Neutral Citation Number: [2020] EWHC 1510 (Fam)

Case No: FA2020 - 000033

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
ON APPEAL FROM THE CENTRAL FAMILY COURT
(Recorder Posner)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/06/2020

Before:

MR JUSTICE WILLIAMS

- -

Between:

AB (Mother)	**Applicant**
- and -	
(1) CD (Father)	
(2) SH (Subject child)	
(through her directly instructed solicitor, Nina Hansen, of Freemans)	**Respondents**

IN RE SH (A CHILD)

- -

Ms Emily Ward (instructed on a **Direct Access Basis**) for the **Applicant**
Mr James Turner QC (instructed by **Forsters LLP**) for the **First Respondent**
Ms Gill Honeyman (instructed by Freemans Solicitors) for the Second Respondent

Hearing date: 3rd June 2020

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This judgment is not certified as citable pursuant to PD Citation of Authorities [2001] 1 WLR 1 and FPR FPR 27A para 4.3A.2

Approved Judgment

I direct that pursuant to FPR 27.9A no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE WILLIAMS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 14:00 on 11th June 2020.

Mr Justice Williams:

1. This is my judgment on the mother's application for an extension of time to appeal, and for permission to appeal, against an order made by Recorder Posner in November 2019.

2. On 5 November 2019 Recorder Posner gave judgment in respect of the child arrangements order for a young person who I shall call SH for the purposes of this judgment. SH was 12 ½ at the time of that decision and is now 13. The application the Recorder was considering had been made by SH's father ('the father') in early 2019; it was for a variation of a shared lives-with order, which dated back to October 2015. The application to vary that order emerged after a series of hearings in December 2018 which had resulted in SH being taken by the police from her father's home pursuant to a without notice collection order that had been applied for by the mother on the basis that the shared lives-with order was not being complied with. The father's position was that for a significant part of the previous three years the parties had by agreement not complied with the terms of the shared lives-with order and that SH had lived for the majority of that time with him.

3. The father's application was timetabled to a final hearing that was due to take place in July 2019. SH had been joined as a party to the proceedings and NYAS appointed as her Children's Guardian. In a report for the final hearing the NYAS Caseworker made a recommendation that was not in accordance with SH's wishes. The final hearing was adjourned to enable the mother to secure legal representation and relisted in September 2019. By the time the adjourned final hearing came before the Recorder, SH had instructed her own solicitor, Ms Hansen, and HHJ Oliver had granted her application to be represented directly in the proceedings. NYAS's appointment was terminated but the NYAS Caseworker remained a witness. I shall refer to that Caseworker as "the Caseworker" in this judgment, for ease of reference.

4. The application came before the Recorder on the 26 and 27 of September. It was not completed and the case resumed on 5 November 2019. On that day the Recorder gave a judgment and made an order which provided that SH would live with her father. No order was made in respect of the time SH was to spend with her mother. An application for permission to appeal was made on behalf of the mother to the Recorder and refused.

5. Over three months later, on 12 February 2020, the mother, as a litigant in person, lodged an Appellant's Notice with the Family Division, seeking to set-aside the order made by the Recorder. The Appellant's Notice was accompanied by a lengthy narrative 'grounds of appeal'. I gave initial directions on 24 February 2020 and further directions on 6 April 2020. In those directions I indicated that the reasons given for the delay did not appear to be good ones but if the merits of the appeal were strong that might tip the balance in favour of granting an extension of time. I sought to distil from the 23 paragraphs of narrative grounds what then appeared to me to be potentially arguable points. I shall return to those later. I listed the application for an oral permission hearing, on notice.

6. In response to the directions I gave, both the father and SH filed skeleton arguments in response to the mother's application. An appeal bundle amounting to some 330-odd pages was agreed between the lawyers for the father and the lawyers for SH, and

filed. The mother filed a supplemental bundle of some 85 pages and I later received a transcript of the oral evidence of Ms Hansen. Given that only one hour had been allowed for pre-reading, I was unable to read all of that material in advance of the hearing. The application was listed before me on 3 June 2019. I heard oral submissions from Ms Ward on behalf of the mother (who did not appear below), from Mr Turner QC on behalf of the father and from Ms Honeyman on behalf of SH. Both Ms Ward and Mr Turner (and his solicitors) acted *pro bono* and I would like to express my thanks to them, in particular, for the assistance they have given to the parties and to the court at no charge, but also to Ms Honeyman and Ms Hansen for their input. The focussed written and oral submissions were of great assistance to me. At the conclusion of the hearing, in particular because of the reliance placed on the transcript of the oral evidence that had been given by the Caseworker at trial, I informed the parties that I would read further documents, in particular the transcript of the Caseworker's evidence, and would circulate my decision and a draft judgment later that day. In the event it was not possible to complete that further reading and this judgment on 3 June.

Reasons for Delay by the mother in filing an Appellant's Notice

7. The mother said that the reasons for the delay were twofold

   i) The order came as a shock and she hadn't recovered mentally or emotionally from the events;

   ii) She had been seriously unwell and was now due to undergo surgery. A letter dated 9 January 2020 was provided from the Royal London Hospital, referring to a nurse-led pre-operative assessment appointment booked for 30 January 2020.

8. Ms Ward submitted that the evidence demonstrated the mother had a serious medical problem which explained the delay.

Grounds of Appeal

9. In the course of the appeal hearing Ms Ward sensibly focused her submissions on the four points I had distilled from the narrative grounds. In addition she, in particular, emphasised that the mother was concerned about the procedural fairness of the hearing before the Recorder. I shall look at these points in turn.

Ground 1

The judge placed undue weight on the views of the child and the extent to which they were authentically her own, particularly having regard to the circumstances in which she came to instruct her own solicitor and the previous findings of various courts as to the father's propensity to dishonesty and manipulation.

10. Ms Ward emphasised that the Caseworker had concluded in her detailed reports that SH was 'in script' when she spoke about what she wanted and that her views were infused with the father's views and enmeshed with his. Ms Ward submitted that the Caseworker had seen SH in different contexts and was thus able to assess what SH said about spending time with her mother against what she (the Caseworker) saw of

SH and how she was with her mother. The Caseworker was said to have had information from the school that SH was emotionally immature for her age and Ms Ward emphasised that Ms Hansen had not seen SH with her mother or her father or in a domestic environment.

11. In particular, Ms Ward emphasised that both the Caseworker and previous judges had found the father to be dishonest and manipulative and she argued that the Recorder had failed to give any weight to such previous findings in respect of the father. She submitted that the Caseworker was entitled to reach the conclusions that she had in respect of the father, which were based on her direct experience of him, in particular in relation to him appearing to agree the summer holiday contact at court but then reneging on it. The Recorder gave as a reason for not following the Caseworker's recommendations and discounting her evidence that she had not provided a balanced assessment of the parents. However, Ms Ward said it is clear from the Caseworker's reports and her evidence that she had identified failings in the mother as well as the father and that her evaluation was a balanced one, albeit she was more concerned by the father's failings than the mother's. There was no basis, Ms Ward contended, for the Recorder to conclude that she could not find any objective evidence which supported the Caseworker's evaluation of the father as dishonest and manipulative.

12. Lastly, Ms Ward emphasised that the circumstances in which SH came to instruct solicitors indicated manipulation by the father. It only emerged in the course of evidence that it was the father's solicitors who had made initial contact with Ms Hansen and this all pointed, it was argued, to orchestration by the father.

Ground 2

The judge placed insufficient weight on the need for the child to achieve some balance in her life as between her educational needs and her emotional and physical needs.

13. Ms Ward emphasised that the Caseworker's reports provided a holistic evaluation of SH's welfare and placed SH's academic aspirations into a proper perspective, where they were balanced with her other emotional needs. She submitted that the Recorder was strongly swayed in her decision by SH's academic ambitions, prioritising them at the expense of her other emotional needs, in particular for a full relationship with the mother. Ultimately, Ms Ward contended, the Recorder's analysis was deficient, as a result of the weight placed upon this issue, which is disproportionate to the holistic evaluation of welfare.

14. Given the holistic evaluation that the Caseworker had set out, these points ought, said Ms Ward, to have attracted far more weight in the Recorder's evaluation of SH's welfare.

Ground 3

The judge placed insufficient weight on the views of the former Caseworker giving as her reasons for so doing that the report lacked balance and had wrongly characterised the father as deceptive and manipulative. However previous findings of the courts had found the father to be manipulative and dishonest.

15. Ms Ward linked this back to the earlier criticisms under 'ground one', which she had submitted ought to have led the Recorder to place less weight on SH's views, as being the likely product of dishonesty and manipulation on the part of the father. She maintained that the Caseworker's reports demonstrated balance as between the parents, albeit (objectively) if the evidence supported great criticism of the father then that had to be articulated.

Ground 4

The judge failed to place any or any sufficient weight on the risk of harm to the child through becoming estranged from her mother and the maternal family.

16. Ms Ward submitted that there was no consideration of the risk of harm to SH from becoming estranged from the mother. She contended that there is no mention by the Recorder of the possibility of alienation, or of the consequences of contact not taking place as a result of the father not complying with the order.

Ground 5

The Fairness of the hearing:

17. Ms Ward referred me to the grounds of appeal at A31-2 in the main bundle, which set out a number of criticisms of the Recorder's approach to the case, including her criticism of the Caseworker's reports, her comments on her own knowledge of Ms Hansen, and her refusal to consider alienation without a psychiatric report, being examples.

Appeals

18. FPR 30.12(3) provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity.

19. The test for granting permission [FPR 30.3(7)] is:

    i) The court considers that the appeal would have a real prospect of success; or

    ii) there is some other compelling reason why the appeal should be heard.

20. The court may conclude that a decision is wrong or procedurally unjust where:

    i) An error of law has been made;

    ii) A conclusion on the facts which was not open to the judge on the evidence has been reached: see *Royal Bank of Scotland v Carlyle* [2015] UKSC 13;

    iii) The judge's evaluation of the facts and the conclusion reached were not supported by the evidence, for instance where irrelevant material has been relied on, or relevant material not taken into account, or where clearly undue weight has been given to material, or clearly insufficient weight has been given to material; always bearing in mind that an appellate court's function is not to substitute its own decision or view of the evidence for that of the trial

judge and, accordingly, the appellate court will respect the trial judge's evaluation unless there is some obvious error in the evaluative process.

iv) A process has been adopted which is procedurally irregular and unfair to an extent that it renders the decision unjust (e.g. has there been an unseemly rush to judgment?): see *Re S-W (Care Proceedings: Case Management Hearing)* [2015] 2 FLR 136

v) A discretion has been exercised in a way which was outside the parameters within which reasonable disagreement is possible: see *G v G (Minors: Custody Appeal)* [1985] FLR 894.

21. The trial court must give a decision and explain the reasons for it, so that the parties and the appeal judge may properly understand the basis of the decision. The trial court does not have to deal with every point raised and does not need to set out the law in detail, provided it is evident from the decision that all relevant factors have been considered.

22. In *Re F (Children)* [2016] EWCA Civ 546, Sir James Munby P summarised the following approach to appeals:

22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."

23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in Piglowska v Piglowski [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):

> *"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."*

> *It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".*

23. Lord Hoffmann also said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372:

> *First, the appellate court must bear in mind the advantage which the first instance judge had in seeing the parties and the other witnesses. This is well understood on questions of credibility and findings of primary fact. But it goes further than that. It applies also to the judge's evaluation of those facts. If I may quote what I said in Biogen Inc v Medeva plc [1997] RPC 1, 45:*
>
> > *'The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.'*

Extension of Time

24. FPR 30.7 deals with extensions of time. It is worded in the same way as CPR 52.15. FPR 4.1(3)(a), likewise, is worded as CPR3.1(2)(a). It would therefore appear that extensions of time are to be dealt with in the same way that the court approaches them under CPR 52.15 and CPR 3.1(2)(a) and CPR3.9. As the White Book makes clear, where an application is made to extend time and is itself made out of time the court should approach it on the basis that it is an application for relief from sanctions. At this point the CPR an FPR part company, as FPR 4.6 provides a list of factors to be taken into account when considering relief from sanctions.

> ***"4.6 Relief from sanctions***
>
> *(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –*
>
> *(a) the interests of the administration of justice;*
>
> *(b) whether the application for relief has been made promptly;*
>
> *(c) whether the failure to comply was intentional;*
>
> *(d) whether there is a good explanation for the failure;*
>
> *(e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant pre –action protocol;*
>
> *(f) whether the failure to comply was caused by the party or the party's legal representative;*
>
> *(g) whether the hearing date or the likely hearing date can still be met if relief is granted;*

(h) the effect which the failure to comply had on each party; and

(i) the effect which the granting of relief would have on each party or a child whose interest the court considers relevant."

25. The overriding objective of dealing with the case justly must also be borne in mind. In *Denton and others v TH White Limited* [2014] 1 WLR 3926, the Court of Appeal identified a three-stage approach to applications for relief from sanctions in the context of the civil procedure rules. That three-stage approach is to:

i) Identify and assess the seriousness or significance of the failure to comply or default.

ii) Consider the reason for the failure or default.

iii) Consider all the circumstances of the case, so as to enable the court to deal justly with the application.

26. Some other principles can be ascertained from the case law:

(a) 'a person who finds himself unable to comply timeously with his obligations under an order should apply for an extension of time *before the time for compliance has expired*' (per Sir James Munby P in *Re W (Adoption Order: Leave to Oppose); Re H (Adoption Order: Application for Permission for Leave to Oppose)* [2014] 1 FLR 1266);

(b) being unrepresented is not in itself a good reason for non-compliance (*Re D (Appeal: Procedure: Evidence)* [2016] 1 FLR 249, CA);

(c) no distinction should be drawn between the lay party and his advisers when considering delay (*Daryananii v Kumar and Gerry* (2000) (unreported) 12 December, CA);

(d) issues relating to public funding and/or pressure of work are unlikely to be regarded as good reason,

(e) particular regard should be paid to the proportionality of strike-out as a sanction (*London Borough of Southwark v Onayamoke* [2007] EWCA Civ 1426);

(f) the underlying merits of a case are a potential consideration (*Re H (Children) (Application to Extend Time: Merits of Proposed Appeal)* [2015] EWCA Civ 583, [2016] 1 FLR 952).

27. In the present case the explanation given by the mother for her delay is unsatisfactory. Given the history of the litigation between the parents she was well-aware of the possibility of an appeal and, at least in general, must have been aware of the time limits. An oral application for permission to appeal was made at the conclusion of the hearing. The delay of nearly three months meant that the order was communicated to SH and began to operate. It appears, for reasons which I have not gone into, that the regime has now broken down. I have not explored that and it is not part of this appeal. In any event, the net result is that now, at the time of this hearing for permission, SH is rising 14 and her wishes and feelings would become even more weighty. The explanation given by the mother does not provide an adequate explanation. Neither

the disappointment, nor shock of the outcome, nor the evidence in relation to her medical condition persuade me that she was not in a position to file an appeal on time. Nothing indicates she was incapacitated or otherwise occupied in a way which justified putting SH's future on the back-burner. The court must consider all of the circumstances of the case, which includes the underlying merits of the proposed appeal but also other matters. It seems to have been accepted that an end to litigation was essential for SH, given she had been exposed to it for several years. The hearing of an appeal with its prolongation of this litigation and the uncertain outcome, including the possible remission of the case for further hearing, by which time SH would undoubtedly be 14 is a factor I take into account.

Merits

28. So, has the proposed appellant mother demonstrated a realistic prospect of success or some other compelling reason to grant permission?

Ground 1

29. Having had the opportunity to read the reports of the Caseworker and the statements of Ms Hansen, together with the transcripts of the oral evidence of each of them, the judge's conclusion that SH's views were her own and should be given significant weight appears to me to be unassailable. The curious feature of SH's views is that she spoke positively of both her mother and her father and of her time with each of them. The records of what she said seem to show balance, reflection, passion and maturity, notwithstanding what the Caseworker (and, according to the Caseworker, the school) said about her lack of emotional maturity. However, SH identified issues to do with her mother, combined with her desire to prioritise her particular academic talent, as being reasons for preferring to live with her father and to spend down-time with her mother. The evidence from a variety of sources provided an objective foundation, both in relation to the emotional pressure she said she experienced from her mother and her genuine passion for her academic subject. This was a long way from alienation. Although criticism was made of Ms Hansen not having seen and spoken to SH in her domestic context, the records of what she said to Ms Hansen is not very different in substance to that which she said to the Caseworker. The record of that, and Ms Hansen's evidence in relation to it, supports the judge's conclusion that SH's concerns about emotional pressure and her desire to prioritise her studies were authentically her own views. Ms Hansen said that she had not had access to any of the papers when she first spoke to SH but that when she did she saw that what SH had said to her was generally borne out by the papers. She was very clear that in her initial interview with SH, and subsequently, she did not detect the markers of influence, or the markers of immaturity and lack of competence, which often cause her to decline to accept instructions from a young person. Although Ms Ward submitted that Ms Hansen had not had the opportunity to see SH in different contexts, which might be said to be a disadvantage, she had seen SH in a neutral environment, without either of her parents being in earshot, and had spent something in the region of 5-6 hours in meetings or telephone calls with her, which would seem to have given Ms Hansen a very good opportunity to gauge SH's competence and the authenticity of her views.

30. It is correct that the judgment does not refer to previous findings that the father had been dishonest or manipulative. However those conclusions were reached in relation to his evidence in the financial proceedings and there does not appear to have been

any criticism of the father of a similar nature within the child-related proceedings. The Recorder was critical of the father and was well-aware of the history and of what had been said of him elsewhere. Her conclusion that the Caseworker's characterisation of the father as being deceptive or punitive was unsupported by objective evidence might perhaps have been more fully explained (for instance, by setting out the evidence of one or more examples which illustrated the erroneous characterisation), particularly given the depth of criticism which infused the Caseworker's report and the number of examples she gave. However, having read those reports and the transcript of the Caseworker's evidence, it is quite clear that the Caseworker's oral evidence did not justify the conclusions she reached. There are numerous examples in the transcript where she is asked to support such conclusions and in most cases she was unable to make good her criticism, either because she had mistaken something or had taken the mother's word for something or had not taken into account some other evidence which was relevant to the evaluation. She also demonstrated a tendency to hyperbole. The Recorder's conclusion that there was no objective basis for the Caseworker's characterisation of the father is a finding on the evidence which she was well-entitled to make, having heard from the father, the mother and the Caseworker.

31. Having reached the conclusion that the Caseworker's extensive criticisms of the father were not borne out by the evidence, the consequence was that the report was unbalanced. However, the imbalance went further than simply the removal of some of the criticism of the father by reason of the judge's rejection of those criticisms. Although Ms Ward's submission that the Caseworker had been critical of the mother in her reports is correct, the differential between the criticism made in the report and the criticism that might properly have been made of the mother and which emerges and is accepted by the Caseworker, in particular during her cross-examination by Ms Honeyman, demonstrates even more clearly the lack of balance in the reports. Again, it might have been helpful, particularly to the appellate court, had the judgment set out clear conclusions, for instance on the 2015-18 consensual variation, the collection order impact, the phone theft allegation, and the video-pressurising of SH. The evidence from SH alone was powerful and seems to have been corroborated by other evidence. The Recorder was therefore justified in rejecting the Caseworker's criticism of the father and in the limited criticism that the Caseworker had herself made of the mother. The Recorder was therefore also entitled to depart from the Caseworker's assessment and her recommendations.

32. The circumstances in which SH came to instruct Ms Hansen were set out in Ms Hansen's first statement and were explored in cross examination of her. The fact that SH had not seen the NYAS solicitor and the absence of any consideration by the Caseworker of whether the divergence between her recommendation and SH's views resulted in a conflict was also explored in cross examination of the Caseworker. Given the very considerable difference between the Caseworker's recommendation, which was in effect for a 50-50 split of time, whereas SH wished for two nights per week and the occasional weekend (on a flexible basis) with her mother, it would not be surprising if a highly intelligent 12 year old had been dissatisfied with her representation. The evidence as to how she came to instruct Ms Hansen is commonplace; indeed perhaps more arm's-length than is often encountered. More important though was the content of what SH said to Ms Hansen, and Ms Hansen's evaluation of it in terms of SH's competence and motivation and the underlying objective substance of what she said. The totality of the evidence simply does not

support the contention that SH was manipulated into instructing Ms Hansen to further the father's goals but rather lends support to the Recorder's conclusion that SH was an articulate and highly intelligent young person who had objectively valid reasons both for being unhappy with her Caseworker and for the sort of child arrangements order that the Caseworker articulated.

Ground 2

33. It is undoubtedly the case that the Caseworker's reports provided a holistic evaluation of SH's welfare. However, this was a highly unusual case with a driven child with a genius for a particular subject. In cross-examination of the Caseworker by Ms Honeyman, the Caseworker accepted that unique children, whether in the sporting or academic fields, justified a change in the approach that their families might take to them. It was clear from the evidence that SH valued the time she spent with her mother and that it met her need for downtime. Issues such as maintaining contact with her wider family, her ability to have a female figure in her life, her ability to connect with her roots and to have her emotional needs met were plainly being met by the regime which SH was advocating. The evidence from her school was that she was thriving in all of the aspects of her life that they were able to comment on. The totality of the evidence also demonstrated that she was achieving some balance and that whilst her academic studies were a central and highly significant part of her life they were not to the exclusion of all else. The Recorder's conclusion that SH's needs could be met under the regime that SH herself proposed, and which the Recorder adopted, were clearly well-rooted in the evidence. The Recorder's conclusion that the Caseworker in her reports had failed really to recognise and reflect the fact that SH was an academic genius, which inevitably would lead to a departure from the sort of regime which might meet the needs of the average 12 year old, was justified, particularly when one takes account of the Caseworker's evidence under cross-examination. I am therefore satisfied that the criticism of the Recorder's evaluation of SH's alleged need to have greater balance in her life is not supported.

Ground 3

34. I have already addressed some of the arguments in relation to this above. It is correct that the father has been criticised by courts in the financial arena. Mr Turner submitted that no such criticisms had been made of him in the children arena and that the Recorder's assessment of his character and evidence, as reflected in her judgment, was one she was entitled to reach, having seen and heard from him and having had the advantage of reading the two lever-arch files of evidence that were before the court. Having had the benefit of reading the transcript of the Caseworker's evidence, in particular sections of cross-examination by Mr Turner, but also significant parts of the cross-examination by Ms Honeyman, the Recorder's conclusion that the Caseworker's evidence lacked balance seems to me to be unassailable. Both the inability to make good the deceptive or punitive or manipulative criticisms, or to have reflected more fully the valid criticisms that could be made of the mother, demonstrate a lack of balance. The Caseworker, having expressed the view that the father was relentless and continued making applications in relation to SH until he got what he wanted was one example where the Caseworker had misinterpreted the history. In reality the father had not appealed any of the orders in relation to SH, in contrast to the mother who had appealed several. This is simply one example of where the Caseworker demonstrably misinterpreted the history. Having reached that

conclusion, the Recorder was fully justified to depart from the Caseworker's recommendations and to give less weight to them and more weight to, in particular, SH's views.

Ground four

35. The evidence before the Recorder demonstrated that since 2015 SH had continued to have a relationship with her mother, which she valued and from which she benefited. Whilst the shared care arrangements had plainly not been adhered to this is very far from a developing estrangement. The evidence suggests that the mother may have agreed, or at least not objected, to it for lengthy periods and was herself absent from the UK for lengthy periods. From what SH said she valued her time with her mother but wished to limit it in order to prioritise her academic studies. Her enjoyment had also been undermined by the mother's behaviour on various occasions, all of which appear to have been well-evidenced in terms of the impact on SH of them. The Recorder was entitled to assume that this sort of relationship would endure, given that was what SH said she wanted and given that it had occurred over the previous four years. The isolated reference to alienation in the Caseworker's report appeared to be an aside and the reference to a change of residence, when explored by Ms Honeyman in cross-examination, appeared to have been ill thought through. The Recorder was therefore not faced with evidence which supported the likelihood of estrangement or of alienation. The history from 2015 to 2019 did not put this case into the category where there was a clear and obvious risk of the child becoming estranged from the mother. Nothing in what SH said about her feelings for her mother, and the value she placed on that relationship, supported such a conclusion. The absence of any weight being given to that risk in the judgment is therefore hardly a surprise. What has happened since does not of course support the mother's case, as her own role would also fall to be considered.

Ground 5

36. I do not have a full transcript of the entirety of the hearing but as far as one can discern the judicial approach, as it emerges in cross-examination or examination of witnesses, there is nothing of any concern that emerges. The Recorder's approach to the witnesses, including the Caseworker, was entirely appropriate. It is inevitable that judges will know expert or professional witnesses but that does not mean they do not treat their evidence objectively. I am unable to discern anything which impinges upon the fairness of the process.

Conclusion

37. On the fuller examination that I have now been able to conduct, none of the grounds put forward by the mother for asserting that the Recorder's decision was wrong or unjust have any realistic prospect of success, or show some other compelling reason for granting permission to appeal. The judgment is brief, having regard to the history of the case and the evidence before the Recorder, but having now had the opportunity to assimilate far more of the material that was before the Recorder it is clear to me that the evidential foundations existed which fully support the conclusions she reached. To those who were participants in that hearing the judgment adequately expressed its reasons. From the perspective of an appellate judge it might have assisted me had the Recorder's reasoning been more fully illustrated by examples

drawn from the evidence, but that is perhaps a counsel of perfection and the Recorder certainly fulfilled her duty to explain to the parties the reasons why she had reached the conclusions she had.

38. I therefore refuse to grant permission to appeal. I will refuse to grant an extension of time to appeal. That is my judgment.