



Neutral Citation Number: [2026] EWCA Civ 998

Case No: CA-2026-000789

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CROYDON COUNTY COURT
AND FAMILY COURT
HIS HONOUR JUDGE MAJOR
ME25P00152 & ZE25P00858

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 July 2026

Before:

LORD JUSTICE LEWISON
LORD JUSTICE MOYLAN
and
LORD JUSTICE STUART-SMITH

Re: - S-O (CHILDREN) (Relocation and Prohibited Steps Order)

Jason Green (instructed by **TV Edwards LLP**) for the **Appellant**
The 1st Respondent appeared in person
The 2nd Respondent appeared in person

Hearing date: 16 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 30th July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Moylan:

1. The mother appeals from the orders made by Her Honour Judge Major, sitting as a Deputy High Court Judge, (“the judge”) on 27 February 2026. The judge dismissed the mother’s application that her daughter (to whom I will give the initial C for the purposes of anonymisation) move to live with her in a Gulf State and continued a Prohibited Steps Order (“a PSO”) prohibiting her other child (to whom I will give the initial S) from travelling to stay with her in that State (which I will call State A).
2. The mother was represented by Mr Jason Green, who also appeared below. The father of S appeared in person as he did below. The father of C was represented at the hearing below but appeared in person at the hearing of this appeal. I am particularly grateful for the measured and focused submissions made by the fathers of each child. They presented their respective cases with great skill and advanced all the points which could reasonably have been made. Without intending any discourtesy and just for ease of reference, I will call the fathers F1 and F2. F1 is the father of S and F2 is the father of C.
3. There are four grounds of appeal. Three challenge the judge’s decision to refuse the mother’s relocation application and one challenges the judge’s decision in respect of the PSO. The grounds are:
 1. The judge failed properly to analyse the evidence of the risk posed by the Second Respondent (F2).
 2. The judge’s analysis of the risks inherent in a move to [State A] was flawed and insufficiently balanced the competing welfare options.
 3. The Judge’s finding that the risk of the Appellant’s retaining [S] in [State A] was sufficient to justify a Prohibited Steps Order preventing him travelling to visit her in [State A] was unreasonable and irrational.
 4. The Judge did not provide adequate reasons for departing from the independent social worker’s recommendations.
4. The judgment is long and considered the evidence in some detail. It is clear that the judge spent a great deal of time considering whether to accede to the mother’s relocation application. I fully recognise the pressures the judge would have been under and she delivered her judgment very promptly after the conclusion of the hearing. However, it is clear to me that the judge’s decision to dismiss the mother’s relocation application was flawed and that her decision not to discharge the PSO was wrong.
5. At the end of the hearing, the parties were informed that the mother’s appeals from both decisions would be allowed with the PSO being discharged. Regrettably, however, we are unable to determine the mother’s relocation application which will have to be remitted for rehearing which we will direct to be listed before a Family Division Judge (and as fit to be heard in vacation). The parties were also informed that none of the judge’s findings would be preserved meaning that there will have to be a complete rehearing of the mother’s application. I propose only to deal with such aspects of the

case and the judge's judgment as are necessary to explain my reasons for agreeing with our decision that the appeals should be allowed, so as to avoid giving any indication of the merits of the parties' respective cases.

6. I focus in this judgment on ground 2, in particular the argument that the judge insufficiently balanced the competing welfare options, and ground 4. As explained further below, because I have concluded that the judge's welfare analysis was insufficient and that, as a result, there will have to be a rehearing of her application before a different judge, the judge's findings will likewise have to be set aside. It would make the task of the new judge impossible to undertake if he or she was bound by the findings made in the judgment under appeal because they are an integral part of the court's welfare analysis and, in this case, need to be determined by the judge making the substantive decision. This makes it unnecessary to consider the mother's challenges to those findings as advanced under ground 1. Ground 4 adds nothing of substance to this appeal and clearly, at the rehearing, the judge will have to include with his or her judgment a sufficient analysis of the independent social worker's evidence.

Background

7. The two children who are the subject of these proceedings are S, a boy now aged 14, and C, a girl now aged 6. The appellant is their mother and, as referred to above, F1 is S's father and F2 is C's father.
8. The mother and F1 formed a relationship in 2006 and separated in October 2012. They agreed that S would live with the mother and have extensive contact with his father (alternate weekends and half the holidays). The mother described S as having "benefited from a consistent and stable contact arrangement". Although F1 hinted during the hearing that there might have been some problems, he accepted that he and the mother had successfully co-parented S. It is clear from all the evidence, in particular the evidence from the Independent Social Worker ("the ISW") instructed for the purposes of these proceedings, that S is thriving and that both of his parents are rightly proud of him.
9. The mother and F2 married in 2018. C was born in 2019. The parents separated in June/July 2025. The father has three children from a previous relationship which ended in 2015. His children from that relationship are aged between 12 and 14.
10. The respective families have always lived in London. This changed in December 2023 when the mother was posted to a country in the Middle East for what, it appears, was initially intended to be a year-long programme. The children remained living at the family home in London with F2 and a full-time nanny and additional support from the maternal grandmother. The mother would commute between London and the Middle East every other week, spending about 8 days per month in London.
11. Prior to F2 and the mother separating, they had agreed that C (and indeed S) would move to live with the mother in the Middle East with F2 dividing his time between there and the UK. That agreement ended when they separated.
12. The mother has continued to work in the Middle East, moving to State A in the middle of 2025. She has continued commuting between there and London. Apart from

holidays, the pattern has fluctuated slightly but broadly, since about the middle of 2025, she has been spending about 20 days in State A and 10 days in London each month.

13. It is also relevant to note, in particular in respect of the PSO, that, prior to the commencement of these proceedings, both S and C had spent time with the mother in the Middle East during school holidays. On the mother's account S had visited the Middle East a number of times, the last such trip being in May 2025, as well as taking many other foreign holidays over the previous 13 years. F1 said that he was not always informed in advance of these trips but they clearly occurred without incident. It is also clear from the ISW's report that S much enjoyed these visits and, indeed, was looking forward to further visits in the future.
14. On 9 July 2025, F2 was arrested and made subject to bail conditions following allegations by the mother of domestic abuse. The bail conditions ended in September when the police decided not to take the matter further after reviewing evidence provided by the mother and examining F2's phone.

Proceedings

15. F1 applied on 26 January 2025 for a child arrangements order providing for S to spend "equal time" with each parent. In response, the mother said that there was no need to change the "flexible" arrangements then in place.
16. Cafcass' Safeguarding letter is dated 8 April 2025. This pointed out that it would be "unfortunate" if the court was required to determine, what was described as "this narrow issue" as it was considered that the parents should be able to reach an agreement as they "have managed arrangements for the last 12 years without any legal intervention despite their differences, which is a credit to them". It was also recommended, in respect of holidays abroad, simply that each parent should provide the other with four weeks' notice of the travel itinerary.
17. In a Position Statement for a hearing in May 2025, F1 continued to propose that S spend equal amounts of time with each parent. This included holidays with the father adopting Cafcass' recommendation that each parent give the other 28 days' notice of planned holidays abroad.
18. On 1 July 2025, F1's position changed and he applied for a PSO to prevent S from being removed by the mother from the jurisdiction. This appears to have been a response to the mother having proposed that S move to live with her in State A.
19. On 10 July 2025, the mother applied for an order permitting S and C to move to live with her in State A. Included in her application was a C1A detailing allegations of abuse by F2.
20. F1's Position Statement for a hearing in July 2025 addressed the mother's request that S move to State A. The father made clear that he was opposed to this. His reasons included concerns that State A was not a party to the 1980 Hague Child Abduction Convention ("the 1980 Convention") which meant that if S did move to live with the mother in State A and she "later refused to return him or - block contact - I would have no direct legal mechanism to compel his return or enforce contact rights". However, no specific assertion was made that the mother would do this and the father still

proposed that school holidays be split equally between them “allowing [S] to go on holiday with both sides of the family”.

21. F1 attached to his Position Statement an email exchange with the mother from June 2025. In his email, the father said that he did not agree to the proposed relocation. In her email in response, the mother said that her proposed relocation to State A for work meant that the father’s proposal of “50/50 is no longer viable or practical”, continuing: “We are left with two options” being either that S lives with the father “on a full-time basis” or that he “relocates with me”. The mother further agreed that this issue needed to be addressed in the proceedings *and* said that she would “not be making any relocation plans for” S given the father’s opposition to this. She proposed that they needed “to discuss and agree a way forward given [S’s] age” and said that her “priority remains for [S] to continue to thrive and be a happy young boy (as he has been for the last 13 yrs) in a stable environment with ongoing positive relationships with his parents”. The mother’s email was a measured response to the issue of whether S should relocate.
22. In her Position Statement for the July 2025 hearing, the mother said that she had “accepted a job offer necessitating relocation to” State A. She reiterated that this meant there were “two options” as referred to in her June 2025 email.
23. On 11 July, the mother applied for a non-molestation order against F2 under the Family Law Act 1996.
24. F1 filed a further statement dated 4 August 2025 which dealt briefly with the relocation application. F2 filed a statement also dated 4 August 2025 in which he raised concerns about the ability to enforce English court orders because State A was not a party to the 1980 Convention and there were no other “enforceable safeguards”.
25. The mother filed a statement dated 5 August 2025 which made no mention of the application for a PSO. She said that she remained “committed to continuing to provide emotional stability for [S], improve [his] educational opportunities, facilitate and encourage strong, positive relationship between” S and his father.
26. A PSO was made by Her Honour Judge Burne on 6 August 2025 prohibiting the mother from removing S from the jurisdiction. The parties appeared in person at this hearing. We do not have a copy of that order nor any judgment, if there was one, explaining why it was made. However, in his statement (see paragraph 36 below), F1 said the PSO was made because of the risk that the mother might “attempt to achieve [relocation] unilaterally”.
27. F2 filed a long statement dated 31 August 2025. In this he dealt in detail with his opposition to the mother’s relocation application. He also proposed that, as an alternative, C could live with him and spend half of the school holidays with her mother “with the assurances of a safe and timely return”.
28. At some point, the mother filed a Schedule of Allegations of domestic abuse on which she relied as against F2, to which F2 responded.

29. Cafcass filed a further Safeguarding Letter dated 4 September 2025 in respect of the proceedings between the mother and F2. This recommended that there should be no interim contact “until further assessment”.
30. On 5 September 2025 directions were given, among other things, for the instruction of an ISW, for an expert report on the law of State A and for the parties to file further evidence. The judge also made an order that the mother was permitted to “take steps she may consider appropriate to secure provisional school places for the children in [State A] without the [fathers’] consent”. This was because F2 had, without informing the mother, directly contacted the school in State A which, when they were agreed about C moving to live there, they had agreed C would be attending. He told the school that C would not be attending.
31. The mother filed a substantive statement dated 26 September 2025. In this she set out her relocation proposals which included that she and the children would be “returning to England regularly at least 6 times a year” (every school break) for contact with their fathers. In respect of C, she added that the structure and extent of contact was subject to professional advice. Contact between F2 and C had commenced in September 2025 with supported contact.
32. The mother made clear that her current living arrangements, divided between State A and London, were no longer sustainable including because of the costs incurred. “On a personal level, the constant travel and emotional exhaustion leave me fatigued and often unable to be fully present with” the children. She considered that relocation was “necessary to ensure that the children remain in my care, as their primary carer, as they have been throughout their lives”.
33. The mother pointed to the fact that her close relatives and wider family all lived in England as well as that she owns property here (in addition to the family home). She also referred to her employer and employment and then said that she had “neither the motivation, energy nor the financial means to conceal myself and the children, nor would I want to. To attempt such an action would require severing all ties with my family in England, something that is entirely unthinkable to me”. She emphasised that the children’s education was very important to her; that she would “never compromise this by removing the children from school or concealing their whereabouts”; that the children had a very close relationship with each other; and that the “children’s relationships with their fathers are crucial to their wellbeing and stability” which she had “no intention of frustrating”. She said that S “has a strong and stable relationship with his Dad” and that she knew that his father “loves him and [S] loves” his father. She also observed that S is “an independent and tech savvy, capable teenager” so that she could not prevent him from maintaining contact with his father even if she tried.
34. The mother relied on statements from the family nanny and her mother.
35. F1’s substantive statement is dated 12 October 2025. It contained detailed evidence about S’s needs and the father’s case on the benefits of his staying in London and the disadvantages of his moving to live in State A. He also set out his continuing concerns about what would happen if S was retained in State A by the mother because of the absence of any legal route in that State to secure his return and the seriousness of the consequences for S if that did happen. He described these consequences as “devastating and irreversible”.

36. F1 relied on the mother's conduct in the proceedings: what he described as her "shifting positions throughout the proceedings" as to whether she was or was not pursuing relocation and said that she had "missed deadlines [and] filed evidence late". What he considered "[m]ost concerning" was the mother's failure "to provide proposals" if relocation was refused despite a court order that she do so. This "omission is telling" and suggested "a worrying mindset that she cannot or will not see a world in which [S] remains in the UK". He continued:

"That single-mindedness is deeply concerning, as it implies that if relocation were refused, she may still attempt to achieve it unilaterally. *It is precisely this risk that led to the Prohibited Steps Order being granted, and it remains a compelling reason why the Order must be made final.*" (emphasis added)

Additionally, he suggested that it was required because there had been occasions when the mother had not told him about travel plans. This would ensure that S was not removed from England "without my knowledge and consent" and that "all future travel decisions are made transparently, jointly and with proper safeguards in place".

37. F2 filed a very long statement dated 13 October 2025 in which he replied to the mother's domestic abuse allegations as set out in the Schedule and dealt with the mother's relocation application including by reference to the welfare checklist. He proposed that, if that application was refused, C should live primarily with him, spending half of all school holidays with the mother. He relied on a number of documents including a statement from his eldest sister.
38. The mother and F2 filed further statements which dealt with a number of matters including the limited contact that there had been between F2 and C since the end of the marriage. The mother repeated that it was "entirely inconceivable that I would sever all my ties with the UK. My life, assets, family and professional connections are all firmly rooted here".
39. The ISW provided a substantive report dated 9 November 2025, an addendum report dated 12 January 2026 and a further addendum report dated 20 January 2026.
40. In her substantive report, the ISW recommended that S should not move to live with the mother in State A but should live with his father and spend time with the mother in the UK *and* State A. She emphasised his strong ties to the UK and his family here and his wishes and feelings with "the likely emotional cost" of a move to State A being "considerable".
41. In respect of C, the ISW's opinion was that she should be permitted to move to live with the mother in State A. This recommendation was based on a number of factors as summarised below.
42. In respect of C's wishes and feelings, the ISW reported that C "shows strong attachments to both her mother and her father and appears comfortable and secure in each relationship. She presents as feeling loved and supported and seems to understand that her parents are working together to care for her in different ways". C "spoke openly about ... a planned move to" State A and "expressed excitement about her new home" there.

43. The ISW addressed the mother's ability to meet the children's needs. She considered it:

“important to recognise that [the mother] is operating under significant pressure. She has a demanding professional role that requires extensive travel and long periods abroad, while also managing the children's daily care, their emotional needs and complex legal proceedings that carry high personal stakes. The evidence shows that she feels deeply strained by this combination of responsibilities.”

In her view, the proposed relocation would allow the mother “to be more physically available and directly involved in [C's] education and daily life”. This “could strengthen her caregiving role, particularly for [C], *who identifies her as her primary attachment figure*” (emphasis added). The ISW then observed that the mother “appears attuned to the children's practical needs but less reflective about the potential emotional impact of separating them from their fathers and established networks”.

44. When addressing whether it was in the children's best interests to remain living together or be separated, the ISW noted that, if C were to remain in England, she “would maintain her familiar routines, school and relationship with both her father and her brother”. However, she then added:

“The limitation of this arrangement is that the mother's ongoing work in [State A] would result in her continued absence for most of each month, meaning that the children's day-to-day care would remain largely with the nanny. This would keep the siblings together but *perpetuate a fragmented pattern of maternal care*” (emphasis added).

45. The ISW recognised that all three parents were “operating under exceptional stress”. In her view, it was “reasonable to expect that *once the court reaches a final decision and establishes clear arrangements*, the emotional temperature among all adults may begin to settle. Having definitive structures in place will provide clarity, reduce the ambiguity that fuels anxiety, and limit the scope for interpretation and conflict” (emphasis added).

46. On “the impact upon the mother and the consequent welfare impact on the children if relocation were to be refused”, the ISW said:

“[134] *If relocation were to be refused, the impact on [the mother] would likely be significant, both personally and professionally, and this in turn would have implications for the children's welfare.* The mother's employment is based in [State A], and her current arrangement involves travelling for approximately twenty days of each month, leaving the children primarily in the care of their long-term nanny ... Refusal of relocation would mean that this arrangement may continue indefinitely, resulting in prolonged separation between the mother and children for much of each month. The mother has explained that this travel schedule is already emotionally and

physically exhausting, and *she has described feeling “stretched beyond limits” by trying to meet the demands of her career while maintaining stability for the children in her absence.*

[135] Emotionally, refusal of relocation could leave the mother feeling trapped and unsupported. She already perceives herself as isolated in these proceedings and has expressed that she feels the fathers have “joined forces” against her. Continued restriction of her movement and professional autonomy could intensify feelings of disempowerment and resentment. *This emotional strain could likely spill over into her parenting, affecting her patience, availability and overall wellbeing.*

[136] For the children, the welfare impact of refusal would therefore be indirect but tangible. While remaining in the UK would preserve their relationships with their fathers and extended families, *they would continue to experience intermittent maternal care.”* (emphasis added)

47. The ISW said that a “further option” was for C to live in the UK with her father although this was not what she recommended. F2 would be able to meet C’s physical needs and his “bond with [C] was affectionate and she described her time with him as enjoyable”. However, having regard to “past findings” the ISW questioned his ability to meet C’s emotional and behavioural needs. As explained in her report, the ISW had “reservations about this ... particularly regarding [C’s] welfare”. At that stage, the ISW had not spoken to F2’s former partner and his three older children because he had not given her permission to do so. In her view:

“[C’s] needs for maternal closeness, secure attachment and routine are best supported by relocating with her mother, who can be physically present in her daily life abroad. Both children have strong relationships with their respective fathers, and these would need to be supported through structured communication and planned visits. [C] has already demonstrated comfort with technology and has spoken confidently about using her iPad to talk to her father. Regular, meaningful contact via FaceTime and longer stays during school holidays could maintain her relationship with him.” (emphasis added)

Moving to State A would align “with the realities of [C’s] developmental needs and family dynamics. With structured sibling contact, predictable holiday arrangements, and consistent communication, this arrangement could offer each child stability, security and the opportunity to thrive”.

48. On the issue of contact, the ISW considered that “it would not be realistic or practical for [C] to travel back to the UK during half-term breaks”. She initially suggested that it would be “more realistic” for F2 to travel to State A for contact during these periods. In her addendum report, however, following receipt of more information about the findings made in the previous proceedings concerning F2, she changed her recommendation and proposed that there should be no contact in State A but only in the UK.

49. The ISW expressed her ultimate recommendation in respect of C moving to live in State A as follows:

“[148] [C] is at a developmental stage where her primary emotional need is for consistency and day-to-day caregiving from her main attachment figure, who is her mother. The evidence shows that C is happy, affectionate and secure in her mother’s care and has expressed excitement about the proposed move to [State A]. She understands that her father will remain in the UK but has spoken confidently about using FaceTime and visiting him during the holidays. The mother has presented a clear and well-structured plan for relocation, including accommodation, confirmed schooling at ... and continued employment in a stable position that will allow her to provide a secure home. The presence of the long-term nanny ... offers additional continuity and familiarity. I believe that the mother’s relocation plan meets [C’s] emotional, physical and educational needs and that suitable arrangements can be made for regular digital and in-person contact with her father. I therefore recommend that [C’s] relocation be approved.” (emphasis added)

50. Following receipt of the ISW’s report, the mother accepted the ISW’s recommendation that S should remain in the UK and move to live with his father. She continued her application only in respect of C. This was, clearly, a significant development in the proceedings including because it went against F1’s argument that a “compelling reason” for a PSO, as referred to in paragraph 36 above, was that the mother would not accept S remaining in the UK.
51. The ISW’s addendum reports followed her having spoken to F2’s previous partner and his older children and the mother’s change of position in respect of S. The ISW explained why the additional information she had received from F2’s previous partner and the children raised significant concerns as set out in her report.
52. I pause there to refer to a significant development which occurred during the course of the hearing below. F2 had been ordered to disclose documents from earlier proceedings between himself and his previous partner. I do not know the precise terms of that order but, although F2 provided a number of documents, he did not provide significant documents which included a judgment containing findings which had been made against him in 2015. Those findings had been made in the course of proceedings by F2’s previous partner for a non-molestation order and an occupation order. The additional documents were provided by F2’s previous partner during the course of the final hearing and after F2 had given evidence. It became apparent that very serious findings had been made against him which were wholly inconsistent with what he had said about them. I would also, however, note that there were subsequent proceedings dealing with, among other matters, contact between F2 and his older children in which orders were made for substantive, including staying, contact.
53. Returning to the ISW’s reports, she also addressed the issue of S travelling to State A for contact. She recommended that there should be contact there. In her view, this would be in his best interests provided that such visits were “planned, age-appropriate

and respectful of his wider needs". The ISW was "disappointed to hear the mother's account that [F1] is no longer adopting a flexible approach to contact and travel arrangements. When I met with [F1], he presented as thoughtful, measured and genuinely committed to doing what he believed to be in [S's] best interests". It was important for S to spend time with his mother and he had "a strong desire to keep meaningful relationships with all of the adults who are important to him, rather than experiencing these relationships as being in competition with one another". The ISW further noted that, if S were to be kept in State A against his wishes, "it is very likely that he would respond by rebelling against the situation, not necessarily through overt behaviour but through emotional withdrawal, resistance or disengagement. Rather than strengthening his relationship with his mother, such an experience could place significant and long-term strain on it". She had "a particular concern that trust between [S] and his mother could be seriously, and potentially irreparably, damaged".

54. In her second addendum report, the ISW recommended that contact between C and F2 should be supervised.
55. The expert report on the law of State A from Ian Edge is dated 28 October 2025. This made clear that there are no reciprocal treaty arrangements providing for the recognition and enforcement of any English child arrangements order made in these proceedings. In addition, any judgment in these proceedings would have "no relevance" in any proceedings in State A. The only route by which the provisions of an English order could be recognised and enforced would be through the parties submitting an agreement to the local court for "registration by way of a local consent judgment". This would make it enforceable locally although Mr Edge added words of caution as to the efficacy of this, which would depend on the circumstances. He also noted that F1 would have considerable difficulties in bringing proceedings in State A because he and the mother were not married such that the court would be likely to decline to hear any application by him.
56. The matter was heard over 4 days in February 2026 during which the judge heard oral evidence from the mother, the nanny, F1, F2 and the ISW. We do not have a transcript of the evidence. Following receipt of the additional documents from the previous proceedings involving F2, in particular the 2015 findings, Mr Green requested that F2 be recalled so that he could be cross-examined about these matters. The judge refused this request. This was dealt with by a brief interchange between Mr Green and the judge.
57. The judge promptly gave judgment on 27 February 2026.

Judgment

58. As referred to above, the judgment below is long and detailed. Having regard, again, to the fact that the mother's relocation application will have to be reheard, I propose only to refer to some aspects of the judgment. In doing so, I recognise that this is only a partial account of the judgment and does not reflect all the matters which the judge had to consider and address. I say this, in particular, to explain why my judgment does not reflect all the evidence that was before the judge nor all aspects of, in particular, F2's case. My judgment focusses on the matters which have led me to conclude that the judge's decisions in respect of the PSO and the relocation application have to be set aside and why no PSO is justified.

59. The judge rejected all the mother's allegations of domestic abuse against F2. She said that this was "a case with a lack of objective, independent evidence. The mother's case relies on her own account and largely self-reporting. There is no separate corroborative evidence".
60. The judge addressed the fact that F2 had lied about the nature of the findings in the proceedings between himself and his previous partner. The judge remarked that "the issue of domestic abuse in a previous relationship is front and central in this case as the mother raises it as a pattern of behaviour". She then said:
- "Did he lie because he has continued that pattern of behaviour?
Or did he lie because he was concerned that if he told the truth
about those findings it would impact his Article 6 rights of a fair
trial here and the court simply assume that he was guilty rather
than engaging with the evidence."
61. The judge accurately set out that she was tasked with undertaking "a *comprehensive welfare analysis and to look at the contrasting proposals*" (emphasis added). She also summarised the effect of Ian Edge's report as referred to above.
62. The judge quoted limited parts of the ISW's report. The judge considered that her reports had been written "on the basis of an assumption that the allegations set out by the mother are proved, rather than an assumption that they are the territory for the court to determine".
63. The judge identified a number of "concerns" she had about the mother's evidence. These included that the mother's proposal in her written statements, that she would return to the UK for contact six times per year, was "now reduced to returning three times per year". The judge clearly considered this a significant factor as she referred to it a number of times. She questioned whether the mother was "being open and honest" about contact because of her "unilateral decision" to reduce the frequency of the contact between C and F2 and that it should be supervised. She repeated that she was "very concerned that ... [the mother] is making unilateral changes that are not agreed and do not respect the father's parental responsibility" having in her "sworn evidence at the outset ... [said] she would return to the UK six times per annum, but now that is reduced to three times per year". The judge also referred to this as among a number of "red flags" that the mother would fail to promote contact (see paragraph 70 below).
64. In making these adverse comments about the mother's conduct, the judge appeared to have overlooked the fact that the mother's revised proposals followed the recommendations of the ISW. Any criticism of the mother would have had to address the fact that she was following the ISW's advice. In addition, in his submissions during the appeal hearing, Mr Green told us that, during her oral evidence, the mother had said she would be flexible and had accepted that there should be more frequent contact.
65. The judge also expressed concern that there had "not been consultation with the father [F2] around educational provision [for C in State A] and why it is not produced in evidence before me. That level of secrecy and lack of openness raises some serious concerns for me". The judge described it as "a last-minute change" which had been "made unilaterally by the mother without consultation of the father or respecting his

parental responsibility and I ask myself why that is ...”. The fact that the mother had been acting “unilaterally” “causes me concern that she is taking steps in isolation and not looking at the bigger and wider picture”. In addition, the judge considered that this and the changes to her contact proposals supported the conclusion that the mother’s “motivation in finalising the move to [State A] is more of a ‘flight reaction’ in face of the recent separation” “rather than being the planned, measured proposals that are set out in her earlier statements”.

66. In making these criticisms of the mother about the school arrangements, the judge had clearly overlooked that the mother had been permitted, by the order of HHJ Burne, to make such arrangements without reference to the father because of the steps he had taken which had disrupted the educational arrangements which had been made previously. The mother had also explained that she had found an alternative school because C was only on the waiting list for the first school which had recommended that, “as a precaution”, she should begin considering alternative options as a place might not become available in time. She said that “to ensure [C] has a school place should my application to relocate be granted” she found an alternative school for her. Mr Green accepted that there had been some delay (two weeks) in the mother providing details about the new school place but submitted that this did not justify the judge’s criticism.
67. The judge referred to the welfare checklist and repeated that C’s welfare was her paramount concern. She also recorded that C was “excited to move to” State A. However, apart from the concerns about the mother’s conduct as referred to above, the judge’s primary focus when dealing with the relocation application in respect of C, was on the potential impact it would have on contact between C and F2 and on their relationship. The judge described “the key factor in the checklist [as being C’s] emotional need to retain a relationship with her father which is a key relationship, given what is said in [the ISW’s] report and also to other family members”. This would be a significant “loss” for C if she moved to live in State A.
68. The heart of the judge’s decision on relocation appears in the following paragraphs:
- “[118] ... If relocation were to be refused the impact on the mother would be likely to be significant, both personally and professionally, and this would in turn have implications for the children’s welfare. The mother’s employment is based in [State A] and her current arrangements involve travelling for approximately 20 days of each month, leaving the children primarily in the care of their long-term nanny. *Refusal of relocation would mean this arrangement continues indefinitely.* The mother has explained that this travel schedule is already emotionally and physically exhausting and she has described feeling stretched beyond limits. She goes on to say:
- “Emotionally the refusal of relocation could leave the mother feeling trapped and unsupported. She already perceives herself as isolated in these proceedings and expressed that she feels the fathers have joined forces against her. The continued restriction of her movement and personal autonomy could intensify feelings of disempowerment and resentment. The emotional strain could spill over into her parenting, affecting

patience, availability and overall well-being, and the impact of refusal on the children would be that they would continue to preserve their relationships with their fathers and extended families, but would continue to experience intermittent maternal care, as has been the case since September of 2023 when this arrangement began.”

[119] There is no evidence before me about what options are available to the mother in terms of reasonable adjustments in her job. This is employment that she sought. She sought a transfer to [State A] and I know that that was at a time when she was in a relationship with [C’s] father and thought that was going to continue. *I need to balance the impact of refusal on her and the welfare imperative in terms of the children.* These are children who already experience intermittent maternal care, who are not solely cared for by their long-term nanny, but have parental familial support around both of them in terms of day-to-day care which is provided across the wider, blended family. It is the children’s welfare that is my principal concern and I do note that this is an arrangement that is of some long-standing.” (emphasis added)

69. The judge also addressed the risk that the mother might retain the children in State A when both children needed “to continue meaningful relationships and lived experiences with both parents”. She had referred previously to the need to consider a number of factors including “the magnitude of the risk” that the children might not be returned and the “magnitude of the consequences of breach if it occurs”. As to the latter, she considered that it would be “devastating” for the children if they were wrongly retained in State A by the mother and, as a result, lost their relationships with their respective fathers.
70. The judge noted that the mother was already resident in State A and identified a number of “red flags”, which I set out in full:
 - “(1) First and obviously is the comment to the IDVA about putting distance between herself and [F2] and taking [C] to [State A].
 - (2) Second are the unilateral actions and the last-minute change of plans in terms of the number of returns per year for contact, which is now reduced, and the school arrangements. [The ISW] in her evidence makes much of the structured forethought that mum had given to the application in her earlier evidence, that in my judgment appears to have been abandoned with changes to contact proposals and rushing through a place at [the alternative school in State A].
 - (3) Thirdly, the allegations have led to a breach in contact and poor maternally supervised contact that has happened subsequently, has not helped promote the relationship between [C] and her father. I worry on a psychological level that these

matters are being rushed through on the basis of the mother acting in flight mode, as it were, and not remaining here to face the consequences and work through all the inevitable difficulties (financial, practical and emotional) of the divorce.

(4) I am also concerned that she is unable to separate the two fathers and the issues. She sees them as acting against her and I am concerned that the actions in respect of one child could impact the other. For example, the need for [C] in her own right to maintain a relationship with her brother. Whether or not she can separate properly the identities of both fathers and the welfare needs of their individual children.

(5) There is antipathy and poor communication in relation to the contact arrangements between the father and the mother in terms of [C] and it is difficult to see how that relationship could be sustained on the low level of contact proposed. I am further concerned that the allegations raised by the mother were in an attempt to limit the level of contact to the father.

(6) [The mother's] recent unilateral actions with the school and reducing arrangements for contact concern me the most in terms of what is set out by her as dogma rather than the starting point for discussion or negotiation and there has been no consideration of safeguarding or putting in measures that might safeguard the children being able to go to [State A] in safety such as a bond or agreement as suggested by Mr Edge. Indeed, it is difficult to see how that could be a course of action now for [C] given the level of polarisation."

It can be seen, as pointed out by Lewison LJ during the hearing, that only (4) might have any relevance to the issue of whether S might travel to visit his mother in State A.

71. At the end of her judgment, the judge made clear that she was dismissing the mother's relocation application without fully considering alternative parenting arrangements which were "for another day":

"[130] It is implicit in this judgment, I hope, that I find that the welfare of both children is met here without the risks inherent in a move to [State A] which I have set out in this judgment. *How those arrangements are going to take place, it seems to me needs to be a matter for another day, given the lack of alternative proposals put forward by the mother in the event that I, as has transpired, dismissed her application.* It may be that she will be able to make some change to her arrangements in terms of the amount of time she works overseas. It may be that she does not and the court will need to look at the live with and spend time arrangements now that I have provided this judgment in respect of the removal application. I would suggest that the matter is therefore listed for a further case management hearing in

approximately two to three weeks to consider that aspect of the matter. That is my judgment.” (emphasis added)

Submissions

72. I propose to summarise the parties’ respective submissions very briefly in this judgment but, when determining these appeals, I have taken fully into account all the matters advanced both in writing and orally at the hearing.
73. Mr Green’s submissions focused significantly on challenges to the judge’s rejection of the mother’s domestic abuse allegations. As explained elsewhere in this judgment, it is not necessary to consider that aspect of the mother’s appeal in any detail. In support of ground 2, he submitted that the judge had failed properly to balance the competing welfare options or to undertake a comprehensive holistic analysis. He also questioned the judge’s criticisms of the mother’s conduct in respect of her contact proposals (as referred to in paragraphs 63 and 64 above); of C’s proposed education in State A (as referred to in paragraphs 65 and 66 above); and of her supposed failure to promote contact. As to the last of these, Mr Green submitted that the mother had supported contact between C and F2.
74. In respect of the PSO, Mr Green submitted that the central question was whether there was a real risk that the mother would retain S in State A. He submitted that this had not been properly considered by the judge and that, if she had, she would have concluded that there was no real risk or certainly not a sufficient risk that outweighed the welfare benefits of S being able to visit his mother in State A. The judge had wrongly concluded (as referred to above) that the mother had “unilaterally” reduced her proposals for contact and changed the proposed educational arrangements. She had also failed to take into account a number of factors. These included that the mother had *agreed* to S continuing to live in England *with* F1 following the ISW’s recommendation; that S wanted to visit State A and had done so previously; that the evidence showed the importance the mother ascribed to S’s continuing education; that the mother had always acted in S’s best interests and it was “highly unlikely” that she would act contrary to S’s wishes and his interests by keeping him there against his will.
75. F1 submitted that the judge had made no appealable error. She had applied the right legal principles and her decision that the PSO should continue was one which was reasonably open to her. The judge had not ignored any material evidence and had undertaken the required welfare analysis which was not confined to the issue of whether the mother might or might not keep S in State A. In essence, the mother’s challenge to the judge’s decision was based on no more than a disagreement about the weight which the judge had applied to the evidence. The mother was seeking to reargue her case on appeal and was wrongly inviting this court to substitute its own assessment for that of the trial judge.
76. In the course of the hearing, in response to a question from the court, F1 suggested that the judge’s risk analysis could be seen in paragraphs 74 to 85 of her judgment. He also submitted that the expert evidence demonstrated that, if the mother were to retain S in State A, there was no enforceable way of procuring his return. There was a risk that this might occur and, while the risk might be small, if it did occur the consequences for S would be catastrophic.

77. F2 likewise submitted that the judge had made no appealable error. The mother's arguments amounted principally to "disagreement with findings of fact"; "the weight attached to the evidence"; and "the evaluative welfare conclusions reached by" the judge. None of these provided any basis on which this court could properly interfere with the judge's findings or her evaluative conclusions. The judge had heard extensive oral evidence and had properly considered the credibility and reliability of the witnesses which were matters for her rather than an appellate court. The judge had made findings which were open to her on the evidence.
78. As to her welfare analysis, F2 submitted that the judge *had* undertaken the balancing exercise required under the Children Act 1989. She *had* weighed the competing welfare considerations before reaching a conclusion that was plainly open to her. The mother was doing no more than asking this court to substitute its own assessment for that of the trial judge who had spent four days immersed in the evidence. F2 submitted that it would not be a proper exercise of this court's appellate jurisdiction to accede to that request.

Determination

79. I recognise the limited circumstances, as emphasised by F1 and F2 in their respective submissions, in which an appeal court is entitled to interfere with the trial judge's findings of fact and evaluative conclusions. We were referred, among others, to the decisions of *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 and *Volpi and another v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48. There is no need to quote from them but I have the principles set out in those decisions well in mind. I also recognise, again as emphasised by F1 and F2, that a judgment must be read fairly and as a whole and that, as was said by Lord Hoffmann in *Pigłowska v Pigłowski* [1999] UKHL 27, [1999] 1 WLR 1360, at 1372 H:

"An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

80. I also fully recognise the pressures on the judge to deliver her judgment promptly after the hearing, as she did.
81. I bear all those considerations well in mind but I have, nevertheless, regrettably, concluded (a) that the judge's welfare analysis was not sufficient; and (b) that the judge's decision to continue the PSO in respect of S was not justified. I can state my conclusions briefly.
82. (a) The Relocation Decision:

In *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882, [2017] 1 FLR 979, McFarlane LJ (as he then was) reiterated, at [48], what is required when the court is undertaking the "welfare balancing exercise". It is an exercise:

"in which each and every relevant factor relating to a child's welfare is weighed, one against the other, to determine which of

a range of options best meets the requirement to afford paramount consideration to the welfare of the child.”

This reflected what had been said in previous decisions including his judgment in *Re G (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ 965, [2014] 1 FLR 670, in which he had said, at [54]:

“What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options.”

The court needs to consider the merits of each option, by considering their respective “internal” positives and negatives, as well as the comparative merits of the competing options. This is not a straitjacket but it sets out the overarching nature of the analysis which is required, in particular that the competing welfare options are sufficiently considered and compared in order to determine which is consistent with and best promotes the child’s welfare.

83. It is clear to me that the judge, regrettably, failed to undertake this exercise. She was clearly aware that this was required because, as quoted above, she said she needed to undertake a “comprehensive welfare analysis and to look at the contrasting proposals”. However, when she came to that part of the judgment where this would have been undertaken she only, in fact, looked at the option of relocation and did not undertake a welfare analysis of any other option or any comparative welfare analysis of the respective options including relocation. All the judge said was that; “Refusal of relocation would mean this arrangement [i.e. the existing arrangements] continues indefinitely”, adding later:

“How those arrangements are going to take place ... needs to be a matter for another day, given the lack of alternative proposals put forward by the mother in the event that I ... dismissed her application. It may be that she will be able to make some change to her arrangements in terms of the amount of time she works overseas. It may be that she does not and the court will need to look at the live with and spend time arrangements now that I have provided this judgment in respect of the removal application. ”

84. With all due respect to the judge, this was not a sufficient consideration of the options available for C as part of the welfare balancing analysis. Fundamentally, there is no analysis of any option other than relocation. The judge did not consider the positives and negatives of the existing arrangements continuing which would then need to be compared with the positives and negatives of relocation. This was *not* a matter for another day but needed to be determined at the same time and as part of the overall welfare analysis. I would also note that the judge did not address F2’s proposal that C live with him which was put forward as one of the potential options for C.
85. The absence of any sufficient comparative analysis can be seen, for example, from the absence of any consideration of the impact of refusing the relocation application on C’s

emotional needs and welfare generally in particular as set out in the ISW's evidence. The judge simply sets out that the impact on the mother of refusing the relocation application "would be likely to be significant, both personally and professionally, and this would in turn have implications for the children's welfare". She does not then go on to consider those implications. These included, as set out in the ISW's evidence, that "the welfare impact of refusal" on C would be "tangible". Further, a balanced analysis would have included consideration of other significant elements of that evidence such as that C's "primary emotional need is for consistency and day-to-day caregiving from her main attachment figure, who is her mother" rather than the "fragmented pattern of maternal care" which existed under the then arrangements; and that "[C's] needs for maternal closeness, secure attachment and routine are best supported by relocating with her mother, who can be physically present in her daily life abroad".

86. There is no indication that the judge took these matters into account and, indeed, the judgment read fairly and as a whole indicates that she did not. They were important matters that needed to be specifically addressed in the judgment if it was properly to explain why the mother's application that C move to live with her in State A was rejected because another option would better promote C's welfare and was more consistent with C's best interests.
87. In addition, I consider that the judge's analysis of relocation was also insufficient because the judge did not sufficiently analyse the "internal positives and negatives" of relocation. The approach taken by the judge probably reflected her view that the "key factor" was C's "emotional need to retain a relationship with her father ... and other family members". However, as the ISW had noted in her substantive report, in "welfare terms" "the loss of direct paternal relationships" had to be "weighed against" the benefits of C moving to live in State A. In addition to the matters referred to above, an important element of this was the mother's case, supported by the ISW's evidence, that the existing arrangements were not sustainable. This needed to be included in the welfare analysis. It may be that the judge did not consider this was necessary because of the absence of "evidence ... about what options are available to the mother in terms of reasonable adjustments in her job", a point repeated by the judge in paragraph 130 (as quoted in paragraph 71 above). In my view, this was not a reason not to undertake a comparative welfare analysis although, in addition, we were told by Mr Green that the mother had been asked about this during her oral evidence and had said there was no possibility of her being able to make alternative arrangements with her work.
88. Turning to the judge's findings, including her findings in respect of the mother's domestic abuse allegations, they were an integral part of the judge's welfare decision. They cannot properly be separated into distinct parts because, as it was put by F2, issues of credibility and reliability are essential elements of a judge's decision when determining the relocation application. In this case, it would be wrong to fetter or restrict the rehearing to some parts of the parties' respective evidential cases by seeking to preserve some of the judge's findings. The judge conducting the rehearing needs to decide for themselves what weight to give such findings as he/she makes and they would not sensibly be able to do this if they were applying findings made by another judge. For example, at the rehearing, the trial judge will have to reconsider those aspects of the mother's conduct on which the judge placed significant weight, as

referred to above. This demonstrates that the judge conducting the rehearing needs to be able to determine the factual foundation afresh as part of the welfare analysis.

89. Although it is not, therefore, necessary to engage with the mother's challenges to the judge's findings, I would just make two brief comments (in addition to the comments I have made above) about the judgment. First, contrary to the judge's summary, the mother's case in respect of her allegations of domestic abuse did not rely solely "on her own account". She relied on the evidence from the nanny and her grandmother. In addition, the ISW's evidence, in particular in her first addendum report, contained independent evidence from others. Secondly, the judge's analysis of why F2 might have lied about the previous findings was based, at least in part, on speculation.

90. (b) The PSO:

I fully appreciate F1's concerns at the consequences for S if the mother were to retain him in State A because there is, in practice, no legal routes available *in* State A to procure his return. However, I would first mention that F1 would not be without any legal remedy. The English court would be likely to continue to have jurisdiction to make orders because it would be likely that S would continue to be habitually resident in England if he was wrongly retained in State A. Whilst such orders would not be enforceable in State A, they would be enforceable here and it would jeopardise much in the mother's life if she chose to ignore them. It would mean, effectively, that she could not return to England with all the adverse consequences that would have for her including her relationships with her family and her assets here. It would also seem likely that it would cause difficulties for her in her employment and hoped for career progression. I would also note in that respect that the mother's right to reside in State A is based on her employment there and she has no other connection with that state. Accordingly, the consequences for the mother of ignoring any such order would be considerable and would act as a strong disincentive for her to act in that way.

91. In my view, the analysis of this issue in the judgment does not justify the continuation of the order. I appreciate, as F1 submitted, that S's welfare is the court's paramount consideration. However, the core issue when considering whether the court should make a PSO is the nature of the risk that his mother might keep him in State A. There is no other factor which would suggest that it would be contrary to his welfare to visit State A and, indeed, the other factors in the case, consistent with the ISW's recommendation, support the conclusion that this would be in S's best interests.
92. The judge referred to the lack of enforcement mechanisms in State A and the effect on S if he were kept there but her analysis of the risk as to whether this might occur is essentially confined to the "red flags" referred to in paragraph 70 above. None of those matters support the conclusion that there is a real risk that the mother would keep S in State A. In addition, the judge's welfare analysis failed to consider the benefits to S of his being able to visit his mother in State A.
93. In my view it is not necessary to remit this issue to be reheard because I consider that this court is in a position to determine that a PSO is not warranted. There is no evidence which supports the conclusion that there is a sufficient risk that the mother would keep S in State A during a contact visit as to justify preventing him from visiting her there. F1's case in support of the PSO when it was made in August 2025 had been that the mother might seek to "attempt to achieve [relocation] unilaterally" if her application

was refused. It was, he said, “precisely this risk that led to the Prohibited Steps Order being granted”. The position had fundamentally changed by the final hearing because the mother had agreed that S would remain living here. The original reasoning for the order, therefore, no longer applied. I would also observe that a PSO would not be required to ensure that the mother did not remove S from England without F1’s knowledge or consent, which was the other reason referred to in his October 2025 statement as supporting the making of a PSO.

94. Further, as referred to in paragraph 53 above, the ISW gave clear reasons for concluding that it would be in his best interests to be able to do this, “being led by [S’s] wishes”. The ISW also made very clear in her evidence that, if the mother were to keep S in State A, it would not only be damaging for S but it would also significantly damage S’s relationship with his mother. There is again, no evidence to suggest that the mother would act in a way that was so contrary to S’s welfare. Indeed, all the evidence is to the contrary effect.
95. I have already referred above to the other consequences for the mother if she was to keep S in State A contrary to an order of the English court which strongly militate against her doing so.

Conclusion

96. In summary, therefore, there is no justification for the continuation of the PSO which will be discharged.
97. The mother’s relocation application will be remitted for rehearing before a High Court Judge. We decided that this needed to be reheard urgently and, as such, indicated that it was fit to be heard during the vacation and gave directions to enable that to occur. The proceedings have now been continuing for over a year. The ISW referred to the fact that the parents had been “operating under exceptional stress”, in particular the mother, throughout this period. Events subsequent to the refusal of the mother’s application in respect of C have borne this out and C’s position needs urgent consideration as a result.
98. Finally, for the avoidance of doubt, nothing in this judgment is intended to give any indication as to the merits of the mother’s relocation application. I also make clear that it will be for the judge rehearing this matter to decide the extent to which it is necessary to consider and determine the allegations of domestic abuse as made by the mother against F2.

Lord Justice Stuart-Smith:

99. I agree.

Lord Justice Lewison:

100. I also agree.