation it is right that I should pay particular attention to the arrangements proposed for meaningful contact (and mechanism for enforcement of the same) with his ‘left behind’ family. While accepting that in Angola, the mother has good employment prospects, a partner and a wide and supportive family, and that her prospects if she were to remain here would be significantly less advantageous, I nonetheless am of the view that her prospects here would not be hopeless: she would have the probable use of the maternal grandmother’s London property, she is bright and personable, with a recently obtained university degree and experience working for a multi-national company which would equip her well for the job market in the UK.
41. These factors contribute to the overall welfare determination – the examination of what will be best for R. In this exercise, the ‘checklist’ factors which emerge for particular consideration on these facts are R’s physical, emotional and educational needs, the likely effect on him of a significant change in his circumstances, the risk of harm, and the capability of his parents.

### ***Discussion and Conclusion***

42. R is a young boy with mixed and rich heritage. He has the benefit of two parents who dote on him. He is plainly academically strong and adaptable, demonstrated by his switch between education systems twice in the last two years, achieving plaudits from his teachers in both countries, and high grades in both systems for his endeavours; he is gifted on the sports field having been selected to play for Arsenal Academy and currently plays for a team in Angola sponsored by the Portuguese side, Benfica. He has, it seems to me, been able to enjoy good quality education both in England and in Angola in recent years; when looking to his future I discern no material distinction between the educational provision in both countries.
43. R has a powerful need, corresponding with his right, to enjoy high quality relationships with both sides of his family. This is more difficult to achieve if he is to be separated from one side of that family by a distance of over 4,000 miles. Judicial endorsement of any plan for his future must reflect this dominant welfare consideration. While raised for his first six years in South East London, he has now spent a significant part of the last two in Angola. While he may have struggled to make sense of his summary relocation in 2013 (we know not, and the mother has not vouchsafed), the reality is that he now has a good appreciation of life in Angola, has ostensibly enjoyed the lifestyle there, and has benefited from the schooling available; he obviously has friends in Angola and, according to a recent e-mail from his school teacher in Luanda, they miss him. Acceding to the mother's proposal within these proceedings will not present R with such a significant and/or unexpected change in his circumstances, as would often be the case in an application of this kind.
44. The mother's physical care of R is indisputably good; her emotional care of him is also largely not in question, save for (i) her failure to have regard to his emotional needs in the global sense when she moved him without preparation to Angola from his familiar home in London in 2013, and (ii) her responsibility (which I accept is less than the father's) for exposing R to the conflicted relationships of his parents, thus exposing him to the risk of harm. The father is concerned about the physical safety of R given the political and military regime/context in Angola; there is still a serious humanitarian crisis in Angola as a result of the prolonged civil war.
45. As to R's own views, he told the Cafcass officer that he enjoyed spending time with both sides of his extended family – maternal and paternal – and that he would want to continue to see both sides of his family “on a regular basis”; he indicated enjoyment over spending time with his younger paternal half-sibling (who is only 18 months old). I consider those views to be reliable. Notably, in the same conversation, R indicated that he would like to go back to living in Angola with his mother; I gauge the reliability of this statement by reference to the other comments to which I have alluded. R has expressed worries to the Cafcass reporter about his father “hurting” his mother, in describing his father “shouting” at his mother on the way to school on the day before the Cafcass interview (6 May). R said that it was “cool” spending time with his father, and wanted the current arrangement (by which he saw his father *every* weekend) to remain in place for the future. He said that he wants to spend Christmas in 2015 with his father.
46. These young parents have good qualities and in some respects made a good impression on me; yet both have behaved badly towards each other and ultimately towards R. The mother was plainly at fault in removing R from the jurisdiction unilaterally, and without even notifying the father; he has since conducted himself in a

discreditable way which was designed to upset the mother, and cause her embarrassment and upset. Both parents have been extremely casual when it comes to telling the truth about their past conduct, and show only limited insight into their behaviours. While they speak with obvious and sincere fondness about their son R, and about his achievements and abilities, they fail to recognise the effects on R of their own behaviours – whether it being the sudden and unplanned uprooting of R from all that was familiar in the summer of 2013, or exposure to domestic conflict. The broadly positive impression which each gave in court during phases of their evidence was regrettably tarnished by their obvious lies under oath, and what I had learned (and accept) about their dysfunctional and conflicted behaviour outside the courtroom.

47. I have considered whether I could or should accept the father's offer to attend a domestic violence intervention project or perpetrator programme. While it may of benefit to him to attend such a programme in light of what I have found at [23] above I do not require the father to attend such a programme as a precondition of contact. I am unable to make any findings about historical allegations; the more recent incidents derive from his anger about the mother's actions in wrongly removing R from this jurisdiction. I consider that once these proceedings have concluded, the temperature of the dispute should reduce. I consider that both parents have learned something of a lesson from this legal process.
48. R speaks warmly and affectionately of both his parents. But these parents cannot be assured of this loyalty if they carry on behaving towards each other as they currently do. R was obviously delighted to see his father on his return to this country in April 2015 and has 'slotted in' to the father's life here again easily, reflective of (a) the fundamentally good relationship between them, and/or (b) that the mother had taken steps to ensure that the father's importance in R's life had remained vivid in R's mind notwithstanding the physical absence and geographic distance; it could be a combination of both these factors. I suspect that the natural bond with his father forged over the first impressionable six of years of his life will have been the most powerful factor, particularly given the absence of objective evidence of the mother's efforts to support contact over the relevant period. Indeed, I am satisfied that she failed R in not facilitating good contact while she and R have been in Angola, while recognising that the father did not help his own cause by aggravating the already difficult parental relationship. It is not often that a court is able to test the likelihood of future contact post-relocation by reference to recent experience of this family. But in this case, there has been a 'dry run', and the mother has been found wanting.

#### ***Security for compliance with the order for contact***

49. In cases of this kind, the Court must consider how much trust it can repose in the parent who wishes to relocate. The father told me that he has a "...very big trust issue right now" in respect of the mother, and, frankly, so do I. It has been necessary for me to consider whether there are ways of addressing this mistrust in the global review of what is in R's best interests.
50. There are two ways in which I have considered the securing of contact arrangements for the future in the event that R is relocated to Angola. First, I can require that the contact order is 'reviewed' and 'confirmed' in the courts of Angola, and secondly, I can (as Mr Jarman has tentatively invited me to do) consider the imposition of a

charge on the maternal grandmother's London property as security for compliance with the contact order. I have considered the former security above (see [29]); I turn now to the latter.

51. I invited Mr Jarman to adduce limited oral evidence from the maternal grandmother on this specific issue. The maternal grandmother works in Angola; she has a rented home in Luanda, her own property in Spain and of course in London. She has provided all of the relevant addresses (including her place of work) to the father. She told me (and this is confirmed by the Office Copy Entries) that she is the sole legal owner of the London property; the financial remedy proceedings following the divorce from her husband have concluded, and I was advised that he has no potential or outstanding claim. The maternal grandmother was willing to offer the necessary co-operation in facilitating the charge, was content to do so without obtaining independent legal advice (though she was advised of the option of this), and was willing to offer undertakings to facilitate the imposition of the charge (the undertakings offered are reflected in the form of order below).
52. I have received two market valuations which reveal that the London property is worth in the region of £350,000; doing the best I can with the information, it appears that there is a little over £230,000 equity in the property, which is a sizeable sum for this family.
53. The mother and maternal grandmother propose that the charge be put in place for a period of two years. I consider that the period should be longer if it were to achieve the effect of securing a routine of contact. A period of four years should reasonably be expected to create a natural momentum of contact which will continue beyond that period without the need for this potential sanction. It would of course be open to the father to extend the period, should circumstances require it.
54. The mother and maternal grandmother confirmed in their oral evidence that they recognise the importance of the relationship between R and his father; this method of enforcement of the contact provision will, in my judgment, reinforce what I believe to be their sincerely held view.

### ***Conclusion and Order***

55. This is in some respects an unusual case. Rarely does the court which is determining an application for permanent relocation have the opportunity to assess the implications for the child by reference to actual recent experience. I am conscious that neither the mother nor particularly the father should view my decision as rewarding the mother for her wholly improper conduct in removing R to Angola nearly two years ago. My decision should only be understood as reflecting what I regard to be the best outcome for R having regard to his welfare now.
56. Having regard to the multiple strands of evidence in this case, which I have highlighted and discussed above, I have reached the conclusion that R's best interests would be served by giving his mother permission to relocate him with her to reside permanently in Angola. The permission which I propose to give is, however, highly conditional, to reflect my concerns about the future development of R's relationship with his father and the need to safeguard it.

57. I propose therefore to make an order which reflects the following:
- i) There shall be a recital on the face of the order which reflects the fact that both parents hold parental responsibility for R under English law, and that they have equal rights and responsibilities in relation to R; that the father is entitled to information about R's education, directly from R's school, and to be consulted on matters pertaining to R's health and welfare, including medical treatment and religious upbringing;
  - ii) I shall accept undertakings from the mother and the father (offered during the hearing) not to use or threaten violence against each other and must not instruct, encourage or in any way suggest that any other person should do so. They shall not intimidate, harass or pester each other, and must not instruct, encourage or in any way suggest that any other person should do so. They must not damage, attempt to damage or threaten to damage any property owned by or in the possession or control of the other and must not instruct, encourage or in any way suggest that any other person should do so.
  - iii) I shall accept undertakings from the maternal grandmother:
    - a) To execute a charge by [date to be suggested] in favour of the property at [her home address in SE London] so as to secure the entire net proceeds of sale of the property (after deduction of the costs of sale and redemption in full of the mortgage) in favour of [mortgagee] secured thereon (such charge to be lodged at Her Majesty's Land Registry by [date to be suggested])
    - b) That the property at [her home address in SE London] shall not be further leased or charged to any third party during the currency of this charge or sold before the charge is registered on the property's title;
    - c) To keep the property insured and in good repair;
  - iv) I shall discharge the Wardship in respect of R (as it serves no current purpose);
  - v) I shall make a Child Arrangements order providing that R lives with his mother;
  - vi) I shall give leave to the mother to relocate R to reside with her in Angola. This leave is conditional upon her producing *before* she is entitled to depart, to the father and to the Court, documentary proof:
    - a) That through locally instructed lawyers in Angola, she has formally applied to the Courts of Angola to review and confirm this order (it is not essential that the Court there has actually undertaken the reviewing procedure);
    - b) Of a charge executed by the maternal grandmother on her property in SE London as set out in the undertakings given herein;
  - vii) I shall make a Child Arrangements order which provides that R shall spend the following time with his father during his school holidays:

- a) For a continuous period of no less than four weeks to be taken in the period December/January; in 2015 (and in every alternate year thereafter) this shall include Christmas Eve/Day/Boxing Day;
- b) For a period of no less than one week in May;
- c) For a period of no less than one week in August;
- d) For periods of time in Angola in the event that the father travels to see R there (the father giving the mother as much notice as possible of his intention to visit);
- e) By regular telephone and/or Skype (which it is suggested should be in the region of three times per week).

On the basis that the mother will fund R's return travel (with accompanying adult where necessary) for at least the December/January visit and the May visit in each year.

viii) I shall direct that:

- a) The charge in respect of the property shall not be enforced by the father without leave of the court;
- b) The charge shall only be enforced by the father in the event that the child is not made available to the father in accordance with the terms of the Child Arrangements Order herein, and/or not returned to this jurisdiction as provided for in this order; the charge may be enforced by the sale of the property by public auction or private treaty;
- c) The charge shall not be discharged until the first happening of the following events:
  - i) The express written consent of the father;
  - ii) Further order of the court;
  - iii) 16 June 2019;

ix) I further direct that both parents shall keep the other informed as to their home address, including prompt notification of any proposed change of address.

x) I shall give leave for this judgment to be disclosed to the Metropolitan Police for the purposes only of their investigation into:

- a) The removal of R from this jurisdiction in 2013;
- b) The father's conduct towards the mother via the use of social media in 2014 and 2015,

***Criminal investigation***

58. The mother has been bailed to attend police station on 22 June 2015 in relation to the investigation in relation to the charge of abduction.
59. The father has told me that he does not wish for her to be prosecuted.
60. It is not my business to influence whether a prosecution is launched, the police and CPS should have access to this judgment which I hope will add a little to their understanding of the circumstances of the alleged offence.
61. That concludes this judgment.