Neutral Citation Number: [2023] EWHC 1454 (Fam)

Case No: NG20P00707

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2023

Before :

MRS JUSTICE LIEVEN

- -

Between :

THE FATHER

Applicant

and

THE MOTHER

Respondent

- -
- -

Ms Clare Meredith (instructed by **[a firm]**) for the **Applicant**
Ms Gemma Kelly attended as the **Special Advocate** representing the **Applicant** in the **Closed proceedings**
Ms Anita Guha (instructed on a direct access basis) for the **Respondent**

Hearing dates: **19 and 20 April 2023**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 6 June 2023 by circulation to the parties or their representatives by e-mail.

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MRS JUSTICE LIEVEN

This judgment was handed down in private on 6 June 2023. It consists of 80 paragraphs and has been signed and dated by the judge. The judge gives leave for it to be reported in this anonymised form.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by his or her true name or actual location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mrs Justice Lieven DBE :

1. This case concerns the welfare of KN ("K"), a [an age] year old boy. The Father ("F") applied in August 2020 to have shared care of K, with effectively a 50/50 split of time; the Mother ("M") applied in August 2021 to be allowed to relocate with K from Nottingham to Rugby. This is therefore a fairly standard private law dispute concerning relocation and time spent with parents. However, for reasons that I will briefly describe below, the case has a CLOSED procedure element which has given it a superficial complexity that the underlying issues do not really justify.

2. I heard both parents and the Cafcass officer, Mr Lill, give oral evidence. It was very apparent that K has two loving and caring parents, both of whom only want to do what they perceive to be best for him. On that basis he is a lucky child. However, it is not possible to resolve this case in a way that makes both parents happy. It is inevitable that one will feel bruised and probably undermined by the Court's decision, and the other somewhat vindicated. I strongly urge both of them to put these feelings, and the negative effects of an adversarial process, to one side and learn to communicate better and work together in the future for K's best interests.

3. The M was represented before me by Ms Guha, the F by Ms Meredith and the Special Advocate, who represented the F's interests in CLOSED, was Ms Kelly. I want at the outset of this judgment to note the clarity and care with which Ms Kelly represented the F's interests in the parts of the hearing he could not attend. This was an unusual case for having a CLOSED procedure in an otherwise fairly standard private law dispute. I can well understand the F's feeling of frustration and potential unfairness in being excluded from hearing parts of the evidence. That was unavoidable in the circumstances, but I want to assure him that his interests were fully protected, both by Ms Kelly and the Court.

4. The second point I wish to make at the outset about the representation concerns the way the hearing was conducted. I intervened fairly frequently during cross-examination to try to persuade the advocates to focus on the issues that went to the decision I had to make. The central decision in this case is whether I allow the M's relocation. I tried to limit cross-examination on what had gone wrong in the past in terms of communication between the parents, and to stop repetition of the same points that, by the end of the two day hearing, I had heard at least three times (as well as being in witness statements and position statements).

5. I appreciate the advocates did try to do this and nothing I say is intended as a criticism of these particular advocates, who conducted the hearing very professionally. However, it is important that advocates, particularly in private law cases, keep closely in mind the

exhortations of the Court of Appeal in *K v K* [2022] EWCA Civ 468. The Court is not there to consider what went wrong in the parent's relationship (limited or extensive) in the past, save strictly to the degree it impacts on the decision concerning the child in the future. Equally, cross-examination about past failings (by both parents) is very unlikely to aid better future relations in the best interests of the child. If the family justice system is to have the slightest chance of dealing with cases in a timely and productive manner and to assist families in decision making concerning their children, then we all have to focus on the real issues and try to adopt a problem solving approach rather than a largely adversarial one.

The Background

6. K was conceived after a brief sexual relationship. The parents did not have any kind of romantic relationship. The relevance of this is that they have never lived together and as the F freely admitted, they do not actually know each other very well. Almost their entire interactions have been around the pregnancy and then K's upbringing. This has resulted in very poor communication and lack of understanding at times, and a level of mutual suspicion and, at times, antagonism which has plainly not assisted in reaching agreements around K.

7. K was born in [a date]. The pregnancy was not planned, but the F was fully involved from the outset and told the M he wanted to be a hands-on father and would be there to support her.

8. The M had been working in London for the Ministry of Defence ("MoD") and had been pursuing a successful career with them for 13 years. Her parents lived in Nottingham, and she moved back to Nottingham for K's birth. The M invited the F to stay in the M's family home for the first two weeks after K was born to help him bond with the baby. The F and his family live in Nottingham. The paternal grandfather ("PGF") and the F run a launderette business in Nottingham with around 4 outlets.

9. After K's birth the M suffered from postnatal depression and received some professional help. There was some dispute in the witness statements about the levels of the F's support at this time, but in my view that has little to do with the current issues. In August 2018 the F started a relationship with his current partner. The messages suggest the M felt unsupported at this time, and it may be that a level of suspicion and antagonism started to accumulate. It is not hard to see that with the M suffering from postnatal depression, and parents who hardly knew each other, the scope for tensions, misunderstandings and mutual insensitivities was very high.

10. In February 2019 the M reported her symptoms to the GP and received professional help. In August 2019 she was admitted for one

week to a mother and baby unit. I asked her about this rather long gap, but she plainly felt uncomfortable speaking about it. As I could not see that it had much, if any, relevance to the issues before me, I did not press her. It is important to note that there is no suggestion of any safeguarding concerns, and both parent fully accepts that the other is an excellent parent.

11. In September 2019 there was some attempt at mediation. The M perceived letters from the F's solicitors shortly after she left the mother and baby unit as being highly insensitive given that he knew her vulnerabilities at the time. The M says she felt under pressure to agree increased contact but was concerned that this should go at K's pace. There was a progression to three consecutive nights overnight contact. The M felt this was too much for K and he was distressed by it. There was further mediation, but the mediator felt shuttle mediation was not appropriate.

12. The M then unilaterally decided to "reset" contact, as I understand it by going to stay with her parents at the next pickup, so the F arrived to find that K was not there. At this point relations completely broke down. The M says she felt intimidated and harassed, the F quite understandably felt the M was making her own decisions and not including him. The M freely accepts that she acted wrongly at this time.

13. The F issued proceedings in August 2020. Overnight contact was reintroduced in May 2021 and has continued since then with the routine having remained the same since October 2021. K spends alternate weekends with F and Wednesdays overnight. The F spends Wednesday and Thursday during the day with K and takes those days off work. K attends nursery two days per week (Tuesday and Friday). The M would prefer for him to go on Wednesday or Thursday, but the F perfectly understandably wants to spend those days with K.

14. In August 2021 the M made an application to relocate to Rugby. There is a dispute over how this arose. The M's parents ("MGPs") moved to a village outside Rugby in December 2019. The M said this had always been their plan because the Maternal Grandmother's ("MGM's") family lived there. In early August 2021 the M had exchanged contracts on a house near Rugby. She says she was poorly advised by her previous lawyers to take this course rather than informing the F of her plans and seeking court approval. She said she did not remember clearly discussing plans to move to Rugby with her parents when they moved.

15. I think the M is still being somewhat disingenuous about when she decided to move to Rugby and the information she gave to the F and the Court.

16. The M's job with the MoD has its primary base in London. When she went back to work after K was born she was seconded to Nottingham and she then got a further secondment to Birmingham. In November 2021 the MoD provided a letter to the Court in which it said that she would have to return to the job in London in May 2022.That proved to be inaccurate because the M did get a further secondment to Birmingham. The current position is that the M's secondment ends in September 2023, but it may be extended by a further year. It now appears that there is a possibility of a further secondment out of London but only after the M has spent three years working in London.

17. Given the way the M's job operates, and her strong commitment to her career, it seems to me to be unlikely that she had not been considering the problems of commuting from Nottingham to London and the benefits of moving to Rugby well before August 2021. However, again, I do not think the M's thought processes about moving to Rugby is an issue which it is necessary or helpful for me to determine as a question of fact.

18. The litigation history has been protracted. In his original application in September 2020 the F raised a number of concerns about the M's mental health history and parenting capacity. The Cafcass safeguarding letter concluded there were no safeguarding concerns.

19. A section 7 report was produced on 8 November 2021. This again said there were no safeguarding concerns and that both parents could meet K's needs. The Cafcass officer (Ms Abbley) did not support the M's relocation application. There was then a long delay, and an addendum report was produced by Ms Newman for what should have been the final hearing in October 2022. She again did not support the relocation application.

20. However, at that hearing the M's advocate made an application for a closed material procedure and the matter had to be further adjourned. The case was then transferred to me as the Family Division Liaison Judge for the Midlands.

21. A further Cafcass officer was appointed, Mr Lill, who provided a new s.7 report. He too did not support the application and I will deal with his report in detail below.

22. I note that in respect of the original s.7 report and the addendum, the M was constrained in what she could say to the Cafcass officers by reason of the nature of her employment.

The Law

23. All the advocates agree that the leading case in terms of internal relocation applications is *Re C (Internal Relocation)* [2015] EWCA Civ 1305. The key passages are at [51] to [54]:

"[51] There is no doubt that it is the welfare principle in s 1(1) of the Act which dictates the result in internal relocation cases, just as it is now acknowledged that it does in external relocation cases. It is difficult to see any room in the statutory scheme for the outcome to be dictated by other, different, principles. And when one goes back over the internal relocation cases, it is clear that one of the main influences behind the exceptionality test was always the welfare of the child. The protection of the freedom of the adults to choose where they would live within the United Kingdom was, of course, another significant influence, but the exceptional cases where that would be restricted were those where the welfare of the child required it.

[52] In Re E, it was contemplated that the welfare of the child might require the adult's freedom to be restricted because of concerns about the competence of the parent. In Re S [2001], Thorpe LJ explained the reluctance to place restrictions on the freedom of the child's primary carer to choose where to live in welfare terms, remarking that such restrictions were likely to have an adverse effect on the children indirectly through the impact on the primary carer, but he also subscribed to the notion that restriction might be necessary where the ability of the primary carer to give satisfactory care to the child was in doubt. Clarke LJ expressed himself very clearly in welfare terms in that case, when he said that no case will be an exceptional case unless the absence of such a condition would be incompatible with the welfare of the child, which could be loosely recast, I suppose, as unless the welfare of the child requires the parent to be constrained to live in a particular place. It was in much the same terms that Dame Elizabeth Butler-Sloss P expressed herself in Re S (No 2) when she said that her earlier judgment had been read too narrowly and that there would be exceptional circumstances in which conditions will have, in order to protect the best interests of the child, to be imposed even where there was no complaint against the parent whose movement would be restricted. As she said, [s]ection 11(7) provides a safety net to allow for the exercise of discretion under the provisions of s 1 where the paramountcy of the welfare of the child exceptionally requires restrictions on the primary carer. In Re H [2001], Thorpe LJ said that in making its decision, the court must always apply the welfare test as paramount, whether the relocation is internal or external, albeit that he later wished, in Re B, to emphasise that a restriction was truly exceptional. In E v E (Shared Residence: Financial Relief: Yardstick of Equality), Wall LJ said that the function of the court was

to decide whether or not the relocation is in the best interests of the children. In Re L, where he carried out his review of the authorities, although endorsing passages from them which referred to conditions being exceptional, he said that in each case what the court had to do was to examine the underlying factual matrix and decide in all the circumstances whether it was in the child's interest to relocate, bearing in mind the tension that may well exist between the parent's freedom to relocate and the welfare of the child which may militate against it.

[53] Given the central thread of welfare that runs through all these authorities, and with the reasoning in K v K very much in mind, I would not interpret the cases as imposing a supplementary requirement of exceptionality in internal relocation cases. It is no doubt the case, as a matter of fact, that courts will be resistant to preventing a parent from exercising his or her choice as to where to live in the United Kingdom unless the child's welfare requires it, but that is not because of a rule that such a move can only be prevented in exceptional cases. It is because the welfare analysis leads to that conclusion. One can see from the authorities, and indeed from this case, that the courts are much pre-occupied in relocation cases, whether internal or external, with the practicalities of the child spending time with the other parent or, putting it another way, with seeing if there is a way in which the move can be made to work, thus looking after the interests not only of the child but also of both of his or her parents. Only where it cannot, and the child's welfare requires that the move is prevented, does that happen.

[54] Once welfare has been identified as the governing principle in internal relocation cases, there is no reason to differentiate between those cases and external relocation cases. In my view, the approach set out in K v K, Re F (Relocation) [2012] and Re F [2015] should apply equally to internal relocation cases. Clearly, however, the outcome of that approach will depend entirely on the facts of the individual case. At one end of the spectrum, it is not to be expected, for instance, that the court will be likely to impose restrictions on a parent who wishes to move to the next village, or even the next town or some distance across the county, and a parent seeking such a restriction may well get short shrift. At the other end of the spectrum, cases in which a parent wishes to relocate across the world, for example returning to their original home and to their family in Australia or New Zealand, are some of the hardest cases which the courts have to try and require great sensitivity and the utmost care."

> …
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> *Vos LJ (as he then was) held:*
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> *" 82. I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional."*

24. In summary, the law is that the court must undertake a global, holistic evaluation of the best interests of the child. In doing that analysis the wishes and feelings of the parents, and how they will impact on the child are of great importance. This analysis will necessarily encompass a consideration of the Article 8 interests of the parents and the child, and the proportionality of any interference in the parents' Article 8 rights.

25. Some reference was made to the factors set out by Thorpe LJ in *Payne v Payne* [2001] EWCA Civ 166. Those include the motivation behind both the application to relocate and the opposition to it, and the impact on the parent of a refusal to allow relocation. It seems to me that those factors are necessarily encompassed in the global holistic analysis.

26. Ms Meredith drew my attention to *Re W (Residence)* 1999 2 FLR 390 and *W v W* [1988] 2 FLR 505 as to the need to give reasons if the Court is going to depart from a Cafcass recommendation. I do not read these cases, or any subsequent cases, as suggesting that there is a presumption in favour of the Cafcass recommendations. Mr Lill is an expert in his field and, as such, I should, and I do, give reasons for departing from his recommendations.

27. There are a number of cases on shared residence orders, and it is clear that the child's time does not have to be divided equally for it to be appropriate for there to be a shared residence order.

Mr Lill's analysis

28. Mr Lill spoke to both parents by telephone and met K at the Royal Courts of Justice Cafcass room. He communicated with the Special Advocates' Support Office ("SASO") who facilitated access to the CLOSED material. He did not speak to the M again after having seen the CLOSED material.

29. His conclusion was that the M should not be allowed to relocate, she and K should remain in Nottingham and the care of K should move towards 50/50, with a model of the days shifting from week to week. He said that K was a bright lively child who was thriving and both parents could meet his emotional and practical needs. He felt that there would need to be a strong reason to depart from equal care.

30. K told Mr Lill that he had two homes and he liked that arrangement. He appeared to be happy in the current situation, and neither party disputes that that is the case.

31. Both parents set out essentially the same position to Mr Lill that they did to the Court, so I will refer to that under their evidence. Mr Lill considered the M's position that she would not be able to continue with her current job if she remained in Nottingham, and broadly accepted that. He said that her leaving her job might involve a significant reduction in her pay and pension, and that there might be some difficulty in her finding another job. However, he said there was no substantial evidence that she would not be able to find another suitable job given her education and transferrable skills. He referred to her saying that colleagues had found other employment even though he accepted that this might involve her making "some compromises". He said there was no evidence that giving up her job and stepping back from her career would significantly impact her mental health.

32. In paragraph 33 of his report he refers to the history of the issue, and in the final sentence he suggests that the M only revealed issues about her employment when she thought she would lose the case. I have to say this appears to me to be an unfair criticism of the M. She revealed issues about her employment when faced with being questioned in a way that would be impossible for her to answer in OPEN proceedings.

33. In paragraphs 34 and 35 Mr Lill appears to be very concerned about the impact on the F and K of not knowing some aspects of the case concerning the M's employment. I set out those paragraphs:

> *"34. [The M] may feel that had little alternative in these matters. However, it is important to remember that her life choices are not known to [the F] and it is difficult to imagine this has not been a factor within the parental dynamic to date, particularly given concerns about restrictions imposed on [K's] time with him. As a result of*

> *the closed aspect of these proceedings, [the F] is now aware that there is information to which he is not privy but his inability to access information to which he (and K) are subject may be seen to represent a significant imbalance of power within (or continuing within) the parental relationship.*
>
> *35. This raises concern in the event that a decision is made by the Court (that is unfavourable to [the F's] application), if the basis of that decision cannot be revealed to him. Indeed, [the F] (and presumably K) will never know the basis on which the decisions about their lives have been made. Whatever the outcome of these proceedings, [the M] is the only party who will be possession of all the information. It is unclear how this might impact on [the F] but it stands to reason that he is likely to consider that [the M's] undervaluation of his importance and role in K's life is being consolidated at an institutional level."*

34. In my view, this is both largely irrelevant to the issues Mr Lill was advising on, but also more importantly, not accurate. Considerable lengths have been taken to try to ensure that the F does not feel the process has been unfair, in particular by the use of a Special Advocate. But in any event, the issue of the CLOSED aspect of the case does not change this from being at heart a fairly standard relocation case. One parent has a job which involves them moving house. There is a choice between them giving up that job/career with the financial and emotional impact that will have or being allowed to move and the impact that will have on the relationship between the other parent and the child. This type of balancing exercise is routine in relocation cases (internal and external). Those factors, and the conclusion of the Court, can be explained to the F now, and to K in the future.

35. Mr Lill's professional judgement section states that K views both parents as equal carers and *"he has the right to an equal relationship with both parents where it is safe to do so and in my assessment, [K]'s developmental needs require this."*

36. At paragraph 37 he says that if the M moves, K's perception is likely to move to his M being the primary carer and the F the secondary one and he goes on to say:

> *"… It could be possible to successfully promote [K's] positive understanding of having two homes, but his perception is likely to move from one of equal co-parents to one that is characterized by his mother as his primary carer and his father as a secondary one. Such a change in his circumstances would be easier to rationalize to an older child but it would be more difficult for [K] at his age*

> *and level of understanding. It may be challenging for [the F] to support a healthy explanation particularly in circumstances where his own understanding would be limited and quite possibly, whereby he may feel confused, in the very least, that factors determining [K's] future have been withheld from him and always will be. Ultimately, it is my assessment that the relocation would not best meet [K's] interests and that his emotional development would be negatively impacted by the proposed relocation. For all these reasons, I am unable to support [the M's] application for permission to relocate."*

37. He then goes on to say:

> *"38. I acknowledge that [the M] will be disappointed by my recommendation. I have considered the impact upon her in the event that she is unable to continue in her current role but I consider that the benefits to [K] of having an equal relationship with both of his parents outweigh the challenges involved in a career transition. Positively, [the M] is likely to have until September 2024 in her current post which is a significant lead in time for any additional training or preparation required for a new position."*

38. He did not think there would be any significant impact on K if the M wasn't allowed to relocate. She would have time to transition to a new job and there were *"no clear indicators of risk".*

39. Mr Lill said in oral evidence that he did not think K would "cope" with the change if the M relocated, and he would view there being a very significant loss in the short-term and K would miss his father. K would view the F as being the secondary parent.

40. Interestingly, he accepted that if the M was allowed to relocate, she would probably feel more secure in the relationship, but that the move would marginalise the F.

41. Ms Guha put a number of the F's messages to the M to Mr Lill and he accepted that the M probably did feel undermined, but he pointed to these being adversarial proceedings, and that temperatures had been raised on both sides.

<u>The parents' evidence</u>

42. The M's evidence was that she was strongly committed to her career, and took a great deal of strength, and self-worth from it. She spoke

of being someone who "compartmentalised" and her career was very important to her both professionally and in terms of her wellbeing. She said it would simply not be possible to continue with that job in London, once her secondment comes to an end, if she was living in Nottingham. The core hours are 10am-3pm but she would normally work approximately 9am-5pm. To get to the job in London from Nottingham would be about a 3 hour journey and that would make her life as a single parent, even with help from her parents, impossible. If she could move to Rugby she would spread her hours over 5 days so that she could be home earlier for K.

43. The M said that she was very worried that if she stayed in Nottingham and had to find another job, she might then struggle to support herself and K. She would not be able to live with her parents, as she had done when K was born. Although some of her fears might be somewhat irrational (given that I have no doubt she could get another job), it was obvious she was very anxious about the situation.

44. She said she would feel highly isolated in Nottingham, not being able to move close to her parents; having to give up the career she loves and is highly successful in; and with her friends largely in London. Her new partner, of about 18 months, lives in London although he is intending to move out, perhaps to Milton Keynes area, but remaining at the MoD.

45. The M said that she had been waiting for a decision since August 2021 and this had been "pretty all consuming, affected every aspect of her life" and was a constant stress.

46. There is a letter from the M's GP from November 2022 saying that she was being treated for depression, and a letter from IAPT (a healthcare body) of 20 December 2022 saying that she has symptoms of low mood and anxiety.

47. Ms Meredith put that the F would "support" her in Nottingham if there were difficulties getting back in time, or emergencies. However, this is plainly not the emotional support that the M would be needing in this scenario. The M said she had, at times, felt bullied and intimidated by the F, particularly when he said that she was "mad" or "crazy", but she said communication had got a lot better.

48. The M said she thought K would adapt fine to a move to Rugby and his arrangements with seeing the F and the paternal family changing. She pointed out that K would be starting school in September and that would in any event be a big change for him with his days at home with the F on Wednesdays and Thursdays necessarily coming to an end.

49. She said she was wholly committed to the F maintaining a full part in K's life and that she would do whatever she could to help that. She

suggested the F could come over to Rugby and collect K from school and possibly her parents could drive him to Nottingham if that worked better as part of an overall package.

50. She said her decision to stop contact had been because she felt K was overwhelmed by the amount of time that he was away from her. I suspect the M was rather over-anxious at this time, and she accepted that she had done things she should not have done.

51. Both parents spoke very movingly about K in their evidence, and there can be no doubt about the love they both feel for him.

52. The F spoke about the very good times he and K had together, and how much they both enjoyed doing things together. He said he was very concerned not to be a "weekend dad" and he wanted to be fully involved in K's life and have equal time with him as the Mother did.

53. The F feels that the M acts in her own interests and makes unilateral decisions about K. He pointed to the purchase of the house in Rugby, but also to the M's decision to continue to breastfeed K, which acts to keep K close to her.

54. He said that they had never had a discussion about her relocating until the application was made. He had believed that the M could get further secondments and no issue would arise for at least 6 years. He said he felt huge shock when the application was made, and he was frightened for K because "he would be taken away from me" and would grow up without the F and his family. The F spoke movingly about the extended family and how he wanted K to be part of that. The F said that he has also found waiting for a decision incredibly stressful.

55. He thought that K would thrive if he stayed in Nottingham, and there would be no adverse effect on him from the M not being allowed to relocate. He said "we will all assist each other like we have done from day one….".

56. He said that if K moved to Rugby it would be impossible for him to go there during the week to see him. The F and his father run a launderette company in Nottingham. The F said it was essential that he was within 20 minutes drive of their various outlets so that he could carry out any emergency repairs or other steps that were needed. He said he could currently take the two days per week with K because his father was still working. However, his father intended to retire this year, and after that the F would need to be "on-call" at all times. He said that it would be expensive and not practical to employ someone to cover the shops if he was not available. Though he did say he would employ someone else at the weekends when the F had care of K.

57. Ms Guha asked the F about sending a solicitor's letter immediately after the M came out of the mother and baby unit and referring to it as a psychiatric hospital. The F accepted that it was rather insensitive, which is plainly the case.

58. It followed from this that he said he would not or could not travel to Rugby during the week, and he would therefore miss out not just on seeing K, but also on getting to know his school friends, going to the school for pick up and drop offs, and other weekday activities. He suggested that it was much more appropriate if the M was working that K spent time with him rather than with the MGPs or other carers.

59. I thought both parents were trying to be truthful, and both thought they had K's best interests at heart. Both of them tended to see K's interests very much from their own perspectives. Both of them now acknowledged that they had made mistakes and some of their decisions or communications had been a mistake.

60. I did think the F's evidence lacked insight into how the M perceived his actions, and the effect some of the decisions he had made impacted on her. I also thought he was unduly rigid and self-serving in his refusal to countenance travelling to Rugby during the week.

61. Equally, the M had made some selfish decisions, particularly in stopping contact, and then justified them to herself by saying they were in K's interests. She was more fragile in her emotional wellbeing than the F was prepared to acknowledge. As I have said, I thought she was somewhat disingenuous about when she had started to consider moving to Rugby, and the way she had not disclosed this to the F or the Court.

Conclusions

62. I need to take a holistic view of the evidence, and all the material factors in applying the welfare checklist. Ultimately, I have to determine what is in K's best interests.

63. K is a happy thriving child with two loving parents and a sense of having two homes. I have no doubt the most important thing for K is that he has those two loving parents. I suspect his wish from the perspective of a 4 year old would be for life to continue as it is at the moment, but that necessarily will not be the case. His life will change in September in any event because he will start going to school. That is a momentous change for any young child and will involve him spending less and different time with both parents. There has been, in my view, too much focus on simply maintaining the "status quo" in a way which is somewhat unrealistic and doesn't acknowledge the way that any child's life changes and develops, regardless of the wishes of the adults.

64. Further, K is going to experience change by reason of the M's job situation in any event. If she moves to Rugby he will during the week see his F less, both because of going to school and the greater distance. But if he stays in Nottingham and the M has to give up her job, that too will have an impact on him.

65. I accept that the M would not be able to continue her work with the MoD once the secondment comes to an end if she was living in Nottingham. The commute would be 2.5 and 3 hours each way and that is simply unsustainable, particularly with a young child and being a single parent. I am sure that people do do it, but for this mother with this job and in her situation, I find that it would not be possible. Therefore, if I refuse the relocation application she will have to give up her job and her career.

66. I think that this will have a very serious impact on her wellbeing. I am not going to speculate on whether it would impact on her mental health, and there is no psychological evidence dealing with that. However, I do not need psychological evidence to determine that someone who has pursued a career very successfully for 13 years and who plainly gets a great deal of her self confidence and self-worth from that career will be seriously impacted if forced to give it up. That impact is exacerbated by the M's lack of family and friends in Nottingham. She could doubtless get another job, although I doubt if it would be either as well paid or as rewarding as the one she has. She will undoubtedly feel trapped, and probably resentful, if forced to live where she does not want to live and to leave her career.

67. In my view Mr Lill has seriously underestimated the impact this will have on the M. Both he and the F described the M as "resilient". However, I have to say that is not how she struck me in the witness box. She doubtless has an outward strength, which she needs for her job. But her history of stress and anxiety, and the way she gave evidence, seemed to me to show someone who could easily be undermined and left feeling very vulnerable if left feeling isolated and undermined.

68. I think the M would be in a very vulnerable position emotionally if forced to remain in Nottingham, and that is likely to have an impact on K. I do not accept Mr Lill's evidence in this regard. In my assessment Mr Lill was unfair to the M in what he viewed as her tactical decision to reveal further information, and I do not accept his assessment of her or his dismissal of the effect on K of her having to remain in Nottingham.

69. I have no doubt that the F wishes to do the best by K and is very committed to him. Equally, the F thinks that he is supporting the M, and he could care for K if the M found herself unable, for example, to get back from London in time to collect him. But the F does not show very much insight or empathy for the M's situation. His offer

of "support", although I am sure well intentioned, actually serves to undermine the M and to make her feel that she is being criticised for placing considerable weight on her career. I have no doubt the F means well, and both parents have acted at times in an insensitive way to the other, but his use of the terminology of psychiatric hospital for the mother and baby unit, and a number of his messages to the M, do not give me much confidence that he will be empathetic to the M's emotional needs if she remained in Nottingham. He perceives himself as being "direct", which the M at times has perceived as him being "controlling".

70. This is a difficult decision, although not in my view a finely balanced one, because if the M moves to Rugby that will impact on the amount of time during school term that K can spend with the F and his family. It was clear from the F's evidence that he will find such a change undermining of his role as a father and will feel less valued. He is plainly very worried it will impact on his relationship with K.

71. I think the F, possibly led by Mr Lill, has become too fixated on "equality" of time, and on the belief that if there is not complete equality that will undermine the F's relationship. There is no principle that the starting point for the Court is equality of time between parents, each case must turn on its own facts. Many children spend different amounts of time with different parents, including when the parents are living together, the bond with the parent does not depend on such chronological equality.

72. K is strongly bonded to his father, and the wider paternal family, and I see absolutely no reason why that should not continue. I understand the F's reasons for saying that he cannot go to Rugby during the week, and ultimately that is a matter for him. However, I do struggle to accept that he could not employ some standby cover for at least one afternoon/evening a week. Whether that is by the PGF continuing to cover some times, or by employing an outside contractor, is a matter for the F and his family. It must be the case that he is planning holiday cover, so that could be extended. In terms of financial impact on the business, I accept there will be some, but the F is happy to say the M would have to give up her job, with a much greater financial impact.

73. In my view, with some goodwill and flexibility, the F should be able to see K on at least one afternoon/evening during the week and then have long weekends. It may be feasible to at least try K spending Friday evening to Monday morning with his F every second weekend and find a way for him to be driven to school from Nottingham on Monday morning. That is a level of "micro management" that responsible parents should be able to organise for themselves.

74. I do not accept that such arrangements will be particularly difficult for the F or K to understand because some of the evidence is in

CLOSED. As far as both are concerned, the key point is that the M has a job in London, to which she must return either in September 2023 or 2024, which involves having to live closer to London than Nottingham. It is no more complicated than that.

75. Finally, I agree with Ms Meredith that a shared lives with order is appropriate, albeit K's time will not be spent equally with both parents. It is important that the F, and indeed the M, understand that K is equally both their child, and that the fact that he spends more time during the week with one rather than the other is not some form of emotional demotion.

76. In reaching these conclusions I have taken into account and applied the welfare checklist, but I do not think it is necessary to repeat all the individual factors.

77. At the end of the hearing I requested the parties to seek to agree contact arrangements if the Mother was permitted to re-locate to Rugby. Sadly, they failed to do so. Instead, I received two ill-tempered submissions with the use of antagonistic language, and no child focused compromises. It is time both parents stopped treating K as a chattel to be divided mathematically between them.

78. I have therefore ordered that the F can have K stay with him overnight on Wednesdays. I am not going to order the maternal grandparents to drive him to Nottingham. If the F can neither arrange time off work, nor an appropriate paternal family member, who K knows, to collect him and return him to school, then the F will not be able to take up this contact. I do not consider it reasonable to require the MGPs to be the facilitators of this contact.

79. I do not consider it in K's best interests to be spending more time with F, and thus less time with M, in the period before he starts school in Rugby. This will be a time of transition for him, and he will need time to settle in his new home in Rugby. I think the F is overly focused on his short-term mathematical equality and insufficiently focused on K's best interests and helping him to build and sustain long-term relationships.

80. Inevitably, the contact arrangements will change as K grows older. I would hope that at that stage both parents would consider K's wishes and feelings and develop an ability to compromise with his best interests at heart. If they cannot do this, then I would strongly encourage them to jointly instruct (at joint expense) an independent social worker to talk to K and find out what he wants. This would be a much better use of their money than instructing lawyers.