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Neutral Citation Number: [2024] EWFC 180 (B)

IN THE FAMILY COURT

The Liverpool Civil & Family Court
35 Vernon Street, Liverpool, L2 2 BX

Before:

His Honour Judge Sharpe

B E T W E E N:

A MOTHER

Applicant

-and-

A FATHER

Respondent

RE J (A Child)(Relocation)

The Applicant appeared in person

The Respondent appeared in person

Hearing dates: 10 May 2024

This judgment was delivered orally on that date

but later prepared in written form and handed down on 3 June 2024

Approved Judgment
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Names

1. Following the handing down of this judgment I invited the parties to consider whether they had any objections to its publication in an anonymised form. None were received. Accordingly an anonymised version of this judgment is now published in which the names of individuals have been changed and any other identificatory information modified to protect the privacy of all those involved, not just the parties. In doing so no discourtesy is intended to any person referred to below.

Introduction

2. It is the experience of this Judge that applications seeking permission to remove a child permanently from the jurisdiction involve some of the most difficult judicial decisions which fall to be made in the Family Court. That may seem a surprising statement considering that the general diet of a judge dealing with public law cases often involves ordering the permanent separation of a child from their birth family with the real possibility, if not probability, that those parents may never see that child again. Permission to remove from the jurisdiction permanently will not usually be granted unless arrangements to maintain that relationship are first proposed by the parent who wishes to remove the child and then rigorously examined by the court to assess their practicality and effectiveness in upholding that existing relationship as well as the genuineness of the intent behind them. The relocated child is still going to be able to speak with and see the other parent, still spend time with them on a recurring basis and so each can remain involved in the other's life. Furthermore, the connectivity offered by the modern smartphone, tablet or laptop now mean that a child settled even in a far corner of the globe is no longer as isolated from the left-behind parent as once was the case and air travel remains, at least for the next couple of decades, an option which can effectively shrink the distance between parent and departed child.
3. However public law cases which result in a permanent separation usually involve clear evidence of parental failure, be it neglect, injury, emotional harm or a combination of other deprivations inflicted or allowed by that parent upon their child. The reality is that a decision to impose permanent separation is only made because of harm, whether actual or likely, and where that outcome is necessary to further the child's welfare. What is a harsh decision in its effect is not always a difficult decision to make.
4. The same is not so in applications for the permanent removal of a child from the jurisdiction. In these cases there are usually two capable, thoughtful and caring parents who have strong, deep relationships with the child, are committed to them, are caring for them and have done nothing, certainly in terms of causing any harm to their child, which could possibly warrant the loss which a removal will bring. For despite the availability of cheap flights and regular scheduled services to almost anywhere in the world, despite the advent of the smart phone and the tablet with their free video calling apps and the instantaneous communication which is one of the (few) benefits of social media, the granting of an application to permanently remove a child from the jurisdiction inevitably results not only in a separation between the child and their now absent parent but creates a detachment from one to the other. The child is now immersed in a world to which the left behind parent has only limited, if any, access. The people that child will meet, the friends they will make and the adventures and tribulations they will experience can be learned of but not fully shared in. A once strong and close relationship will inevitably change as the child builds a world in which their now absent parent is far from the centre.
5. Balanced against that is the understanding that change is a part of life, that people have the right to make decisions about their own lives, to move forward and move on from their past, to embrace opportunity and to make the most of them not only for themselves but for their children too. More often than not a parent who is making an application to remove their child has done so only after the most anxious thought about the benefits and detriments which such a move will have upon not only their child but on the wider family of whom that child is a part. For the child

to move away means also leaving behind not only the other parent but also their friends, their school, their cousins and grandparents and all the places that they know. It is a huge disruption to what may have been working well and which has contributed to that child to thrive and, as importantly, to be happy. No responsible parent would inflict that degree of change and disruption upon their child without taking a very hard look at the pros and cons to reach a balanced conclusion as to what is in their child's best interests.

This case

6. I set out the above to better explain the issues which are posed when adjudicating upon applications to remove a child from the jurisdiction and give some context to the situation which was before me in relation to a child whom I shall call John (not his name). It was the reason why, having heard the Cafcass Officer and each of John's parents, both of whom very effectively represented themselves before me and did so with a courtesy, sensitivity and civility towards each other which reflected well upon them both, I rose to reflect upon all that I had read and heard. It was the reason why that period of reflection extended far beyond my initial indication as I genuinely wrestled with the many advantages as well as disadvantages which each potential option for John's future offered. Minutes turned into hours before I could be clear as to my decision.
7. Having finally concluded my deliberations I explained as clearly as I could to each parent but particularly the applicant, John's mother, why I was refusing her application. Appreciating the magnitude of my decision and the fact of her being both unrepresented and unsupported in the courtroom when I delivered my ex tempore judgment I indicated that I would prepare a written version to enable her to better understand how I had applied the law to the evidence before me. This is that written decision.

Background

8. John is a child of primary school age. He lives with his Mum and spends most of each weekend with his Dad. At home with his Mum also lives her partner and John's older sister, Jane (not her real name). Jane is older than John by several years and a different stage of her education. But John also lives with his Dad. He may spend less time in the company of his father but John is not a visitor to his Dad's house, he is a fully integrated member of the family who live in that home. When with his Dad, John also lives with his Dad's partner and Sally, his baby sister (not her name). The reality is that John is at home wherever he is and whomever he is with. This was captured well by Ms Youds, the Cafcass Officer, in her report where she wrote of 'the homes John shares with both his parents.'
9. That happy situation has been built despite the difficulties which lead to and followed from his parents' separation. Mum and Dad met in 2006, married in 2007, separated in 2018 and I think were divorced in 2020. Although there were problems between the parents following the separation, Mum, to her credit, did not allow them to impact upon the relationship their children enjoyed with their father. Those events have no impact upon life in 2024 and therefore no weight in my deliberations about this application. The breakdown of a marriage and a separation can be difficult and, driven more by emotion than rationality, people can sometimes act in a way which does not reflect their normal nature. In this case Dad has clearly recovered his equilibrium and the parents' mutual courtesy towards each other in the courtroom, itself a pressurised environment, properly reflected their true natures and quality as individuals.
10. As a consequence of the guidance and stability each parent, but particularly Mum, was able to offer at that time John and his older sister appear to have been able to bear the fact of parental separation and divorce, each a traumatic event which could easily destabilise a child less well emotionally secured, as well as the subsequent re-partnering enjoyed by each parent and, in the case of Dad, expanding his family. Although I have heard from neither parent's partner nor

received any written evidence from either of them Ms Youds has had the opportunity to understand how John perceives each of them when she spoke with John in their respective homes. It was clear from her report that John spoke well of each individual and has a good relationship with them both. I am in no doubt that John does not lack for people who love him, care for him and want only the best for him. In that respect, as in many others, he is far more fortunate than most children who are the subject of applications to the Family Court.

11. This settled state of affairs was only disturbed when Mum informed Dad that she and her partner had decided that they wished to move to the Emirate of X, in the United Arab Emirates. Following the parents' separation Mum has qualified as a teacher and successfully forged a new career for herself. In his own evidence Dad was clear that Mum had always been someone who worked hard and sought to better herself in a positive way. Bill (not his real name), Mum's partner, also works in education and the couple had identified that career prospects looked promising for them if they were to move to teach in one of the many international schools which have been set up in country X. From her written evidence Mum appears to have had this goal in mind, at least as a possibility, for some time. In her first statement Mum was frank that the decision to relocate to X had been *'a carefully considered and well-thought process since the commencement of my PGCE'* some years before. That view was buttressed by an exhibit attached to Mum's first statement which was a quotation for health insurance provided by a company which describes itself as a leading health insurer in X and is costed in the local currency. The quotation carries the date of 19 February 2023.
12. Whenever that seed first planted itself a very significant step forward occurred on 26 October 2023 when Mum received an offer of employment from such an international school as a teacher of primary education. On the same date Bill received a similar offer. In each case the respective employment offers are for a period of two years but with an auto-renewal for a further period of two years. For the sake of completeness I should add that, having secured those initial job offers both Mum and Bill appear to have received supplemental offers of additional professional responsibilities. Whilst the initial period of employment is not lengthened by those additional responsibilities, albeit the salaries were increased, their willingness to either seek and/or accept enhanced roles illustrates the degree of commitment being given to this prospective move abroad.
13. It is not clear when Dad was first informed about Mum's plans to move abroad but by 20 November 2023 Mum had filed her application for a specific issue order and sought an urgent hearing citing the emotional impact of the situation now being faced. It is reasonable therefore to assume that somewhere between late October and mid-November Dad had not only been informed about the idea but had offered a negative response to the proposal that John leave for X.
14. As the proposed relocation involved a country which is not a signatory to the Hague Conventions the matter was allocated to the Circuit Bench and then listed before me as a Judge with experience of cases involving non-Hague Convention state relocations. Notwithstanding the fact that X is not a signatory to the Hague Conventions the facts of the case did not suggest this to be a case in which a real focus should be upon a risk of non-return from a non-Hague Convention country. Neither parent in this case is a citizen of X nor has ties to it in terms of origins, culture, faith, established connections there nor available financial resources therein. The issue in this case is about the welfare benefits of a move and not the risk of a non-return. For that reason, as well as reasons of cost and time, no direction was considered necessary to obtain an expert report on the legal framework in place in X, notwithstanding the authority of *Re R [2013] EWCA Civ 1115* as to the necessity of the court having the benefit of expert evidence in such applications. In my judgement such a direction in these circumstances would have been at odds with the Overriding Objective to deal with cases justly, expeditiously and proportionately.
15. What was important was ensuring that the right information was available to best inform the decision-making which would have to be made. At the initial hearing before me in December 2023 it was clear that each parent was minded not to engage professional legal advisers, despite my inviting them to give serious consideration to such a matter, and therefore it was necessary to ensure that each, but particularly Mum, properly set out their case in a comprehensive manner to

fully detail the proposal as to where and how John would live, be cared for, be educated, spend his time and, most importantly, maintain his relationships with those he would have left behind. Mum was also clear that there was a critical time-factor involved as she understood that necessary formalities for the successful immigration into X had to be completed by 1 March 2024 if all matters were to proceed so as to ensure she and Bill could start their proposed new employment on their contracted date later that summer.

16. This created an immediate difficulty as the usual period of preparation for a Cafcass report in these courts is 14 weeks. That would not only take matters beyond 1 March 2024 but extend the uncertainty and the worry for all involved. In an attempt to drive the litigation forward and to ensure that the decision with regard to whether John should relocate was taken purely on the basis of welfare and neither unfairly rushed to accommodate an administrative date nor effectively answered by a failure to be able to comply with that date if it rendered Mum entire enterprise moot I directed the preparation of a Cafcass report which gave particular focus to John's wishes and feelings. I understood from Mum's submissions that John was fully aware of his mother's plans and in favour of them. Dad was less certain that John was sure in his own mind of his preferred outcome but accepted that he was fully informed about them. It was assumed that a more focused report could be delivered within the usual period of 14 weeks.
17. In fact this was not the case. For reasons which need not be dwelt upon it was not possible for Cafcass to provide the proposed report in the preferred timeframe. Having given those directions I was informed by Cafcass that their view was that such matters required a broader welfare analysis and that such a wider report could not be prepared within the timescales I was inviting. The net result, despite the best efforts of all involved, was that the date for the final hearing had to be moved back to accommodate receipt of the Cafcass Officer's report. The report, when received, whilst ostensibly focusing upon the views of John, attempted to look further and wider than the wishes and feelings of the child and although the welfare checklist was not expressly set out or even mentioned within the report I was assured in her oral evidence that Ms Youds had reflected upon John's welfare in a rounded sense in forming her recommendation. I am grateful to her for her work.

The final hearing

18. At the final hearing again neither parent was professionally represented and I was not aware whether either had sought any professional advice since the previous hearing. Each had however filed supplementary statements following receipt of the section 7 report which, when taken with their initial statements, had enabled both parents to have two opportunities to set out their different arguments. I have read with care their respective proposals and comments upon each other's evidence.
19. Before turning to the evidence of the parents I heard first from the Cafcass officer, Ms Youds.
20. Ms Youds had undoubtedly taken time and trouble to speak with John and had done so at the home of each parent to ensure fairness as well as satisfying herself as to the caring arrangements for him that were being provided by each parent. In that respect Ms Youds had no reservations about the quality of care John received from each of his parents nor their ability to care for him in the absence of the other.
21. More importantly Ms Youds was able to converse with and observe John and spoke positively of his maturity, his emotional intuition and the depth of his thinking over the issue of a potential move to X. In both his homes John expressed himself to be in favour of moving to X, he rattled off positive comments about the place, not just in general terms (such as the weather and the famous architecture) but also in relation to what he thought life would be like for him. In particular he said that he liked the structure of the school day and the longer length of the school holidays. Ms Youds paid tribute to the fact that John did not just view matters from his own perspective but had considered the benefits to his mother and Bill. It was Ms Youds' view that

John's was not the voice of a child who had given no thought to the matter, had simply swallowed the view of a parent or who had been directly and deliberately influenced by someone.

22. However what was equally clear from Ms Youds' evidence was John's understanding of the basis of this move. John understood that he would be living in X for two years. There was no indication that he understood that this might be either a permanent move or one that even if it was not permanent could be of an indefinite duration. Further, whilst recognising and acknowledging the losses he would suffer in terms of father, family, school and friends, John was clear that he would be seeing his father frequently by reason of accessing social media on the new smartphone he would be receiving, that he would be returning regularly to this country both of which would be in addition to there being opportunities for his father to visit X. In John's mind X was a temporary sojourn during which he would experience many positives from all that he had been made aware about that country but which would be punctuated by regular return trips to England, frequent access of social media and occasional trips to X by his father. That was an integral part of his understanding in my judgment.
23. Also of importance was John's relationships with his two sisters. John loves both of his sisters but is particularly close to his elder sister, Jane. This is a very important relationship to John and one that is reciprocated by his sister. That is readily understandable. The children have jointly experienced much, not all of which has been positive but all of which has been borne together, and they have been able to rely upon each other for comfort, solace, companionship and a shared experience which has served to bind them to each other. This close relationship was apparent to Ms Youds in how each child spoke of the other and which seemed unaffected by the age difference between them and the different outlooks and agendas commonly expected of children of their different ages and accompanying maturities. It would not have been surprising had each been going through a phase when they barely acknowledged each other, not unknown for siblings at such different points in their development. Instead there was clear evidence of a real connection between the two, of warmth, care and thoughtfulness.
24. Although Jane was initially included within her mother's application for permission to remove by the time of the first hearing Mum had arrived at a position whereby she both understood and accepted that Jane had decided she did not wish to move to X but wished to continue her education in England. Jane was therefore removed as a subject of this application but that change in status for her in no way diminished her importance to John nor moved her outside of the circle of interest for the Cafcass Officer. Ms Youds took the time to speak with Jane about John, their relationship and her understanding of him and his own view of the proposed move. What Jane made clear to Ms Youds was not only the sense of understanding she has of John's views but her confidence in both him being honest with her and her being able to discern what he truly means.
25. John's younger sister, Sally, is closer in age to John than Jane is to him but their relationship is very different given that she is not yet two. Sally's birth has offered John the opportunity to be a big brother to his little sister, an experience which he appears to enjoy and from which each child draws benefit. By reason of her age John's relationship with Sally is far more dependent upon the interaction afforded by proximity than indirectly through social media or even videocalls.
26. In reflecting upon her investigations Ms Youds considered that this was a finely balanced situation and she could see merit in the position of each parent. It was Ms Youds' view that there was no decisive welfare issue which should determine the outcome one way or another. In her words Ms Youds considered that 'when all is said and done John already has a great life, surrounded by people who love him, including key attachment figures...John is flourishing in all aspects of his life.' In her conclusion Ms Youds recommended that permission be given. What appeared to tip the balance in favour of relocation rather than refusal was her view that John had thought about this matter and arrived at his own conclusions and then told people of his views, even if it was not what they wanted to hear. She further expressed the view that John would be disappointed if he was not allowed the opportunity to move to X, which he would perceive as missing out by not now being allowed to go.

27. However in recommending that permission should be given to Mum to remove John from the jurisdiction Ms Youds was clear that it should be for a limited period of two years. She confirmed this in her oral evidence.
28. Mum had prepared two very full statements in support of her application and had clearly taken on board the directions I gave at the first hearing about ensuring there was practical information about the proposal. It was clear that much thought had been given to what was being asserted and Mum left no stone unturned in her focus upon the benefits to John of living in X and of being educated at the school at which both she and Bill had been offered employment. That educational establishment could not have been presented with greater positivity or polish.
29. What was equally clear from Mum's evidence was how much thought she, and no doubt Bill too, had given to their decision to work abroad, how keenly each wanted it and how firmly Mum believed that it was an opportunity for all of them, including John, which was not to be missed. Even though Mum acknowledged that it might be the case that the move might not prove to be as promising as it presently seemed; that they may all return home after two years or even sooner, her evidence before me, as well as her written statements, gave the clearest impression that her sincere belief was that this was a move which she hoped would become a long term decision. Living in X was what Mum wanted as the future for the three of them and to return at the expiration of two years would indicate not that they had enjoyed a short term experience but that something had gone wrong because they were not staying. Insofar as Mum was unable to say that she wished to secure a permanent removal for John it was only because her contract was time limited. What Mum really sought, as she said in her evidence, was not a limited term permission for two years but something at least indefinite, if not permanent. Mum was concerned that before two years had passed it would be necessary to go through this exercise all over and she considered that this would not assist anyone. Better, in her view, to allow now for the possibility that X would be a success and could continue without further court involvement.
30. In relation to contact Mum was very clear that her plan was that for the first year at least the family would return to the UK for the duration of each major school holiday and that upon their return John would spend the majority of that time with his father. This, according to Mum, was an increase in the time John currently spent with his father and would afford more than reasonable opportunities for father and son to retain and even develop their relationship. The costs of John's flights would be met by her notwithstanding that Dad would no longer have maintenance commitments once John had left the jurisdiction and so represent a significant saving to him.
31. In addition there would be frequent and, within reason, open-ended indirect communication which would allow John ample opportunity to share his new experiences with his father, Jane and, to such extent as she could comprehend them, with Sally too.
32. In support of these generous arrangements Mum submitted that she was retaining the home she and Bill owned in England and would not be trying to rent it out following their departure, so ensuring that it would be available to them and removing a disincentive to returning. Whilst she recognised the financial strain this would cause she considered that it made sense to hold onto the property at least initially whilst they settled in X and gave them a base for the extended periods they would be back in the UK.
33. Insofar as there was anything approaching a factual dispute between the parties it was in relation to the likelihood that these extensive proposals would be maintained at all and certainly beyond an initial period of 12 months. Dad was sceptical bordering on dismissive about longer term intentions and regarded these proposals as little more than persuasive window dressing for the benefit of this hearing. The reality, he suggested, was that once in X there would be a significant erosion of these promises either because they were never intended to be honoured or perhaps because continually returning to England for extended periods would conflict with the commitments, obligations and opportunities which would inevitably develop in X as both adults and child made friends, put down roots, involved themselves in the local community and wanted to do other things with their free time than simply get on a plane to England. Dad, whether through ignorance of the law or his perception of Mum, put little store in the effectiveness of an

English court order when a party was outside the jurisdiction and feared a future in which the focus became X-based and the importance of coming to England eroded rapidly. Mum was keen to rebut both of these points.

34. In terms of his own evidence Dad had filed two very helpful statements which raised a number of points.
35. Dad firstly challenged the necessity of this move. Without seeking to be dismissive of Mum's plans he categorised a relocation to X as being what she and Bill wanted for themselves but which Mum had worked hard to present as being as much about John too. Dad did not believe that John's preference for a life in X was as a result of being dragooned into that mindset. He did not regard John as a child who was simply speaking with his mother's voice. However John's views, he stated, were an understandable reaction to the novelty, the excitement and the adventure which X offered in contrast to simply more of the same in this jurisdiction in terms of his school and his friends.
36. Dad was concerned that the reality of relocation for John would only be fully appreciated after he had left and was having to cope with multiple absences: of friends, of school, of his sisters, of his wider family; all in addition to his father. Dad believed that John should not have to make a choice between everything and everyone he knew on the one hand and living with his Mum on the other. He was specifically concerned that a situation might arise whereby John, despite his best efforts and those of his mother and Bill to assist him, found himself not enjoying X, missing those who were now absences in his life and consequently being unable to settle. In that scenario Dad questioned whether it was likely that John would feel able to articulate any unhappiness or, even if he did, would actually be returned if it meant Mum and Bill having to sacrifice their dream move, of which they could well be making a real success, or his mother having to accept that she needed to separate from John?
37. In his evidence before me Dad posed an alternative possibility. Given that Mum and Bill had such high hopes for a future life in X it was his view that they should make their move and try it out during their two year contract period. If during that period John, who could travel out to X during school holidays when he could spend exclusive and dedicated time with his Mum, enjoyed X and could see how life was being lived there, what it would mean for him should he move too, then when the time came for him to move from primary to secondary school he could move to X. This, suggested Dad, would result in an altogether better choice because John would be both older and far better informed. Despite the chronological and practical benefits which this suggestion, at least superficially, offered Mum, her view was that she could not contemplate a separation from John and therefore despite any apparent logic it was not an option she would entertain.
38. In their evidence and submissions I was greatly assisted by both parents. Their cogency was exceeded only by the courteous way each parent dealt with a hearing which must have been an ordeal for each given all that was at stake. Each was a very effective advocate in their own cause.

The law

39. Although I explained the legal principles which underpin applications of this nature in the *ex tempore* judgment I delivered at the hearing I set out them out here to enable each parent to more fully understand the position.
40. The application before me is for a Specific Issue order, which is a form of order created by Section 8 of the Children Act 1989. In the absence of any existing Child Arrangements order it is the correctly framed application, the alternative procedural path being via an application pursuant to s.13, Children Act 1989 where the arrangements for a child are already governed by an existing order.
41. By reason of the fact that this is an application under the Children Act 1989 the following principles are automatically invoked by operation of the statute:

- a. The welfare of the child is the court's paramount consideration and to which all other factors must give precedence. This is in accordance with s.1(1) of the Children Act 1989 which is the governing legislation for an application for a Specific Issue order.
 - b. Delay is considered to be prejudicial to the welfare of the child.
 - c. There is an operating (but not irrebuttable) presumption that parental involvement will further the welfare of the child.
 - d. In identifying the best welfare outcome for a child regard should be made to the several factors set out in s.1(3), (a) – (g) of the Children Act 1989, commonly referred to as the 'Welfare Checklist'.
 - e. No order should be made unless to make one confers a positive benefit upon the child. The 'no order' rule is reflective of the importance of the concept of proportionality as an important aspect of family law to which further reference will be made below.
42. In addition to the above there has been considerable jurisprudence generated in this area of law. This is understandable given the high stakes involved, the frequent absence of any effective compromise for these types of disputes and therefore their being litigated through to an adjudication and the industry and ingenuity of legal (and judicial) minds in seeking to create pathways and frameworks by which to navigate these difficult cases.
43. Fortunately much of that jurisprudence is now properly a subject more for legal historians rather than current practitioners as the Court of Appeal has helpfully refined the applicable legal framework and made clear that arguments based upon the primacy of the reasonableness of the proposals of a mother, whether the existing situation for the child amounted to a shared care arrangement or even whether the motive for a move was a 'lifestyle choice' have been moved firmly to the edge of, if not beyond, the focus of the court. In short, what matters is welfare.
44. The most accessible exegesis of the law is still that set out in the judgment of Lord Justice Ryder (as he then was) in *In the Matter of F(A Child)(International Relocation Cases) DF & N B-F [2015] EWCA Civ 882*. In that case Ryder LJ reviewed the more recent jurisprudence and identified the critical principles from three authorities: *Payne v Payne [2001] 1 FLR 1052*, *K v K (Children: Permanent Removal from Jurisdiction) [2011] EWCA Civ 793* and *Re F (A Child) (Relocation) [2012] EWCA Civ 1364*. In his careful cross-reading of these three cases the following was identified by Ryder LJ as the correct analytical approach:
- a. The only principle which must be applied is that the welfare of the child is paramount, all other matters are secondary to that.
 - b. Relocation cases are highly fact dependent and the welfare evaluation will be rooted in the facts before the court.
 - c. Judicial guidance of the type which had been given in *Payne* was valuable but it was neither to be applied too rigidly nor treated as though it contained principle from which no departure was permitted. Such guidance went only to *how* the welfare evaluation might be conducted; it was not a substitute for that welfare evaluation.
 - d. It is immaterial whether a child lives almost exclusively with one parent, spends their time equally with both or has their time divided in accordance with a recognisable pattern which results in an unequal division as between each parent. The welfare of a child is not determined differently according to the existing arrangements for a child.
 - e. The parental responsibility held and exercised by each parent is not hierarchical, there are no major and minor rankings of parental responsibility as between two parents. Each is equal and worthy of equal consideration in respect of their proposals for their child.
 - f. Different, particularly conflicting, options for the future arrangements for a child must each be scrutinised individually to discern their merits and demerits and then also comparatively against every other proposed option so as to ensure that the best option was identified through a comparative analysis rather than a lineal exclusatory process. This

itself was not judicial guidance but merely a spelling out as to how to conduct the necessary global, holistic welfare evaluation which is required to ensure that the best outcome for the child is identified.

- g. An outcome for a child which results in a relocation to a foreign jurisdiction raises the possibility of a fundamental interference with the relationship between a child and a parent. Where that possibility is a likely consequence of the outcome which has been identified as the best for the child there needs to be reference to the proportionality of that interference. If an outcome involves an interference in the rights of the child and a parent, even if it is the best option available, does that outcome amount to a disproportionate interference in their human rights?

My welfare analysis

- 45. In order to conduct that essential welfare analysis it is necessary first to identify the competing options for the child. Before me in this case there were two: John either moves to X or stays in England. However if he stayed in England because permission was refused he might either move to live with his father, which is what his father wished to happen, or continue in his present arrangements of living with his mother during the school week in term time and spending time with his father at the weekends and in school holidays.
- 46. If permission was given John would depart for X with his mother and her partner and thereafter live there, either for a fixed period of time or possibly an indefinite period. He would spend time with his father and both his sisters on the occasions when he was flown back to this jurisdiction which would be during the principal school holidays and may, in addition, see his elder sister more frequently if she travelled to X during periods when John was there, most obviously half-term holidays. In between times John would be able to communicate with his family in this jurisdiction through a mobile phone; albeit given his age the frequency and length of those communications may be inversely proportional to each other (in short frequent but short) and may be dependent upon the time he has available and the extent to which other distractions begin to impact upon his willingness to chat with those who were left behind.
- 47. Alternatively permission would be refused and one of two possibilities would take effect:
 - a. Mum leaves for X without John in which case he would join his elder sister in moving to live with his father and therefore spend time with his mother in both X and England depending upon when he was not in school and she was in a position to spend time with him in England or fly him out to X.
 - b. Mum does not move to X in which case John could continue to spend the school week during term time with his mother and see his father at the weekends and during shared school holidays.
- 48. My focus is not centred upon what might happen if permission is refused but the welfare impact of going or not going. Mum is not bound to leave or to stay by reason of my orders, she is free to choose as she pleases.
- 49. Neither am I being invited to make wholesale changes to John's living arrangements even if I refused Mum's application. It was no part of Dad's case that even if I dismissed Mum's application John's welfare demanded that I then make a child arrangements order which radically altered John's otherwise settled arrangements. There is nothing wrong with John's present arrangements in the view of either the Cafcass Officer or each of his parents. But for the application to remove John to X there is no basis to make significant changes. Dad felt that he was a little restricted in the frequency with which he saw John and the Cafcass Officer had suggested that father and son might benefit from enjoying the full weekend together, from Friday after school through until Monday morning before school, rather than returning on a Sunday afternoon / evening up but that is the only additional change suggested other than determination of the X question.

The 'Welfare Checklist'

50. Section 1(3), Children Act 1989 states that 'in the circumstances mentioned in subsection (4) the court shall have regard in particular to...' and thereafter sets out what has long been known as 'the welfare checklist.'
51. The constituent parts of s.1(3) are not, strictly speaking, a checklist in the modern sense of being a list of tasks to be carried out in a sequence to ensure the correct performance of a safety-critical exercise (such as flying an aeroplane or performing surgery in an operating theatre) but a means by which there can be consistency and completeness in the otherwise discretionary and fact-specific task of identifying the optimal welfare of a child through the evaluation of evidence and at the same time providing an audit trail or record of that process. What is set out in each of the subsections are different factors which individually reflect matters of importance of and for a child and which collectively provide as close as can be achieved to what might now be referred to as a 360 degree view. It is important to remember that every child is different and every situation specific and even the groupings collected between subsections (a) – (g) are not intended to be complete and certainly not exhaustive. The Act itself requires a court to consider 'all the circumstances of the case' before requiring specific consideration of those 'checklist' factors.
52. The factors specifically identified and to which, by instruction of s.1(3) a court 'shall have regard' are: wishes and feelings; needs; the effect of change; personal characteristics; the actuality or potentiality of harm being caused; the capability of parents or other carers in meeting the needs of the child; the range of powers / statutory options open to the court.
53. For the sake of clarity I have set out the full subsections below and under each heading addressed matters which were relied upon in evidence before me.

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

From the evidence of Ms Youds I am clear that John has expressed that he wishes to move to X. His view is that this move involves living there with his mother and Bill for the next two years during which time he will be returned to England to spend extended periods of time with his father, sisters and wider family as well as, no doubt, his friends. He is aware of the proposed school and has expressed favourable views about what X can offer for himself as well as his mother and Bill. Ms Youds' assessment is that those views are his own, that he is not simply parroting his mother's wishes nor expressing a response which he has been persuaded to imbibe and then make his own. Whilst Dad does not directly challenge the authenticity of John's views, he believes that they cannot be founded upon experience but only aspiration and that they are firmly based upon a belief that the move is time-limited.

(b) their physical, emotional and educational needs;

John's physical needs are not an issue in this situation and will be unaffected by whether he goes to X or remains in England.

In terms of his emotional needs John has a strong attachment to all members of his immediate family, including his younger sister, Sally, with particular focus upon his relationships with his older sister and his mother. His relationship with his father is an important aspect of his life as well as being undoubtedly important to John himself. A move to X would separate him from the majority of his family, albeit preserve his tie to his mother who has been a daily constant in his life. A refusal of permission may separate John from his mother whilst preserving all of his other relationships. Either way John stands to suffer loss. In relation to the loss engendered by the separation from his elder

sister, Jane, it must be acknowledged that that is by reason of *her* choice and one she made knowing that John was intent on moving to X. Notwithstanding her own understanding of John's genuine desire to move to X and her own appreciation of the closeness of her relationship she has elected to potentially separate from him.

Educationally John is working well at school, meeting educational milestones and there is no issue with his own performance at school. Pastorally John appears to be settled and content in his present school, whilst there is an element of disruption amongst some of his peer group it is not so great a factor in his experience of school life as to demand a move or impact upon his own development. John would most likely cope and possibly thrive in the identified school in X as he would were he to continue in his present school. Whilst there is always the possibility that a child attending a school where their parent teaches can have a negative impact it must be recognized that the parent will know the school and the child's teachers more than well and be well placed to ensure the child thrives.

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

As referred to above the harsh reality is that John can only lose whether permission is given or not. It is as much a question of managing the loss and hoping that the benefits which will follow can outweigh that loss. John's departure would separate him from the majority of his family, all of his friends and all the places he has known. There will be a distance between him and those he has left behind which is not just measured in miles but more meaningfully in the infrequency with which there can be time spent directly in the company of those family members as well as the limits which will be in place which will mediate how he can enable those far away to share in his experiences in X. Those new experiences will start to feature with increasing importance in his life and space will be made for them where previously time and opportunity had been for those now far away. The result will be that important relationships will not end but they will change.

Alternatively, John would stay and retain almost everything he previously had except his mother, who might depart for X, or, should she choose not to do so, now have a mother who had previously been buoyed with optimism and hope for the fulfilment of an ambition which was so important to her and her partner but which, without John, had now to be discarded. It would be wholly unreasonable to expect Mum, in that situation, not to feel disappointed and even downcast. Whilst any discontentment would not be directed towards John it would be equally unreasonable not to assume that it will not reflect within the household and so John will be aware of the sense of loss she is enduring, possibly feel an sense of attribution regarding it, perhaps direct anger towards his father and may be even develop a sense of guilt that, but for him not being allowed to go, his mother could have achieved her dream.

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

In my view there is nothing in respect of any of these personalized characteristics which carry weight in the evaluation of John's welfare. John's age and gender do not lean towards a grant or refusal of permission. Neither does his background, in the sense of his history to date of being a boy growing up in Northwest England, render a move overseas unviable. Further, John's experience of parental separation and the subsequent development of each relationship with each parent through that prism simply confirms the importance of both his parents in his life and how well each has enabled him to adjust to that new reality.

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

John has not suffered any harm to date which should factor into this assessment. Insofar as there is a risk of suffering harm it is a possibility whether he leaves for X or does not do so as separations will occur, or disappointment will follow in the event that none does. Insofar as the consequences which flowed from the decision could be regarded as being harmful the more likely to amount to harm would be a chilling or dampening effect upon the relationships which John had with those left behind after he moved to X and the longer-term consequences if that happened. I do not consider that harm would follow were John to remain in England with a disappointed mother, Mum is too capable and able a parent to allow that to occur.

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

In respect of the provision of care for John each parent can fully meet his needs. Whilst Dad is skeptical of Mum long term commitment to contact, she can point to a track record of doing just that in the years since she and Dad separated. Whether the full promises made at the final hearing (each main school holiday and or the entirety of their duration) are capable of being sustained over a long term is a different issue but I have no evidence to base a conclusion that Mum does not intend to keep to that offer for the foreseeable future. I have no doubt that in the event that John was not allowed to leave but his mother did that Dad would ensure that John spent proper time with his mother both in X and in England. There is no indication that Dad does not appreciate the importance to John of his relationship with his mother and I was struck by the comment John made to Ms Youds when he told her: “My dad tells me that X is a beautiful country,...”. It can only augur well for John to have two such capable and child-centric parents.

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

The court’s powers are clear. I can make a Specific Issue order which enables John to leave as sought by Mum and, if appropriate, add a condition limiting that permission to a two year period as recommended by the Cafcass Officer. If I were not to time-limit the order I can make a Child Arrangements order which details the time John spends with each parent prior to his departure and which records thereafter the arrangements for future contact as one of the bases upon which permission was granted. If a condition of two years is included it would be appropriate to continue the Child Arrangements order through that period on the basis that absent a further application to extend the period or remove any future reference to an expiration point John would return to this jurisdiction and a new framework to govern his time would be both necessary and appropriate. In the event that permission was refused it would be appropriate to set out via a Child Arrangements order the basis upon which John’s immediate and future living arrangements were to be structured and to include within that order the necessary permission for John to spend time outwith the jurisdiction for periods longer than one month.

A comparative analysis of the competing proposals

54. In keeping with the precept given by Ryder LJ in *Re F* to undertake a comparative analysis of the competing proposals for the child (see paragraph 43(f) above) it is necessary to give specific consideration to each possible outcome for John.

A. Going to X

55. Were John to go to X it would not only be in keeping with his wishes and feelings but those of his mother and Bill as well. As referenced above, this is important to John and not purely because of

the indirect benefits to him of the adults enhancing their own opportunities. John told Ms Youds: “*The move to X is better for my Mum and Bill because the pay is better; this means I would get more opportunities. It is not just for me, it’s better for everyone.*” John recognised that the proposed move represents a personal desire of his mother and her partner. It is neither a purely selfish desire nor one taken in disregard of John’s views but a choice that is being made because it is seen as having the possibility of enhancing the quality of life for all of them.

56. Whilst in accordance with his expressed view John also sees this move to X as being only a temporary one for two years and with him enjoying regular if not frequent times when he will see his father and the rest of the family whom he will have left behind. I am satisfied that a court order made in this jurisdiction can ensure that the proposed schedule of contact is maintained notwithstanding that the person responsible for making it work thereafter is outside the jurisdiction and despite Dad’s scepticism on that point. If leave was given for a time-limited period it would add even more incentive to Mum to ensure that the arrangement was adhered to if it was likely to be the case, as she believes, that within that period she would be seeking to make the move abroad a permanent one. Compliance and co-operation have long been powerful arguments in determining whether a parent can be trusted to act in the best interests of their child.
57. Similarly whilst the move would separate John from the vast majority of his family and leave him, initially at least, somewhat isolated in X, the provisions for indirect contact could be monitored by Dad and the matter returned to court if there was any suspicion of a reneging not just from the commitment to return John to this jurisdiction three times per year but in the event that there was any perception of a restriction on the occasions when he could speak with his family via videocalls.
58. Whilst in X John would have opportunities to explore a different part of the world; to experience a very different culture, insofar as there were opportunities to move outside of the ‘western’ / expatriate lifestyle to which he would be exposed and to which he would relatively easily adjust; to travel with comparative ease in that region and so explore an important and vibrant part of the world and appreciate global diversity and so better prepare himself for a future in which he was able to embrace change, respect variety and appreciate situations beyond his origins. All of these could be hugely beneficial to a child.

B. Not going to X

59. If John were not to be allowed to go to X there is a reasonable likelihood, based upon her evidence, that Mum will not leave either. This is despite Dad’s suggestion that were Mum to move there without him John could visit regularly and so inform himself about X to make a far more informed choice as to his future location at a time when a change of school was necessary in any event.
60. The consequence of Mum not moving is that she may feel disappointed, unhappy and possibly even resentful towards Dad for his opposition to what she believes is a positive move for John as well as herself and her partner. However it is not the case that the unhappiness of a thwarted parent, even a parent with majority care, is of itself a welfare issue and certainly not one which, in isolation, should tip the balance. Insofar as this was an issue highlighted by Thorpe LJ in the guidance he set out in his judgment in *Payne* it is now recognised as only being guidance as to the proper conduct of the necessary welfare evaluation and not a stand-out issue itself. In any event as referred to above in my judgment even were Mum to feel unhappy with a refusal of permission there is no evidence upon which to base a conclusion that this would manifest itself in any negative manner towards John and certainly not anything likely to escalate to a situation of harm.
61. In any event it must be recognised that while Mum has asserted that she would feel a sense of regret at the loss both of the opportunity to live in X and to enjoy enhanced career prospects, that sense of regret would arise from her choice not to travel without John. It would not be a fait accompli, which would be the reality for Dad. Mum would at least be able to reconcile her sense

of regret with the knowledge that it was her choice not to leave and one that she was able to make for herself having balanced the considerations rather than it being imposed upon her.

62. Far more important in terms of welfare is the fact of the losses which would inevitably follow for John from a move to X and the extent of those losses. John, as acknowledged by Ms Youds, currently '*... has a great life, surrounded by people who love him...*' and the move to X, despite whatever potential it might offer, would only significantly upset all those arrangements which currently work so well for him. Separation from both his siblings, a parent, his school, his friends and his neighbourhood aggregates to a significant change and one which potentially could completely undermine all that John currently benefits from. Whilst change in life is inevitable, upsetting the apple cart in a dramatic and drastic way is not to be undertaken lightly, particularly when there is so much going right for a child which will be lost and may not be replaced.
63. If he does not go to X John will either move relatively seamlessly to live with his father, a place in which he already feels at home, and in so doing not only maintain his existing sibling relationships but in fact enjoy a hitherto unknown experience of living with both of them at the same time. Given Jane's age and her possible future plans the chance even for a few years of children living together is not to be regarded as unimportant. Even on that worst case scenario of his mother's departure he would be able to visit her relatively frequently as well as maintaining frequent indirect communication, both of which be bolstered by the fact that time with his mother would be specific to her unlike time with his father if and when he returned to England which would have to be shared amongst other competing commitments.
64. The alternative is that John would simply stay at home with his mother and carry on with his paternal relationship and all the other constituent parts of his great life. In this scenario of John staying put at least two of his options are attractive ones and the least attractive is far less likely to impact upon him negatively than his removal from all and everything he has previously placed store by.
65. Having considered welfare generally through the s.1(3) factors and then considered specifically the pros and cons of the competing options I have concluded that in this case permission should not be granted to allow John to be removed to X.
66. Without wishing to appear to be reducing complicated and delicate welfare evaluations to single simplistic slogans the phrase 'if it ain't broke, don't fix it' comes to mind.
67. I consider that the proposed move, for all the potential benefits which might be offered by living in X, represents a significant loss for John of many things in his life which are working well, which have enabled him to thrive despite the difficulties in his family life which he has had to endure and which could not be adequately protected by the move despite the possibilities offered by the ability to travel and the far-reaching developments in modern telecommunications.
68. In addition, in my judgment there is nothing in John's current arrangements which necessitate a change of this magnitude. John is not dependent upon a particular parent for his care who now has to leave the jurisdiction for personal or professional reasons. Mum is not in the situation of a person who moved to this jurisdiction for the sake of a relationship which has now failed and finds themselves isolated and without support absent that relationship. Neither is this a situation whereby Mum has rebuilt her own life through a new relationship with an individual who now must or should return to a country of origin or whose professional commitments require them to relocate in order to maintain employment which offers a particular quality of life.
69. The proposed move is driven not by any welfare-based reasons centred upon deficits in John's life but in the preference for Mum and her partner to advance their professional careers in X. That is not an improper nor insignificant reason to seek to relocate but it is important to identify that the driving force is not John's needs but his mother's wishes. I acknowledge that in making her case Mum is in no way callous as to her son's welfare and may well believe that this move would only be good for John but the reality is that it is a move which will cause loss and create change when there is no need for either.

70. Similarly, it cannot be argued that the changes which John would face are ones which are necessary by reason of any inadequacies in his current circumstances: he is not failing at school, he is not distanced from siblings; he is not relatively isolated from members of the wider family and specifically not enduring a distant or intermittent relationship with his father. There is nothing in John's circumstances which requires the change proposed and much which would be deleteriously affected by making it.
71. In not going John will not sustain the variety of losses which would inevitably follow from a departure and insofar as his mother's departure would undoubtedly create a loss for him that loss can be far more easily mitigated over the next two years and still leave the door open to allowing a change in the future when John would be in a far better position to absorb the changes which would then be experienced.
72. In going to X now there is, in my judgement, a very real possibility that important parental and familial ties will inevitably be undermined and therefore changed in a way which is unlikely to be positive over the remaining years of John's childhood and adolescence. Dad, in my view, is right to consider that his relationship with John will begin to wither on the vine. It will be crowded out by the reality of a boy living far away from his father and learning to live with that degree of separation. All the new experiences which would inevitably follow a departure will, just as inevitably, only serve to cement that reality of distance by decreasing his father's knowledge and awareness of his son's life and creating, to a not insignificant degree, a compartmentalisation of John's life into what he does where he lives, goes to school and engages with his friends and what he does when he spends time with his father in England. The two will become quite distinct and as John's centre of interests inevitably changes from England to X so he will move on from the life that he currently enjoys in which his father is present and engaged and instead move on to a life in which his father is a distant onlooker. That is not a change for the better, it is one which would have a significant impact upon this child's welfare and therefore one which requires clear, necessary reasons to justify it. In my judgement those reasons simply are not there.

Whether only a time-limited permission would make a difference to the welfare calculation?

73. The Cafcass Officer recommended that permission should be given but only for the two year period which John believed to be the plan. I have to consider whether the difficulties identified above would be mitigated by limiting permission only to a two year period and requiring all concerned to think anew in 2026 as to what should happen thereafter.
74. A two year, temporary permission would be in line with John's views and would ensure that the period in X was, at least in theory, regarded as no more than a discrete episode. By so doing it would emphasise the need for John to maintain his connections with this jurisdiction, to keep up friendships and to continue to look upon his current location as one with which he had a real connection despite being so far away from it. It would make clear that his relationships in England would be continuing through and beyond this two year period. Most importantly it would give force to the view that X was not the new home but rather the place he would be on an extended visit to for a period of time.
75. However there is a second and quite different interpretation of the operation of only temporary, time-limited permission which, with great respect to Ms Youds, has not featured in her analysis but which I consider would be more likely to play out.
76. Mum was admirably clear that she saw her contractual period of two years as a minimum commitment and without even having started in the new role she could see a real possibility of her and her partner wanting to stay for longer, either for the additional two years which her contract allows or even indefinitely. That is entirely understandable when this move has been her plan since 2021. The reality is that Mum and Bill already see X as a place in which they wish not just to work but where they will find professional fulfilment. They both can already see themselves settling in X and are more than ready to embrace all that it offers and therefore to make the

sacrifice of separation from family and friends which is required. They are, to use another colloquialism, 'all in' on this move.

77. That being so to grant permission only for two years would, in my view, create the worst of all worlds for all those involved.
78. For Mum it would immediately create uncertainty as to her future and raise the possibility that all her commitment and desire to make X work could be for nothing if within two years there was a requirement for John to be returned back to this jurisdiction. It would require a further return to court almost certainly at a time well within the two year period given that John would need to be enrolled in a secondary school which would have to be achieved, whether in England or X, well within the academic year after next (i.e. well within 2025-2026) and so require further litigation in less than 18 months.
79. For Dad he would be concerned that John might be overly encouraged to like X in order to ringfence Mum's own desire to stay and so be placated, rewarded and even spoilt to create in him the notion that X was all that a boy could wish for and that whatever bonuses and benefits he enjoyed were all dependent upon his being in X.
80. A worse scenario for Dad was that John found himself homesick, not liking X or simply taking far longer to settle than had been expected and yet would be discouraged from voicing his feelings in case it meant that the adults' chance of staying for longer was lost.
81. Of most significant concern in my judgement was the thought that all those in X would look upon the time-limited permission as a ticking clock which slowly but surely ratcheted up pressure as the time began to run out. For John this might bring particular stress. If John could see that his mother was happy in X and wished to stay he may feel compelled, irrespective of his own views, to assert only contentment for fear of being the cause of a decision which forced his mother to bring to a premature close a period in her life which she was so obviously enjoying.
82. I am unable to see any benefits in granting a time-limited period of permission, it would serve only to create pressure, stress and to distort the purpose of going to X into something it is not. For John it would be a limited visit which would then be approached as the start of a long term arrangement. For Mum it would be a long term plan packaged into a short term start. For Dad it would be a limited term period which may prove hard to stop once John was settled in X and encouraged to swiftly learn to love the place. For all concerned it would be a period of great uncertainty as to what was going to happen at the end.
83. For all of those reasons the recommendation of Ms Youds that a leave be given for a two year period is not one that I consider to be in John's best interests but a recipe for real problems.

The outcome for the family

84. The outcome for John is that he will not be leaving for X later this year as permission for him to go is refused.
85. In relation to his future arrangements it was proposed by the Cafcass Officer that an extension of the time he spends with his father should be made so that he stayed over the full weekend until Monday morning. I can readily see the benefits of such a change.
86. Before making an order to that effect I must acknowledge that John's parents have never yet felt the need to secure a court order to underpin their agreements over the time he spends with each and that this absence of formal orders has survived their separation, the consequent difficulties, their each moving on in their personal lives and even the pressures which were created by their disagreement over the proposed move to X and the uncertainties which have hung over them for too long due to the delays in the resolution of these proceedings. That is a lot for Mum and Dad to have coped with and to do so without resorting to court speaks well of them as parents to their children.

87. Considering s.1(5), Children Act 1989 I must apply the 'no order' principle and not make an order unless I determine that there is a positive benefit from the making of a court order. In this case without any understanding that these parents have now passed the point of being able to arrive at and comply with agreements in respect of their son I should not make an order and therefore do not do so.
88. My decision therefore is limited to the dismissal of the only application before me which was for a Specific Issue order.
89. That is my judgment.

3 June 2024