

ENGLAND AND WALES / JUDGMENT

O (Summary Return: Non-Convention Country), Re

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Neutral Citation Number: [2025] EWCA Civ 660 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE HIGH COURT (FAMILY DIVISION) Ms HANNAH MARKHAM KC, sitting as a Deputy High Court Judge FD24P00268 Case No: CA-2025-000448 Royal Courts of Justice Strand, London, WC2A 2LL Date: 21/05/2025 Before : LORD JUSTICE PETER JACKSON LORD JUSTICE STUART-SMITH and MR JUSTICE COBB

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- ----- Re O (Summary Return: Non-Convention Country)
- ----- Michael Gration KC and Charlotte Baker (instructed by International Family Law Group LLP) (none of whom appeared below) for the Appellant Will Tyler KC (who did not appear below) and Roshi Amiraftabi (instructed by Irwin Mitchell LLP) for the Respondent Hearing date : 7 May 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 21 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) The Honourable Mr Justice Cobb :

Introduction

1. 2. 3. 4. The children at the centre of this appeal are a boy ('D') who is five years old, and his sister ('A') who is four years old. The Appellant is their mother ('the mother'), and the Respondent, their father ('the father'). The mother brings this appeal, with the permission of Moylan LJ, against an order of Ms Hannah Markham KC, sitting as a Deputy High Court Judge, dated 21 February
2025. By that order, the Judge ordered the summary return of D and A to Nigeria. Nigeria is a 'non-Convention country', that is to say a country which is not a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention'). The return order was to take effect by 1 March 2025. The Judge gave her reasons for her decision in a judgment which she handed down on 20 February 2025. Simultaneously, the Judge handed down a judgment ordering the mother's former

solicitors, Burnham Law, to pay the wasted costs of an earlier aborted final hearing; this is reported as *A Father v A Mother* [2025] EWHC 364 (Fam) (20 February 2025) (see further §15 below). Following the delivery of the two judgments, the mother instructed her current solicitors, who in turn acted swiftly to initiate the appellate process. Moylan LJ granted a stay of the substantive return order, and the children (and the mother) remain in this jurisdiction pending the decision on the appeal. For the purposes of determining this appeal, this Court has been provided with a significant amount of the written evidence which was before the Judge; we have been greatly assisted by leading and junior counsel for both parties.

5. For the reasons set out below, I would dismiss this appeal. Background facts

6. 7. 8. The essential background facts, collected in the main from the judgment under review, are these. The mother and father are Nigerian. The father, an engineer, moved to live in England in 2004, and obtained British Citizenship in 2013. The parties met in 2015 and married in Nigeria in June 2016. The mother moved to England in 2017; she obtained British Citizenship in 2023. The parties' children were both born in England. D has complex special needs and is neurologically diverse; it is said that he cannot effectively communicate and has difficulty focusing and following instructions. He requires speech and language therapy, and occupational therapy. In December 2022, the father moved to a third state ('X') for work. The mother and children remained in this country. In December 2023, the mother and children travelled to X; the parents let out their flat in England, and boxed up and shipped all of their belongings, some to Nigeria and some to X; the children were withdrawn from their school/nursery. The mother and children spent one month in X before travelling on to Nigeria, accompanied by the father. When in Nigeria, the family Judgment Approved by the court for handing down. *Re O* (Summary Return: Non-Convention Country)

9. 10. lived with the father's family. They attended the father's brother's wedding. After a fortnight, the father returned to X. The parents had identified specialist speech therapy provision and developmental support for D in Nigeria which he commenced in March 2024; both parents agreed he benefited from this. It was the father's evidence that once D had completed his speech and language therapy, the family would reunite (in or about November 2024) and thereafter live permanently in X. In the spring of 2024, the mother regarded the marriage as having broken down. On 24 June 2024, the mother left Nigeria and travelled with the children to England; this was done without the knowledge of the father. The father, believing (correctly, as it happens) that the mother had travelled to England, flew direct to London on 27 June to see if he could locate her and the children; he instructed solicitors, and notified the police. On 28 June, the father issued proceedings in England invoking the High Court's inherent jurisdiction, seeking the summary return of the children to Nigeria. The mother and children's precise whereabouts were at that stage unknown to him. Disclosure orders were made, and within a few weeks the mother and children were located. A number of case management hearings followed: permission was granted for the parties to instruct an expert in Nigerian law; a pre-trial review was set down for 8 October 2024 with the final hearing to follow on 26 November 2024.

11. As a result of several case management failings, the application did not proceed as planned; the date for the final hearing was pushed back to 16 December 2024.

12. Within her filed evidence, the mother made a large number of serious allegations of domestic abuse against the father and his family; she alleged physical abuse of herself and the children, emotional abuse, verbal abuse, controlling and coercive behaviours. The mother further stated that she had been the victim of rape and sexual abuse by the father. Accordingly, the Judge directed the mother to file and serve a schedule of findings of domestic abuse on which she wished to rely within her defence of the father's application. The mother did so. 13. The father alleged that the mother's care of the children was at times volatile, verbally and physically abusive and negligent; he further contended that the mother struggled to manage D's challenging behaviours. As part of his evidence, the father adduced a video recording of the mother assaulting D, which was said to have been made in early-2024. The Judge described the content of the video (judgment, paragraph [29]) thus: "...the mother is seen to be lashing out at D, hitting him several times with an open hand across his face and pushing him away when he seeks comfort from her. D is plainly very distressed in the video". The mother could not challenge this indisputable evidence, but sought to deflect her conduct, alleging that "the children were beaten with canes by the [father's] family" ([31]), and further alleging that the paternal grandmother had insisted on the mother disciplining the children "by beating them" ([32]). I return to these issues at §33 and §35 below. Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 14. At the pre-trial review hearing on 4 December 2024, and in line with the approach commended to her by counsel then instructed (we have seen the written submissions), the Judge identified the factual issues which she would try. These were listed on the order as follows: "(i) the children's habitual residence; (ii) whether the children were wrongfully removed from Nigeria by the respondent on or about 24 June 2024; (iii) the applicant's allegations about the respondent's capacity to care for the children; (iv) to the extent that the court determines it is necessary, the allegations of domestic abuse made by the respondent against the applicant and members of the paternal family". In relation to (iv) above, the order further recorded that: "The court was unable today to decide whether, and the extent to which, it is necessary to determine the allegations of domestic abuse made by the respondent in the absence of trial counsel for the respondent". 15. 16. 17. The final hearing scheduled for 16 December 2024 did not take place as planned. Burnham Law failed to instruct counsel for the final hearing; the firm notified the court of this by e-mail only a matter of minutes before the hearing was due to commence, and sought an adjournment. The mother had attended the hearing on her own. In a judgment addressing these specific events, delivered on 20 February 2025 (see further §3 above and §82 below), the Judge found that Burnham Law had been 'negligent' in their failure to instruct counsel and ordered them to pay the father's wasted costs of that hearing. The mother and children were at this point living in a refuge while awaiting local authority housing. Both children were attending school in England. The children had been assessed by the relevant local authority as 'children in need' under Part III of the Children Act 1989 ('CA 1989'). At this time, and indeed at the time of the judgment, D remained on a waiting list for therapeutic support. The final hearing was therefore re-listed for four days commencing on 27 January

2025. The mother was then represented by an experienced barrister, of nineteen years call, who specialised in family law. At the outset of the hearing the mother indicated through her counsel that she did not wish to pursue the allegations of rape and sexual assault; she sought findings on all other allegations (see further §§27-28 below). Over the following days, oral evidence was given by the mother and father, and by witnesses called on behalf of the father (the mother's witness was unexpectedly unobtainable). Submissions were delivered in writing. Judgment was reserved and then circulated in draft on 14 February 2025; a final version of the judgment was handed down on 20 February 2025. Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 18. 19. 20. The Judge concluded that it was in the best interests of the children that they be returned to Nigeria. She rejected in their totality the mother's allegations of domestic abuse. The Judge concluded that the mother's statement that she would not return with the children was 'tactical' and ordered the return of the children to Nigeria, to be effective within nine days, in the company of the father if the mother chose not to travel. I discuss the judgment more fully below. Following the delivery of the judgments, the mother immediately instructed her current solicitors; she sought permission to appeal. Moylan LJ granted a stay of the order, and permission to appeal. To complete the picture, in July 2024, the father issued divorce proceedings in Nigeria. An order dated 7 October 2024 dissolved the parties' marriage and granted the father full 'custody' of the children. The father has confirmed within these proceedings that, pending consideration by the court in Nigeria of the arrangements for the children, he would not seek to enforce the custody order were the mother to return to Nigeria, but that he would wish for the children to spend time with him. The father also made an application dated 5 August 2024 to the Magistrates court in Lagos for an order that the mother return the children to Nigeria. The mother has sought to set aside the order dissolving the marriage. The Judgment 21. 22. The judgment under review is lengthy and detailed. It opens with an acknowledgement of the delay in resolving the application, the Judge rightly observing that this was "far from what is expected in an application for a summary return" ([2]). At the outset, the Judge rehearsed the list of issues which she had earlier set for herself the task of resolving (see §14 above); materially, she added a fifth issue, namely "the best interest of the children in relation to the application that they are summarily returned to Nigeria" ([4]). The Judge went on to address the children's habitual residence as "the primary issue" ([12] and [22]), specifically articulating the question ([22]) of "... whether at the date that the children travelled from Nigeria to England they were habitually resident in Nigeria". As earlier mentioned (§14 above), the need to investigate the issue of habitual residence, and the framing of the question, can be traced to the written submissions of counsel for the pre-trial review; it is further reflected in two extracts in the judgment: "The father's case is that at the time the children were removed from Nigeria to this jurisdiction they were habitually resident in Nigeria. The mother submits that they were only temporarily in Nigeria and that the children had been and remained at all relevant times habitually resident in this jurisdiction" ([5]). "There has been no dispute as to when I ought to be looking at the question of habitual residence as both parties agree it is the date of the father's application

and the date when this court was seised of that application” ([72]). Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 23. The Judge addressed the issue thus at [23]: “If I determine, as the mother invites me to do, that the children were are all times habitually resident in the jurisdiction of England and Wales, and that they are currently present here (as they indeed are) then I need go no further as this court could then go on to determine welfare issues. If however I determine, as the father invites me to find, that the children were on June 28th 2024 [the date of the father’s application] habitually resident in Nigeria and that the children were removed from that country without the father’s consent and or knowledge then I must go on to consider whether it is in the interests of the children to return to that jurisdiction or whether they should now remain here in this jurisdiction”. 24. Having traversed other ground (see below), the Judge returned to the issue of habitual residence later in the judgment at [69], referencing and reproducing a portion of section 3 Family Law Act 1986 (‘FLA 1986’) (‘Habitual Residence or Presence of child’). In this regard, she referenced the Court of Appeal’s judgments in Re A (A child) [2023] EWCA Civ 659; [2024] 4 WLR 49, and London Borough of Hackney v P and others (Jurisdiction: 1996 Hague Child Protection Convention) [2023] EWCA Civ 1213; [2024] 2 WLR 1163; [2024] 1 FLR 1139, before adding at [71]: “The latter [London Borough of Hackney v P] is of significance when considering the proper time for any assessment of habitual residence and the former how then to apply the law to the facts of the case”. The Judge set out what she described as the “helpful summary” of habitual residence issues in Re B (A Child) (Custody Rights: Habitual Residence) [2016] EWHC 2174 (Fam); [2016] 4 WLR 156. 25. The Judge returned finally to the theme of habitual residence in her conclusion at [101]-[105] where she said this: “[101] I find that the mother knew that the children were settled in Nigeria by March 2024 when she was putting her plan into action to remove the children from there. Her own messages evidence this. I know not if she had taken any formal legal advice but the mother appeared to know that she was unlikely to have been given permission to lawfully remove the children form Nigeria.

[102] I have given careful consideration to the question of habitual residence. The children were living with a paternal family member. It was on the father’s own case, for a temporary period in the first instance before the family moved to [X]. I find that the family had left living in England. The family home had been rented out, the children’s school had been told that they were leaving and Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) the school had wished them well. Steps have been taken to secure family housing in [X] and visas had been acquired to regulate arrangements there. Additionally, the family’s belongings had been boxed up and bags arrived in both [X] and Nigeria. Of significance to me in this finding is the agreement by the mother that the intention was that the family would be living together so that the father could be more present in his children’s lives. It makes no sense if then he would agree to a situation where for the next 5 years he lived away from them (which is the mother’s case).

- [103] I then turn to the question of whether the children had acquired habitual residence in Nigeria. I am satisfied that the children had moved on and away from England. Ties had been cut and changes made to school and living arrangements. I remind myself of the guidance from Hayden J in Re B. The situation need not be permanent, the question is the degree of integration. Parental intention is not determinative, and one parent can change habitual residence without the consent of the other. On the evidence before me the children were settled in Nigeria. They were cared for amongst family. With cousins and aunts and uncles living both with them and near by. The mother accepted to me that she is Nigerian, it is her country and culture. I am satisfied the children settled well into this family life. [A] was attending a local school with her cousin, her mother walked with her there in the school week, she enjoyed a routine and time with the family. [D] was being supported with therapy at the home and was achieving milestones and acquiring new skills. The children I am satisfied felt integrated into their new home. They were accustomed to being primarily cared for by their mother so the absence of their father was not new to them. I have determined on the facts before me that the parents together made the decision to spend some time in Nigeria so that [D] could have access to supports which due to lengthy waiting lists were not available to him in England. The parental decisions and engagement in local services in Nigeria supported the children's sense of integration and belonging there.
- [104] On the facts of this case, I find that the children were settled and integrated into life in Nigeria. I am clear that they had habitual residence there. ...
- [105] Notwithstanding this finding it is open to me to consider the best interest and the welfare of the children who are physically present in this jurisdiction." (Emphasis by underlining added). 26. I turn now to other aspects of the judgment. Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 27. As I referenced earlier, the mother had made multiple allegations of domestic abuse against the father and his family. The Judge summarised the mother's allegations, and the impact of the allegations on the case as a whole, in a passage of the judgment from [31]-[39]. At [33] she said this: "The proceedings had been case managed to allow time for the trial judge to determine domestic abuse allegations. I considered it necessary to do so on the unusual facts of this case and because the allegations that the mother makes are serious and wide ranging. The scope of them includes allegations of rape and sexual harm. By agreement those allegations (rape) were not pursued, the mother's position being that those allegations would not of themselves impact on the approach she would then invite a court to take in relation to any welfare based assessment of the father's time with the children. Her focus both in her evidence to this court and her written evidence was very much on what she called the tricking of the father and his family in getting her and the children to Nigeria and then their behaviours once she was there." She added (at [34]): "I have however throughout my approach to the mother's evidence reminded myself of the scope of PD12J and the relevant case law in relation to the proper approach to allegations of domestic abuse. I also cautioned myself to consider only those allegations which were relevant to the

central decisions I must make in the ‘summary’ return application” (emphasis in each paragraph by underlining added). 28. 29. 30. The Judge gave herself an extensive self-direction in relation to the protections in court for vulnerable witnesses (part 3A Family Procedure Rules 2010: ‘FPR 2010’), and its application to the situation of the mother in this case. She observed that given the way in which the hearing had been set up, the mother was offered a “forensic advantage” in giving evidence after the father and his witnesses ([39]). In an important section of the judgment, under a distinct sub-heading ‘Summary Return’ ([75] et seq.), the Judge referenced my decision in *J v J* (Return to Non- Hague Convention Country) [2021] EWHC 2412 (Fam) and reproduced into her judgment my extensive recital of the key principles from the House of Lords speeches in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40;

[2006] 1 AC 80 (‘Re J’). The Judge then turned to the decision of the Court of Appeal in *Re A and B (Children) (Summary Return: Non-Convention State)* [2022] EWCA Civ 1664; [2023] 1 FLR 1229 (‘Re A and B’), in which the Court of Appeal had considered whether, and if so to what extent, the court could or should embark on a fact-finding enquiry where domestic abuse allegations are raised in a non-Convention summary return case. Judgment Approved by the court for handing down. *Re O (Summary Return: Non-Convention Country)* 31. Later in her judgment she analysed the evidence of the parties and their witnesses, confirming a positive impression of the father ([79]-[80]) and the paternal family ([81]-[83]: “measured, fair and child focused”). By contrast, she formed a wholly unfavourable view of the mother: “[86] The mother’s case evolved and changed as her evidence progressed. She elaborated and added to accounts and stories in a way which become hard to not only follow but also to place any weight on. I have cautioned myself with reference to the case law above when assessing the mother’s evidence and remind myself that people tell lies for many different reasons and can do so when feeling worried or fearful about something. I note too that victims of domestic abuse may not always be able to recall details in a linear fashion and may well have acted in one way when in an abusive situation and describe their responses and reactions now they are out of the abusive situation from a different view point.

[87] Notwithstanding this I find that the mother was not a good historian and often made new allegations or amplified others when giving her oral evidence to me. She often sought to blame those representing her for missing details from her statements or for the errors within them. I have been mindful of the criticisms I have made of her legal team, but go back to the fact that the mother had time to read her statements, to correct mistakes before signing them. The mother had time at court with her counsel on 4 December 2024 at the prehearing review and could have flagged worries about the way in which her case was being articulated, she did not do so. There were several inconsistencies in the mother’s accounts which were significant in my view” (Emphasis by underlining added). 32. The Judge set out at some length the inconsistencies referred to in the passage just cited, going on to find that the mother “cherry picked” what she chose to tell the court, and “[created] a narrative to support her case” ([92]). She continued: “[94] I have looked with care at the

evidence both parents provided to the court. I have asked myself whether the mother's allegations of abusive behaviours are made out on the balance of probabilities. I am clear that they are not. I am driven to conclude that the mother has created this narrative to support her decision to remove the children without her husband's consent from Nigeria on 24 June

2024. I have no doubt that she had made a decision to divorce her husband and wanted to return to England. I suspect she hoped that she could return to the family home and I am suspicious of the relationship she had with this male friend. It is plain to me that the mother knew that her family may not support a divorce (her elder brother at least Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) did not) and it is clear that the mother knew that a Nigerian court may not allow her to remove the children from Nigeria in circumstances where the children were settled in school and settled there in the home with the paternal family and where their father did not consent to their leaving the country.
- [95] I find that the mother's narrative that she was tricked into staying in Nigeria is not made out. There is no evidence to support her account of being a victim of abuse..." (emphasis by underlining added). 33. In relation to the incident in which the mother was seen to hit D (see §13 above), the Judge found as follows: "[99] There is evidence of the mother losing control and lashing out at her son in anger. The video is distressing and uncomfortable to watch. I do not accept that the mother hit D under pressure to do so by the paternal family. The video is clear, the mother is angry, lashes out time and time again to her son. There are opportunities of her to take him in her arms after hitting him and to offer him comfort, she does not do so as she is clearly angry. I find that the narrative that the children were beaten by the paternal family with canes wholly untrue and fabricated by the mother to divert from her on behaviour in that video. I note that she was told by the social worker undertaking the assessment that had that happened in England it would have been a matter for the police" (Emphasis by underlining added). 34. The Judge then turned to her 'analysis' and the 'decisions' ([101]-[115]); I have quoted extracts of this section above (see §25). The Judge conducted a review of the children's situation by reference to the welfare checklist under section 1(3) CA 1989. It is neither necessary or appropriate for me to reproduce the Judge's review and analysis extensively here, but it is sufficient to note that: i) ii) iii) iv) She found that the children "had left living in England"; their home had been rented out, the children had left their schools; the family belongings had been boxed up and shipped in part to Nigeria and in part to X; "ties had been cut"; The children were settled in Nigeria by March 2024, as the mother well knew; they were immersed within the wider family where they "settled well into family life" and "felt integrated" there; it had become their new "home"; The mother is Nigerian "it is her country and culture"; "nearly all of [the mother's] immediate and extended family live in Nigeria"; A was attending school with her cousin; The father had remained a significant figure in the children's lives, notwithstanding his physical absence for periods; he expressed appropriate concern for their welfare; Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country)

35. 36. 37. 38. 39. v) The Judge described the current situation of the mother and children living in a refuge in England with “no or limited support”. The Judge further acknowledged the mother’s resistance to returning to Nigeria, as she claimed not to feel safe there. The Judge pointed to the fact that the father was willing to take a leave of absence to help settle the children in Nigeria, as required, and that he supported them remaining with their mother if she returned there. Reports of his time spent with the children were generally favourable. The Judge referenced the local authority assessment of the mother and children undertaken in September 2024, three months after the children returned to England; she noted the positive remarks recorded there in relation to the mother’s care and “warm and attentive parenting”, notwithstanding that the children were then non- verbal and without a school place. However, the Judge also described the mother’s considerable isolation in England with few sources of support as at the date of the hearing; she commented on the isolation of the children away from family and friends in Nigeria. It was noted that the mother had refused housing which would require a change of schools: “their position remains, I find precarious and unsettled” ([113]). The Judge considered the children’s ages, wishes, and feelings, and acknowledged their need for a relationship with both parents. She noted their additional educational needs were better met in Nigeria. The Judge considered the risks of harm if the children remained in England, their relationship with their father, and the role of the maternal family in Nigeria. This section of her judgment concludes: “[116] I am entirely satisfied when standing back and looking at the facts of this case that it is in the best interests of the children to be returned to Nigeria. The mother has family who live both in Lagos and elsewhere who appeared to have supported her decision to divorce the father. She is Nigerian and can access that community support were she to return to live there with the children. This brings a wider support for the children too. There are therapeutic supports in place to support D when there is a question mark as to what and when supports might be in place were he to remain in England. I am satisfied that even if the children were to live primarily with their mother that the father would provide financial support for D’s access to this therapy, just as he did in 2024”. Having found as a fact that the mother had actively engaged in matrimonial proceedings in Nigeria, and had instructed her own lawyers there, the Judge concluded that the mother’s stated decision not to return to Nigeria with the children was “tactical” ([118]). The Judge recorded at [119] the various assurances and undertakings which the father had offered to ensure the mother’s safe and easy passage back to Nigeria. The Judge recorded that the father had further agreed (pending consideration by the court in Nigeria of the arrangements for the children) not to enforce the custody order in his favour, and offered undertakings as to his conduct towards the mother. She added: Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) “[124] If the mother holds fast and does not return with the children then the father shall travel to this jurisdiction and travel to Nigeria with them”. Grounds of Appeal 40. 41. 42. 43. 44. 45. There are five grounds of appeal. They are summarised in the paragraphs which follow (§§41-45). Ground 1: Habitual Residence Assessment: It is said that the Judge erred in considering that she needed to make a determination of habitual residence. She further made errors in fact and law regarding the

assessment of the children's habitual residence; she failed to consider the temporary nature of the children's stay in Nigeria for D to participate in a speech therapy programme. It is said that the Judge failed to assess the significance of the children's stay in X on the way to Nigeria and the father's initial proposal that they should in fact return there. Moreover, the Judge did not consider D's specific needs and how they might affect his integration into a new environment. Ground 2: Consideration of allegations of rape and sexual assault: The mother complains that it was incumbent on the Judge to consider the allegations of rape and sexual assault as part of the factual dispute, in accordance with the provisions of Practice Direction 12J ('PD12J') of the FPR 2010, especially at paragraphs 17(g) and 18 *ibid*. Her failure to do so represented a serious procedural irregularity, the more so since she failed to provide reasons for not determining the most serious allegations, despite considering other allegations of domestic abuse. Ground 3: Relevance of allegations to welfare issues: The Judge's failure to consider and determine the mother's allegations of rape and sexual assault was a significant oversight. These allegations were relevant to the welfare issues and the assessment of the mother's credibility as a witness. The Judge did not address or apply the relevant paragraphs of PD12J FPR 2010 (namely paragraphs 36 and 37). Ground 4: Inadequate welfare assessment: The Judge conducted a flawed welfare assessment; she neither identified nor weighed the pros and cons of the available options for the children's future care. The Judge's assessment was linear, focusing only on the negatives for the children in England and not considering the welfare benefits and disbenefits of separating the children from their mother if they were returned to Nigeria, where they would be likely to live with the father's extended family. Ground 5: Impact of negligent representation: The Judge did not give appropriate weight to the disadvantages faced by the mother in presenting her case at trial by reason of her previous solicitors' negligent preparation of her case. This failure led to a flawed conclusion regarding the mother's credibility. The arguments on appeal

46. Mr Gratton KC and Ms Baker, relying on Baroness Hale's speech in *Re J*, laid particular emphasis on the Judge's error in focusing in her judgment on the need to establish the children's habitual residence (as opposed to their 'home country') in the Judgment Approved by the court for handing down. *Re O* (Summary Return: Non-Convention Country) determination of the father's application; they criticise the Judge's erroneous importation of this concept, and the reference in the list of issues to be tried to determining whether the mother's departure from Nigeria in June 2024 with the children constituted a 'wrongful removal' – both terms taken from the 1980 Hague Convention. They argue that multiple errors flowed from that mistaken approach, that the Judge was wrong in her assessment of the evidence relevant to habitual residence or home country, that the Judge was wrong to consider the evidence as at the date of the father's application, and that consequently the welfare evaluation was skewed and the welfare decision fatally flawed. They argue that the Judge was wrong not to consider with proper care whether the court should undertake a finding of fact exercise in relation to the mother's two most serious allegations of domestic abuse (rape and sexual abuse), when considering the balance of the mother's abuse

allegations; they say that the Judge effectively and wrongly abrogated her duty to determine whether to try these two issues by accepting the parties' agreement that these need not be litigated. They say that she mischaracterised the issue to which these serious allegations may go as only potentially relevant to the "father's time with the children" (see §27 above). In this regard, it is said that she has failed to discharge her obligation under paragraphs 16, 17, 18, 36 and 37 of PD12J FPR 2010. Compounding this error, they say, was the Judge's failure to conduct a holistic analysis by identifying the relevant options, identifying and attributing weight to the 'pros and cons' of each and then weighing those in the balance in order to determine which option best promotes the child's welfare. This was a particularly serious omission in D's case, given his special needs. In particular, in the welfare review, the Judge failed to give any or any proper attention to the impact on the children of a change of their circumstances, in particular one which potentially involved (should the mother not return to Nigeria) a change of primary care-giver. The Judge should have explained why it was in the children's best interests to go to Nigeria without their mother, in circumstances where the father would only be present for a period of time before he returned to X, leaving the children in Nigeria without either parent. The mother had been badly served by her former solicitors (as the Judge had separately found), and the negligence of those solicitors in the preparation of the case had materially affected her ability to present her case effectively. Essentially, the Judge was unfair in her condemnation of the mother as a historian of truth, given that the presentation of her unsatisfactory evidence had been caused or contributed to by the failings of her former legal advisers who had failed her in the "preparation" of the case for the final hearing, such as to make the proceedings "unfair". 47. 48. 49.

50. Mr Tyler KC and Ms Amiraftabi emphasise the fact-specific nature of this type of enquiry at first instance, and rely on the well-known passages from the speech of Lord Hoffman in *Piglowska v Piglowski*, [1999] UKHL 27; [1999] 1 WLR 1360 and the judgment of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5. They seek to discourage this Court from interfering with the decision, particularly in a case in which the Judge had made such clear and unfavourable findings against the mother. They emphasise the benefits which the Judge enjoyed (a) through a degree of judicial continuity over the last stages of case preparation, and (b) through her understanding of the personalities and dynamics of the case over the four days of the hearing. They drew attention to the multiple inconsistencies in the mother's evidence, Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) her false allegations, and the obvious lies, which they say are fatally undermining of much of what the mother argues in relation to the best interests determination in this case. 51. They contend that while the Judge may have given undue prominence to the issue of habitual residence, it was not entirely wrong for her to consider the issue, given Lord Wilson's comments at [57] in *Re NY* [2019] UKSC 49; [2019] 2 FLR 1266 ('Re NY'). They accept that while it may have been unhelpful and distracting for the Judge to use labels such as 'habitual residence' and 'wrongful removal' in her determination of the facts as presented to her, it can nonetheless be assumed that the Judge was aware of the distinction drawn by Baroness Hale between 'habitual residence' and 'home country'. In any

event, they argue, the factors identified by the Judge as relevant to habitual residence were equally relevant and applicable to a finding about 'home country'. Furthermore, the Judge addressed the correct welfare issues which Baroness Hale had described in *Re J* at [33] and [34] (see §§68-73 below) and this led to a reliable best interests decision. 52. They argue that the Judge was right to focus on the mother's allegations of abuse by the father and his family which directly impacted on the ultimate issue in the case. The Judge was right to respect the mother's wish not to pursue the allegations of rape and sexual assault. Indeed, by reason of the mother's stance this no longer remained a 'disputed allegation of domestic abuse': paragraph 16 PD12J FPR 2010.

53. Mr Tyler and Ms Amirafabi contest the suggestion that there was, in any sense, a causative link between the mother's former solicitor's negligence and the Judge's adverse findings about the mother. The mother's patent and gross lack of candour and dishonesty could not be laid at the feet of her former professional advisers. Discussion and conclusion 54. An application for a summary return of a child to a non-Hague Convention country under the inherent jurisdiction of the High Court is to be determined simply and straightforwardly by what is in the child's best interests (*Re J* at [18], [25], [28], [29] and [32]). On an application of this kind, a judge must undertake: "...a swift, realistic and unsentimental assessment of the best interests of the child, leading, in proper cases, to the prompt return of the child to his or her own country, but not the sacrifice of the child's welfare to some other principle of law". Ormrod LJ in *Re R (Minors) (Wardship: Jurisdiction)* (1981) 2 FLR 416, at 425. The requirement for the Judge to undertake this "swift and unsentimental decision", rooted firmly in welfare, was reinforced by Baroness Hale in her speech in *Re J* at [31] and [41]. 55. In determining a non-Convention summary return application, there is no 'warrant' to apply the principles of the 1980 Hague Convention, either directly or by analogy (*Re J* at [22], [31] and [33]). While 'habitual residence' is a key jurisdictional component of the 1980 Hague Convention (see, inter alia, Articles 3, 4, 5, 8, 13 *ibid.*), and 'wrongful removal' part of the lexicon of the 1980 Hague Convention (see, inter alia, Judgment Approved by the court for handing down. *Re O (Summary Return: Non-Convention Country)* 56. 57. Article 1, 3, 7, and 12), Baroness Hale could not have been clearer in *Re J* that it would not be right to introduce such "technicalities" of concept and language into a non-Hague Convention summary return application. *Re J* provides the definitive statement of the law in this area. Lord Wilson in *Re NY* endorsed, by implication at least, all that had been said by Baroness Hale in *Re J*. This court has more recently confirmed (see again *Re A* and *B* at [71]) that within the two leading judgments in *Re J* and *Re NY* there is to be found all the "relevant, and sufficient, guidance to the court for the purposes of determining an application for the return of a child to a non-Convention State". The court's judgment in *Re A* and *B* opens with the statement: "... the exercise in which the court is engaged when the court is determining an application for a return order under the inherent jurisdiction or the Children Act 1989 ("the CA 1989") is not the same as when the court is determining an application for the return of a child under the 1980 Convention" ([3]). It will be apparent from my resumé of the arguments above that counsel before us were not entirely agreed on whether the Judge was

right to give any attention at all to the issue of ‘habitual residence’. To recap, Mr Gration submitted that Baroness Hale had been clear that there is “no place” for the technical concepts of ‘habitual residence’ in a non-Convention summary return case (Re J [22], [31] and [33]); Mr Tyler did not concede that habitual residence has no place at all in such a determination, given Lord Wilson’s remark in Re NY at [57] that there may be “need” for an “inquiry into the child’s habitual residence at the relevant date” when determining a summary return under the inherent jurisdiction. 58. The competing arguments focus on two passages from the respective judgments. In Re J, Baroness Hale said this at [22]: “There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it....” Then, adopting what Buckley LJ had said in Re L (Minors) (Wardship: Jurisdiction) [1974] 1 WLR 250, at p 264 (“The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country”), Baroness Hale had added at [33]: “One important variable, as indicated in Re L, is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his ‘home’ country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this.” (Emphasis by underlining added). Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 59. Attention then turned to what Lord Wilson later said within an important section of his judgment in Re NY, in which he outlined the eight questions which he considered the Court of Appeal should have asked itself in that case before substituting a return order under the 1980 Hague Convention with an order under the inherent jurisdiction. His second question was formulated ([57]) thus: “[57] ... the court should have considered whether the judge [at first instance] had made, or whether it could make, findings sufficient to justify the summary order. The only relevant finding made by the judge had been that on 10 January 2019, only seven weeks after her arrival in England, the child had retained habitual residence in Israel. Was that sufficient to justify the making of a summary order five months later? In the light of the policy in favour of the making of substantive welfare determinations by the courts of habitual residence, did there need to be inquiry into the child’s habitual residence at the relevant date, which, in the absence of an application, was in this case the date of the proposed order?” (emphasis by underlining added). 60. 61. 62. 63. Neither Mr Gration nor Mr Tyler were able to offer us an authoritative, let alone a uniform, explanation for how to reconcile these references to habitual residence in the two judgments. For my part, I do not treat Lord Wilson’s comments in Re NY as contradicting what Baroness Hale said in Re J at [31] and especially [33]. Lord Wilson was, in my judgment, simply advertising that, depending on the facts of the case, one of the many issues which a judge considering a summary return under the inherent jurisdiction may need to consider is the ‘habitual residence’ of the child, given the long-standing ‘policy’ that substantive welfare determinations should be made in the court of the child’s ‘native country’ (Re L). He was not saying that it was necessary to determine the children’s ‘habitual residence’ in order to

establish a jurisdictional foothold for making the order sought. I turn then to the Grounds of Appeal. It is convenient to take Grounds 1 followed by Ground 4; these grounds address the asserted principal judicial error and its possible consequences. In my judgment, Mr Gratton and Ms Baker have made good their submission that the Judge gave undue prominence to the issue of habitual residence in her judgment; she allowed herself to be distracted by the technicalities of the 1980 Hague Convention, and ended up over-complicating the determination of this application by reference to this core concept. In fairness to the Judge, it seems highly likely that she was led along this path by counsel then instructed (see §14 and §22 above). While there may have been some reason for her to consider the issue as one of the range of relevant factors in her overall welfare analysis – per Re NY above – it did not warrant the ‘primary’ status in her judgment which she gave it. Illustrative of the errors which I have identified in the Judge’s approach was her reliance at [69] of her judgment on section 3 of the FLA 1986 (see §24 above). This is, for a number of reasons, out of place. Section 3 FLA 1986 had no, or no material, relevance to this application. Had the father sought a specific issue order under the CA 1989, the court would have had jurisdiction to make such an order based on the Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) children’s presence (sections 2(1)(b)(ii) and 3(1)(b) of the FLA 1986). As the claim had been brought under the court’s inherent jurisdiction, the FLA 1986 would have endowed the court with jurisdiction but only if an order had been sought which “gives care of a child to any person or provides for contact with, or the education of, a child”. That was not this case (see by analogy Re NY at [29]). Jurisdiction was however exercisable either under the FLA 1986 (see section 2(3)(b)(ii) FLA 1986) because of the summary nature of the proceedings: i.e., “the child concerned is present in England and Wales on the relevant date [i.e., the date of the application: section 7(c)

- (i) FLA 1986] and the court considers that the immediate exercise of its powers is necessary for his protection”, or under the common law on the basis of the children’s physical presence in this country (see again Re NY at [29]). Moreover, the Judge’s summary at [23] (see §23 above) of her approach to the issue of jurisdiction is both confusing and misplaced. She was further wrong to consider London Borough of Hackney v P as being of ‘significance’ to this case (see again §24 above); this judgment was specifically concerned with the relevant date for assessment of habitual residence under Article 5 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. That convention had no application here. 64. However, the Judge’s examination of the evidence relating to habitual residence, while directed to the wrong legal concept, was not without its value. ‘Home country’ and ‘habitual residence’ will not necessarily be the same, but the Judge’s findings of fact about the children’s situation as they had moved between Nigeria and England did engage an appropriate comparison of the “degree of connection of the child[ren] with each country” ([33] Re J: see §54 above). In this regard I accept Mr Tyler’s submission that the Judge’s findings directly informed an alternative determination, namely the identification of the children’s ‘home country’.

65. Within the welfare review, the weight to be attached to ‘home country’ will vary depending on the individual facts of the case. Thus, in the case of an international family, such as this one, the notion of ‘home country’ may be less significant as a factor in the welfare review than it would be for a family which had otherwise never left these (or indeed other) shores. The Judge concluded that Nigeria had become the ‘home country’ where the children had settled, and it followed that it would be better for any dispute about their welfare to be determined there, directly corresponding with Baroness Hale’s remarks at [32] of Re J. 66. Insofar as the Judge had apparently been distracted by the concept of habitual residence, I am nonetheless satisfied that she did not apply any presumption or quasi- presumption in favour of the children’s return to Nigeria which – had she done so – may well have signalled an erroneous application of the philosophy of the 1980 Hague Convention, and in all probability vitiated her decision. Furthermore, although she had set herself the task of determining whether the mother’s removal from Nigeria was ‘wrongful’ (see §14(ii) above), in fact she did not consider the evidence by reference to this concept, nor did she make such an adjudication. Indeed, the Judge correctly referenced (and cited extensively from) the relevant judgments in Re J, Re NY, and Re A and B all of which emphatically steered her towards a best interests outcome. Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) 67. 68. 69. 70. 71. Reading the judgment as a whole, and notwithstanding the error in approach on habitual residence, I am satisfied that the Judge’s decision to return D and A to Nigeria was based upon a clear finding that it was in their best interests to be returned to the country where they had ‘settled’, and not because the welfare principle had been superseded in her overall evaluation by her finding on habitual residence. She expressed her conclusion repeatedly and convincingly by reference to the “best interests” of the children ([105], [116] and [121]). On this basis, Ground 1 fails. It is logical to consider Ground 4 next, to analyse whether the erroneous focus on habitual residence had contaminated the Judge’s overall welfare review. The Judge conducted her welfare review by explicit reference to section 1(3) CA 1989 (see §34 above). Although the Judge described herself as obliged to consider the welfare checklist (this was not, self-evidently, an application brought under the CA 1989, therefore no such unqualified obligation existed), she was nonetheless right to do so: see Re J at [38] (the court “looks at the child and weighs a number of factors in the balance, now set out in the well-known ‘check-list’”), and Lord Wilson’s comments about this in Re NY at [49]. I have reprised in outline some of the key judicial findings relevant to ‘home country’ and welfare at §§34-39 above. It will be seen from those findings that the Judge was clear that after December 2023 England had ceased to be the children’s ‘home country’ (as that is used per Baroness Hale in Re J at [33]); at the time of the judgment their situation in England was assessed by the Judge as “precarious” and they were “unsettled” (see §37 above). The Judge was equally clear that, for the reasons which she set out in her judgment (see the extracts which I have quoted at §25 above, paragraphs [101], [103], [104], at §33, paragraph [94], and §34), by June 2024 the children were well “settled” in Nigeria. I reject Mr Gration’s challenge to the Judge’s neglect of the issue of ‘likely effect of change of circumstances’; the Judge specifically directed herself as to the need to consider this very issue (see [101]) and made clear that the findings

which she had made throughout her judgment “form part of that analysis and assessment”. In undertaking that assessment, the Judge took particular account of what she described as the ‘unusual situation’ with which she was faced: that the father had not been the primary carer of the children, having lived and worked abroad for many years and that neither parent saw their long term future as being in Nigeria ([108]). I further reject Mr Gration’s challenge that the Judge had conducted a ‘linear’ analysis; I am satisfied that the Judge identified positives and negatives in relation to the children’s situation in both jurisdictions, ultimately concluding that the children’s best interests were met by their return to Nigeria. The Judge was obliged to consider the differences between the legal systems in the two countries (see Re J at [39]). In this case, she had commissioned and obtained an expert report on Nigerian law, from which she drew in her judgment, and was thus able to draw comparisons with the domestic law. The Judge was also obliged to consider whether the mother would return with the children or not. It was her assessment that the mother’s stated intention not to return was ‘tactical’, a finding which she was entitled to make on the evidence. Although not specifically referenced in the judgment, she may have had in mind the then very recent judgment of my Lord, Peter Jackson LJ in Re R (Child Abduction: Parents’ Refusal to Accompany) [2024] EWCA Civ 1296; [2025] 2 WLR 141 at [36]: Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) “The court will ... make a reasoned assessment of the degree of likelihood of the parent not returning. Relevant considerations will no doubt include the overall circumstances, the family history, any professional advice about the parent’s health, the reasons given for not returning, the possibility that the refusal is tactical, and the chance of the position changing after an order is made”. 72. 73. 74. 75. The mother had no objectively reasonable grounds to refuse to return to Nigeria. Her allegations against the father and his family had been dismissed by the Judge, after hearing the evidence of all key parties involved. The mother was actively engaged in proceedings in Nigeria. The Judge did not contemplate a change of primary carer, because – on her finding – the mother would return with the children. As Baroness Hale said in Re J at [40]: “The courts are understandably reluctant to allow a primary carer to profit from her own wrong by refusing to return with her child if the child is ordered to return.” For these reasons, I am satisfied that the welfare review was sufficiently thorough, and the appeal based on Ground 4 fails. I turn to Grounds 2 and 3. The Judge amply displayed her awareness of the challenges faced by vulnerable parties/ witnesses, the caution required in fact-finding in private law proceedings, and the need to assess the quality of evidence generally, as a backdrop to her determination of the domestic abuse issues. Having done so, the Judge conscientiously addressed the mother’s complaints of domestic abuse. It was open to her on the evidence to reject the mother’s allegations which she tried; she emphatically did so, and no challenge is raised in this appeal in that regard. Although, strictly speaking, PD12J FPR 2010 does not apply to applications under the inherent jurisdiction (see paragraph 1 PD12J), in practice it will always be treated as applicable. Indeed, the father’s application for the children’s return could have been made as an application for a specific issue order (see Re NY at [28]) to which PD12J would have applied, and as Lord Wilson said in Re NY at [47] (and see also [50]): “[47] Where an

application for the same order can be made in two different proceedings and falls to be determined by reference to the same overarching principle of the child's welfare, it would be wrong for the substantive inquiry to be conducted in a significantly different way in each of the proceedings". 76. I have proceeded, therefore, as did the Judge, on the basis that PD12J FPR 2010 applies without qualification to a case such as this. I nonetheless conclude the Judge was not wrong to accept the parents' agreement that it was not necessary for her to conduct a fact-finding of the allegation of rape and sexual assault. I say so for the following reasons. 77. First, as in all welfare decisions, the extent of the court's inquiry will depend on the specific facts of the particular case. PD12J FPR 2010 does not require every Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) allegation of domestic abuse to be tried. The Court of Appeal in Re H-N [2021] EWCA Civ 448; [2021] 2 FLR 1116; [2022] 1 WLR 2681 ('Re H-N') was clear about this, dedicating a central portion of its judgment to the question of the necessity of holding fact-finding hearings in family cases and their scope. I have in mind Re H- N at [35]-[40] and specifically what was said at [37]: "iii) Careful consideration must be given to PD12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved." 78. 79. This point was repeated and underlined in K v K [2022] EWCA Civ 468; [2022] 1 WLR 3713 at [8] ('K v K'). The passage of the judgment from Re H-N quoted in §77 above draws from paragraph 17(d) of PD12J FPR 2010 which makes clear that in deciding whether and if so to what extent to determine a specific issue of abuse, the court must consider "whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed". I am satisfied that the Judge here faithfully applied the terms of PD12J FPR 2010, and the approach advocated by this Court in Re H-N and K v K. Secondly, in determining whether to conduct a fact-finding enquiry, the court must take into account the views of the parties (paragraph 17(a) of PD12J FPR 2010). In this case, the parties (both represented by experienced counsel; the mother by counsel who in the Judge's finding fulfilled her task "with skill and care" [19]) indicated that they did not require the Judge to try these two specific allegations. The Judge recorded (at [33]) that the mother's focus was on the trickery of the family in luring her to Nigeria, "and then their behaviours once she was there. She relied upon the abusive nature of the paternal family as being relevant to best interests decisions" (emphasis added). In this regard, the Judge was clearly not limiting her consideration of relevance simply to "the father's time with the children", a phrase which featured in this context elsewhere in the judgment, on which Mr Gratton focused. While I do not accept the father's submission (see §52 above) that by not pursuing the allegations of rape and sexual abuse they were no longer 'disputed' (as that term is used in paragraph 16 PD12J FPR 2010), the Judge was right to afford the fullest respect to the mother's wish not to pursue the specific allegations of rape and sexual assault. After all, this was not a situation in which a complainant was abandoning altogether a case based on domestic abuse, possibly for unsound reasons. Indeed, had the Judge rejected the mother's wish not to pursue these specific sexual allegations, and had she insisted on hearing them, this decision may in itself have been challengeable for other

reasons.

80. Thirdly, it was incumbent on the Judge to have regard to the overriding objective of paragraph 1.1, 1.2 and 1.4(2)(c)(i) of the FPR 2010, namely the court's resources and the proportionality of this specific enquiry. The final hearing had already stalled more than once; the time available for the final hearing had, for other reasons, been eroded. Further delay in concluding these proceedings to allow for these additional contentious matters to be litigated was not in the children's interests (see *K v K* at [42] and section 1(2) CA 1989). It is important for judges to hold firm to the notion that Judgment Approved by the court for handing down. *Re O (Summary Return: Non-Convention Country)* 81. 82. 83. "every fact-finding hearing must produce something of importance for the welfare decision" (*Re H-D-H* [2021] EWCA Civ 1192; [2021] 4 WLR 106 at [21]), and use the court time available as efficiently as possible. Fourthly, with the benefit of our retrospective view, we can see that the mother was fundamentally disbelieved on all of the allegations of domestic abuse which the Judge did try; the Judge had further found the mother's assertions that the paternal family had assaulted the children to be "wholly untrue". These clear findings offer an inauspicious basis on which this Court could or should assume that, if the Judge had tried the two specific allegations which the mother did not wish to pursue, the mother's position in the case would have materially improved. Insofar as there had been any independent assessment of these allegations by the police, their view (as the Judge knew) was that there were "differences between the accounts [which the mother] provided" to them of the key events, as a consequence of which a decision was made not to refer the case to the Crown Prosecution Service. Finally, Ground 5. It is clear that the mother had instructed solicitors, Burnham Law, in late July 2024. Burnham Law had the benefit of a public funding certificate. Between July and December 2024, the mother, through her solicitors, filed and served three detailed witness statements which together with exhibits run to over 70 pages; she filed a schedule of allegations against the father. She filed and served written evidence from a supporting witness. However, in failing to secure her representation for the scheduled final hearing in December 2024, there can be no doubt that Burnham Law failed in their professional duties to the mother, which led to the wasted costs order against the firm. The wasted costs order was founded upon the following key finding (at [58]): "I find that [the solicitors firm] were negligent, in that they did not act with the competence reasonably expected of ordinary members of the profession in the preparation of this case for the 3-day hearing and in their failure to both instruct counsel and enquire whether counsel was available to be instructed. I further find that it was unreasonable of Burnham Law to expect counsel to 'instruct' new counsel to take the case when she was not able to". I accept that deficits in case preparation, particularly in relation to the collating of evidence and drafting of statements, and/or the provision of bad legal and litigation advice, could leave a party exposed to challenge and criticism at trial, especially in the unprotected environment of the witness box. But in my judgment that was not the case here. The mother's written evidence, set out at length, was thorough and detailed. Importantly, she attested to its accuracy at the commencement of her oral evidence. The numerous internal

inconsistencies in the mother's oral and written evidence, the inconsistencies between that evidence and other credible evidence, and her unfounded allegations against the paternal family, all of which were exposed through cross-examination, could not in my judgment be laid at the door of her former solicitors. 84. The Judge, having properly directed herself as to the assessment and weight of relevant evidence and the impact of lies, made a range of adverse credibility findings against the mother (see §31 above). These findings, which were not challenged on Judgment Approved by the court for handing down. Re O (Summary Return: Non-Convention Country) appeal, were well-supported by illustrations which the Judge took from the evidence, and cannot be in any sense attributable to any failings in the preparation of the case on the part of her solicitors. In the circumstances, Mr Gration has failed to make good his submission that the proven negligence of the solicitors caused any unfairness to the mother in the content or presentation of her oral and written evidence and/or in the preparation of her case more generally. Therefore, this ground also fails. Order 85. 86. For the reasons set out herein, and as earlier indicated, I would dismiss this appeal. Subject to my Lords' views, I would propose to direct that the stay of paragraphs 15, 16, 17, 18 and 20 of the Order of 21 February 2025 be lifted. A new timetable will need to be drawn up to give effect to the return of the children to Nigeria. Their return should ideally be achieved within fourteen days of the date of hand-down of this judgment. I will leave it to the good sense of leading and junior counsel instructed in this appeal, at least in the first instance, to agree the detail of the arrangements, and prepare an order for our approval. Lord Justice Stuart-Smith 87. I agree. Lord Justice Peter Jackson 88. I also agree.

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