

Neutral Citation Number: [2020] EWFC 20

Case No: BH19C00222

IN THE FAMILY COURT SITTING AT BOURNEMOUTH

Courts of Justice
Deansleigh Road
Bournemouth
BH7 7DS
Date: 19/3/20

Before:

HIS HONOUR JUDGE DANCEY

Sitting as a section 9 Judge

Between:

Bournemouth, Christchurch and Poole Council

Applicant

- and -

KC

1st Respondent

-and-

WG

2nd Respondent

-and-

W

3rd Respondents

(by her children's guardian)

Dan Nother (instructed by **BCP Legal Services**) for the **Applicant**

Caroline Kinloch-Jones (instructed by **Laceys**) for the **1st Respondent**

Tor Alloway (instructed by **Fort & Co**) for the **2nd Respondent**

Sarah O'Hara (instructed by **Aldridge Brownlee**) for the **3rd Respondent**

Hearing dates: 11-12 December 2019, 4-6, 10 and 18 March 2020

JUDGMENT

His Honour Judge Dancey:**Introduction**

- 1) These care proceedings concern W, a girl aged 9, nearly 10. W's parents, who were married, are Polish nationals and W was born there. Following the separation of the parents in Poland in April 2016, contested contact proceedings there resulted in an order providing that W live with the mother with contact to the father. The father's parental responsibility was limited to decisions about medical treatment and education. Following the breakdown of the father's contact with W, the mother brought her to the UK in June 2018 where they have remained since. That was done without the father's agreement, although he was aware the mother planned to relocate and acquiesced once the move had taken place. The mother did not tell the father of her and W's location within the UK.
- 2) On 28 February 2019 the police attended at the mother's home. There had over the preceding month or so been a number of referrals from concerned neighbours about the mother's mental health state. The mother was found to be suffering a delusional psychotic breakdown. The police exercised their protection powers and removed W. She has been in foster care since. The mother was sectioned and spent time at a local psychiatric hospital. The local authority issued these proceedings on 15 March 2019 and W was made subject of an interim care order.
- 3) The parents accept that at the point the proceedings were issued, W was suffering, or was likely to suffer significant harm by experiencing her mother's frightening psychosis. The threshold criteria under section 31(2) of the Children Act 1989 are therefore accepted. The mother disputes allegations of neglect and harsh discipline of W.
- 4) Because W had been in the UK for 9 months I found her to be habitually resident here and declared that this court had jurisdiction. The Polish authorities were given early notice of the proceedings and have assisted with advice from time to time. There has been no challenge to the court's jurisdiction and no request to transfer the proceedings to Poland under Article 15 of B11a. Instead the father has come to the UK as necessary to attend hearings and (with his parents) for assessment.
- 5) The mother seeks the return of W to her care, supported by the maternal grandmother who has since come to the UK and lives with the mother in her flat. The mother points out that W was in her primary care down to the end of February 2019 and that she has now recovered her mental health with low risk of relapse. She has had a positive parenting assessment. The mother would either remain in the UK with W or, if W wished, return to Poland.
- 6) The father asks that W be placed in Poland with him and his partner and her son F (who is a similar age to W).
- 7) The common professional view of the local authority, the court appointed psychologist, Dr Jefferis, and the children's guardian, is that W's best interests

would best be served by returning her to Poland under her father's care with a child arrangements order. All the professionals share concerns about the mother's attitude towards the paternal family and contact between them and W and aspects of her parenting and personality.

- 8) That said, the local authority accept that the mother has made a good recovery from her psychotic illness and would be able to meet W's day to day care needs. Given that the issue is with which of two potentially viable parents W should be placed, the case has taken on the hallmarks of a private law dispute.
- 9) The local authority also proposes a supervision order, permission to the father to relocate W to Poland with release of appropriate documents to the Polish authorities.

Summary of decision

- 10) Both parents were the subject of negative comment by the Polish court in 2017, with the mother being assessed as being obstructive towards contact between W and her F and the father as lacking insight into W's needs.
- 11) By October 2017 the Polish Court had a more favourable view of the father. However the mother continued to obstruct contact and in June 2018 moved to the UK with W. That was not a child-focused thing for her to do. The father took a rather laid-back attitude until he found out in March 2019 that the mother was ill and W had been removed into foster care. Since then he has engaged well, shown commitment to W and been assessed positively as somebody who could care for W in Poland.
- 12) The mother has recovered well from her psychotic episode but aspects of her parenting continue to cause concern. She and her mother continue to have a negative attitude towards the father and his family.
- 13) I have decided that W needs emotional stability and security which would best be met by the father in Poland. I have greater confidence in his ability to promote a relationship between W and her mother than I have in the mother to promote a relationship between W and her father.
- 14) W would like to return to Poland. She does not express a clear preference as to which parent she lives with.
- 15) I am therefore making a child arrangements order providing that W is to live with her father. I give permission for him to remove her from the UK to Poland. He must make sure W has contact with her mother, with a one month gap in direct contact to allow W to settle and thereafter supervised contact. Supervision is necessary because the mother is likely to be upset by this decision, may continue to undermine W's relationship with her paternal family.
- 16) I will also make a supervision order to secure help and support for W and her family in Poland.

The hearing

- 17) The local authority are represented by Dan Nother, the mother by Caroline Kinloch-Jones, the father by Tor Alloway and W by Sarah O'Hara, instructed by the children's guardian.

- 18) The parents have each had an interpreter throughout the main hearings. The mother's English is very good. She worked in marketing in the UK for some years. However, she finds it easier to express herself in her native language when stressed and so used an interpreter at times during the hearing. The father's English is limited. I should say that W has very good command of English and no professional saw the need for an interpreter when speaking with her.
- 19) On 11 and 12 December 2019 I heard an application by the mother to discharge the interim care order. I heard evidence from Dr Jefferis, the allocated social worker, the mother and psychiatrist, Dr Doherty.
- 20) At that point Dr Jefferis had met with the paternal family and formed a favourable impression. His view on balance was that W, who was missing Poland, should go back there with her father. That was also the social worker's view.
- 21) Dr Doherty accepted there was a risk of relapse in the mother's mental health. The diagnosis was more likely to be depression with an acute psychotic episode than schizophrenia (although the latter was not discounted). The mother was driven by her delusions which were terrifying for her and W (involving microphones in her flat and snipers trying to kill her). The mother had recovered by June/July 2019 (following a second admission to hospital in May) and had developed good understanding of her condition. Her memory of events for some time before the acute episode may have been affected by her depression. There is a risk of relapse if W is not returned to her care.
- 22) Because Dr Jefferis' report about the paternal family was not at that point available it was thought it would be premature to come to a conclusion. That hearing was treated as the start of a final hearing and adjourned part-heard to a further hearing in January 2020.
- 23) Dr Doherty agreed it would be a good idea if somebody with knowledge of the mother's condition spoke to W to give her a balanced perception of her mother's mental health. There was concern that W's experience of the acute episode and lack of subsequent explanation may have left her worried about returning to her mother's care and the possibility of relapse. Sadly, that piece of work has still not been undertaken.
- 24) Very soon after that hearing the guardian was taken ill and a new guardian had to be appointed. The new guardian was not available for the adjourned hearing and the matter had to be further adjourned until 4 March.
- 25) I have over three days (4 to 6 March) heard further evidence from Dr Jefferis, a previous social worker, the allocated social worker, the parenting assessor, the mother's neighbour, the mother, the maternal grandmother, the father and the guardian. I directed written submissions on 10 March and reserved judgment.

Threshold findings sought

- 26) The local authority's threshold document falls under two headings – the impact of the mother's mental health on her ability to provide W with consistent and stable parenting, which is largely conceded – and neglect and emotional harm, in particular:

- a) emotional harm found by the Polish Court, set out in the threshold document as follows;
- It is “indisputable that the Parties remain in mutual conflict...unfortunately this impacts negatively on the Parties’ daughter because this embeds a negative image of the parents (Respondent (*father*)) in the child’s eyes and results in the minor’s mental dismissal of her father which is in essence an undesirable situation which requires purposive action aimed at remedying this state of affairs”.
 - “The Petitioner (*mother*) wants to take sole care of the child and to make contact between the other parent impossible...The minor has all her basic material and sustenance needs met while under the care of her mother. This will undoubtedly be the case when she is in the care of her father. It does however need to be mentioned that the conflict which exists between the petitioner and the respondent is felt by the minor which results in her feelings of safety and stability being shaken and also has an impact on her general well-being and daily life”.
 - The court took the view that the mother needed to instil in W a positive view of her father, something which she had not done to date. “In so doing, she causes the child irreparable injury which the Court cannot agree to”.
- a) failure to promote contact with the father;
- b) removal from Poland without the father’s consent (compounding the harm found by the Polish court);
- c) leaving W home alone for extended periods during the day and occasionally late at night (as reported by W and the neighbour);
- d) when the mother was at home, not spending much time with W but spending time on her computer, leaving W in her room;
- e) shouting to W about snipers in the home and telling her microphones had been planted;
- f) the mother hitting W on her head with a hairbrush (as reported by W);
- g) the mother telling neighbours there was something seriously wrong with W’s brain when there wasn’t;
- h) the mother disposing of her mobile phone by burning it, having told neighbours it wasn’t safe for her to hold a mobile phone and that she was at risk and not safe;
- i) causing fear and distress to W when the police attended on 28 February 2019 by initially refusing to open the door to them, causing the police to force entry, the mother taking hold of W who was cowering on the floor, saying that people had threatened to kill her and there were snipers on the roof, and attempting to escape with W from the property so that W had to be removed from her grip by police officers;

- j) having almost no food at the property, with W found in damp pyjamas and almost no toys.

The legal principles

Threshold criteria

- 27) The first stage is to consider whether the local authority have proved the threshold criteria or, in this case, the extent to which they have proved it, given the parent's acceptance that it is met.
- 28) Section 31(2) provides (so far as is relevant in this case)
- A court may only make a care or supervision order if it satisfied –
- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
 - (b) that the harm is attributable to –
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; ...
- 29) The burden of proving an allegation lies on the local authority. Insofar as the agreed outcome in this case should be placement with one or other parent, the case has the appearance of a private law dispute. Insofar as a parent may in that context make an allegation, they may assume the evidential burden of proving it but the legal burden of proof in care proceedings remains with the local authority throughout.
- 30) The standard of proof is the balance of probabilities. Once a fact is proved to that standard it happened, if it is not proved it did not happen – the so-called binary consequence. The court is entitled to take into account inherent improbabilities in deciding whether a fact is proved, but must base findings on evidence, not speculation: *Re B* [2008] UKHL 35. The court has regard to the totality of the evidence and does not compartmentalise it.
- 31) It is common for witnesses to lie in the course of investigation and hearing. They may do so for a variety of reasons – shame, misplaced loyalty, fear and distress being examples. It does not follow that because they have lied about one matter they have lied about everything: *R v Lucas* [1981] QB 720.
- 32) There is a different but related question of witness fallibility, which is a matter of reliability rather than credibility. The court should bear in mind that recall of events by a witness is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded by the process of litigation and the drafting of lawyers, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC (Comm), Leggatt J and see *Lancashire County Council v C, M & F (Children - Fact-finding)* [2014] EWFC 3.

Welfare

- 33) The second stage, if the threshold criteria are met, is to make such order as best meets W's needs having regard to the following principles:

- a) W's welfare is the court's paramount concern (section 1(1) of the 1989 Act);
- b) delay in determining questions about her upbringing is generally prejudicial to welfare (section 1(2));
- c) involvement of both parents in W's life, provided it does not put her at risk of harm, is presumed to further her welfare (section 1(2A) and (6));
- d) the court has regard in particular to the matters set out in the welfare checklist at section 1(3);
- e) an order should not be made unless it is better for the child to do so (section 1(5));
- f) evaluation of welfare requires an holistic analysis of the benefits and disadvantages of each realistic option;
- g) where it is said options involve risk of harm, the court must assess what the risks are, what the consequences of the risks would be if they happened, whether the risks can be managed and what measures are proportionate to them;
- h) any order must comply with the ECHR Article 8 right to respect for private and family life and interfere with such right only to the extent that is necessary and proportionate.

Polish law and practice/withdrawal from the EU

- 34) Four particular questions arise which have been the subject of advice from the Polish Consulate:
- a) Was the removal of W to the UK in June 2018 unlawful by reference to Polish law?
 - b) What steps, if any, would be needed for recognition/enforcement of child arrangements/parental responsibility orders made here given the existing Polish order granting custody of W to the mother and limiting the father's parental responsibility?
 - c) What steps can this court take to help the family receive help and support from Polish social services?
 - d) Would the Polish courts and authorities recognise such orders after 31 December 2020 ("Exit day")?
- 35) I am grateful to Mr Nother for his note on the position in relation to these questions.

Lawfulness of removal

- 36) Article 3 of the Convention on the Civil Aspects of International Child Abduction (Hague Convention 1980), given force in the UK by s.1 of the Child Abduction and Custody Act 1985, provides:

The removal or the retention of a child is to be considered wrongful where

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body either jointly or alone, under the law of

the State in which the child was habitually resident immediately before the removal or retention; and

- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

- 37) Under Article 5 “rights of custody” include “rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence”.
- 38) An order made in the Polish proceedings on 30 December 2017 provided for:
- a) W to reside at whatever location the mother resides at;
 - b) the father’s parental responsibility to be limited to joint decision-making regarding the child’s education and medical matters (with no mention of relocation);
 - c) advance notice and supply of travel documents in advance of foreign holidays.
- 39) I was told by the father that there is a greater expectation in Poland than here that children will remain with their mothers following separation. Further, the limitation of the non-resident parent’s parental responsibility there is much more routine. As Baroness Hale reflected in *Re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51:
- “[26] ...The question is, do the rights possessed under the law of the home country by the parent who does not have the day to day care of the child amount to rights of custody or do they not? States’ laws differ widely in how they look upon parental rights. They may regard the whole bundle of rights and responsibilities which the law attributes to parents as a cake which can be sliced up between the parents: one parent having the custody slice, with the package of rights which that entails, and the other having the access slice, with the different package of rights which that entails. This is by no means an unusual way of looking at the matter. Alternatively, the state may regard the whole bundle of parental rights and responsibilities as inhering, and continuing to inhere, in both parents save to the extent that they are removed or qualified by the necessary effect of a court order or an enforceable agreement between them.”*
- 40) The question of rights of custody was central in *Re D* because the issue was whether there had been a removal in breach of those rights in the context of Hague Convention proceedings. The Supreme Court decided that a potential right to veto a move, rather than an actual right, did not amount to ‘rights of custody’ and dismissed the proceedings. In the present proceedings this is not a central issue, but merely a factor to be taken into consideration as part of the landscape of the case.
- 41) The Polish Consulate was asked the question whether the mother was entitled to remove W in the way she did. Their response of 26 July 2019 was:

“As in this case, the father still has the right to co-decide about child’s most important matters such as education, medical treatment, going abroad etc., but the mother is the “leading” parent, who single-handedly makes everyday decisions concerning the child. Consequently, even though the father’s parental authority has been limited, the child’s mother is not allowed to make crucial decisions about the child without the father’s consent.”

- 42) In a response to further questions on 9 March the Polish Consulate said this:

“ ...in [a] general sense the parents decide jointly in essential matters concerning a child and this includes permanent move abroad. Nevertheless, if the father’s parental authority was restricted/limited to joint decision-making in respect of the child’s education and medical matters, these are the only matters in respect of which the parents must make decisions together. Therefore, as far as this aspect of the Court’s decision of 30/10/2017 is concerned the mother did not act in breach of the order by deciding about the child’s residence. Nevertheless, should the decision in relation to residence of the child make other orders impractical to achieve for instance in relation to contact... the mother should have informed the father that there is a need to change arrangement in relation to the contact due to relocation. Subsequently, should the father disagree with the same he ought to apply to the court to vary the Court Order. Whilst the decision of the Polish Court omits to mention the country of permanent residence it is assumed that this would be Poland as the decision in relation to contact may have been impossible to achieve should the mother and the child live elsewhere.”

- 43) In *Re S (Brussels II Revised: Enforcement of Contact Order)* [2008] 2 FLR 1358, a case with similarities to this one, Roderic Wood J noted:

“[4] Upon the dissolution of the marriage, the Polish court ordered that the mother should exercise full parental responsibility, but that the father’s rights to the exercise of parental responsibility over the child were to be restricted to co-deciding about her education, her future employment, and medical treatment in the event of serious illness;

...

[10] The parties and the court agreed that, for the purposes of construing the Regulation, the mother did not need the leave of the court to remove V to England any more than she needed the consent of the father.

...

*[18]: ...it is in my judgment, quite rightly agreed by these parties that the order of the district court ... giving him parental responsibility but only in the limited spheres to which I have adverted, does not in the eyes of the English court give him rights of custody such that he would be in a position lawfully to impede the removal by the mother of V to England (see *Re D (A Child)(Abduction: Rights of Custody)* [2006] UKHL 51.”*

- 44) In *Re D* the question whether the father had rights of custody had been subject of expert evidence and, when the Court could not decide between the experts, a referral for determination of the issue by the home court.

- 45) As Mr Nother points out, the question whether the removal was wrongful or not is not necessary to the welfare decision I have to make. Short of adjourning for expert evidence it is unlikely I will be able to reach a finding on this issue. I therefore do not treat the removal as wrongful in its legal sense but it remains of relevance to the mother's approach and attitude towards the father's relationship with W.

Recognition

- 46) Of more practical importance is the second question. The starting point is Article 21 of Council Regulation No 2201/2003 (B11R), which provides that a judgment given in a Member State shall be recognised in another Member State without any special procedure being required.
- 47) This is subject to the right of an interested party to apply for a decision that the judgment be or not be recognised. The grounds for non-recognition (by another Member State) for judgments relating to parental responsibility (Article 23) are (in summary):
- a) if it is manifestly contrary to the public policy of the other Member State, taking into account the best interests of the child;
 - b) if it was given, except in the case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure in the other Member State;
 - c) if it was given in default of appearance where the person in default was not served;
 - d) if it infringes a person's parental responsibility without them having an opportunity to be heard;
 - e) if it is irreconcilable with a later judgment relating to parental responsibility given in any other Member State or a non-Member State fulfilling the conditions necessary for recognition in the other state;
 - f) if the Article 56 procedure has not been followed (the requirement for consent by another state to placements in institutional or foster care in that State).
- 48) 'Parental responsibility' for this purpose includes rights of custody (including the right to determine the child's place of residence) and rights of access (including the right to take the child to a place other than her habitual residence for a limited period of time) (Article 2.7).
- 49) Under Articles 24 and 26 there can be no review of the jurisdiction or substance of the judgment of the court making the original decision.
- 50) Article 28 provides for the enforcement of a judgment in another Member State when it has been declared enforceable there. Article 29 provides that an application for a declaration of enforceability is submitted to the relevant local court, here the Polish court, and the procedure is governed by the law of that court (Article 30). The application must be dealt with without delay, without submissions from the person against whom the declaration is sought or the child and refused only for one of the reasons set out in Article 23 (Article 31).

- 51) An order concerning rights of access is enforceable provided it is certified in accordance with Article 41.
- 52) Mr Nother submits that the effect of these provisions is that:
- a) a child arrangements order made here would be enforceable in Poland without any special procedure being needed (Article 21);
 - b) any party wishing to object to recognition in Poland would need to apply for a decision to that effect on one or more of the grounds set out in Article 23;
 - c) the judgment would be enforceable in Poland once declared enforceable there under local procedures (Articles 28 and 30);
 - d) an order for contact to the mother (or father) would be immediately recognised and enforceable in Poland if the court issues a certificate under Article 41
- 53) The father's concern, if the court orders the return of W under his care, is that the mother may seek to invoke the Polish order limiting his parental responsibility.
- 54) The Polish Consulate explained in its email of 26 July 2019 that, although the father's parental responsibility had been restricted by the order of 20 December 2017, he could apply for the restrictions to be lifted:

“The Family Court may restore parental authority to the parent if the cause for which they were deprived has ceased. The court may change its decision on parental responsibility, if the best interest of the child requires so – in particular care for its proper psychological and physical development.

For parental responsibility to be restored, the father could apply to the court for restoration of parental authority, in which it is likely that the cessation of the reasons that constituted the basis for restriction/deprivation/suspension of parental authority should be made.

Proceedings in the case of restoration of parental authority may also be instituted ex officio.

An application for the restoration of parental authority is subject to non-trial recognition by the family court, competent for the child's place of residence or stay.

The decision to reinstate parental responsibility can only be issued after the hearing has been held. During the proceedings, the court examines whether the reasons underlying the limitation/deprivation/suspension of parental authority cease to exist.

In the case of submitting an application for the restoration of parental authority, the father should at the same time submit an application for a protective order (interim order) that will enable him to exercise full power over the child until the end of the main proceedings. Otherwise, it will be in contradiction with a previously-issued order which remains in force until the new order becomes final and changes the scope of exercising parental responsibility.”

- 55) The Polish Consulate was asked to advise to what extent it would be necessary or desirable to grant full parental responsibility to the father and restrict or terminate the mother's parental responsibility. The question went on to say that there is no concept of limiting parental responsibility here, it can only be terminated and that is unusual.
- 56) There are a number of problems with the question:
- a) if a child arrangements order is made naming the father as the person with whom the child is to live and the father would not otherwise have parental responsibility for the child, the court must make a parental responsibility order (section 12(1) of the 1989 Act);
 - b) although a parental responsibility order may not in its own terms be restricted, a prohibited steps order has the effect of prohibiting the exercise of the parental responsibility specified in the order without the court's consent – thus restricting at least the exercise of parental responsibility, if not the concept;
 - c) although the court has power to remove or terminate parental responsibility acquired by a father under section 4(1) of the 1989 Act (section 4(2A) and see *Re A (Termination of Parental Responsibility)* [2013] EWHC 2963 (Fam) and *Re D (Withdrawal of Parental Responsibility)* [2014] EWCA Civ 315), there is no power to remove parental responsibility granted to a father under section 12(1), at least so long as the child arrangements order remains in force (section 12(4)), let alone terminate parental responsibility automatically held by the mother.
- 57) This begs the question whether the court must make a parental responsibility order under section 12(1) in circumstances where, as here, the father holds parental responsibility under a foreign order which, because of the different exercise in jurisdiction there, is limited in a way that could not happen here. Adopting a purposive approach, I would interpret section 12(1)(c) – 'would not otherwise have parental responsibility for the child' – as meaning full parental responsibility as envisaged by section 4, not the limited parental responsibility currently held by him under the Polish order. If I make an order that W is to live with the father, I therefore consider I must make a parental responsibility order in his favour pursuant to section 12(1).
- 58) In the context of the question asked, the Consulate's response on this issue was as follows:
- “The concept of limitation or deprivation of parental authority does not exist within the jurisprudence of England and Wales therefore this cannot be part of the decision within this jurisdiction. The deprivation/limitation of parental rights or alternatively termination is not required to enable effectiveness of the English Court's decision which gives custody of the minor to the father with access rights to the mother in Poland. It is recommended that if the Court is minded to grant a Child Arrangement Order it is supplemented by information in relation to the specifics of this order within the law of England and Wales. This will then be recognised equivalently as part of automatic recognition mechanism. Additionally, it is suggested that any Orders made by the High Court in England and Wales which give that rights of custody to the father state that the*

decisions of the Polish District Court dated 30/10/2017 no longer apply and the reasons for this.”

Help and support from Polish social services

59) In an email dated 22 November 2019 the Polish Consulate gave this helpful advice:

“If the supervision of the placement [with the father] is sought by the Polish Authorities it is recommended that a Supervision Order is also issued. As there is no parallel order to a Supervision Order in the Polish Legal System a mirroring arrangement can be achieved upon an engagement of an enforcement procedure in relation to the respective orders (known in the UK as registration). Additionally, the Local Authority may wish to make a direct contact with the respective local authority children’s services in Poland in relation to a potential referral for support and monitoring.

...

We can offer assistance in identifying the relevant equivalent of the children services in Poland to support the ease of making this contact. Additionally it would be recommended that the final order as well as the threshold document are disclosed to the Polish Authority to alert to any concerns. ... The support the Polish social services will be able to provide the father and the equivalent of the type of support that could have been expected under supervision order in the UK.”

60) The Consulate went on to give detail about the Polish child protection system including:

- allocation of a family assistant;
- involvement long-term, on average 2-3 years;
- periodic assessments of the family situation with referral to specialists;
- potential for therapy of the child to involve the parents;
- obligation on any person or institution to report a risk of harm;
- the potential for court proceedings to protect the child;
- the Polish court can suspend parental authority;
- in the event of court proceedings, contact with the parents might be regulated.

61) And so the local authority invites me to make a supervision order alongside a child arrangements order.

The position after 31 December 2020 (Exit day)

62) B11a is revoked from 31 December 2020 (Jurisdiction and Judgments (Family) (Amendment etc) (EU Exit) Regulations 2019/2003, reg 3).

63) By reg 8 of 2019/2003, dealing with saving/transitional provisions, the revocation does not apply to proceedings before a court in a Member State seised before exit day (and, for present purposes, I am seised of these proceedings).

- 64) However, my understanding from the European Commission document ‘Notice to Stakeholders: Withdrawal of the United Kingdom and EU Rules in the Field of Civil Justice and Private International Law: 18/1/2019’ is that EU rules on recognition and enforcement will not apply to a UK judgment, even if the judgment was given, or enforcement proceedings started, before 1 January 2021 unless the judgment has been exequatored (declared enforceable by the courts of the Member State where recognition or enforcement is required) before 1 January 2021.
- 65) I set out in full the Polish Consulate advice concerning this issue contained in its email of 9 March 2020:

“3.1. Despite the United Kingdom leaving the European Union, in the United Kingdom, as well as in the Member States, the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period. This also applies to documents formally drawn up or registered as authentic instruments by that time. The transition period will conclude on 31.12.2020. Thus, until that time the court orders issued in the United Kingdom are subject to automatic recognition in Poland, under art. 21 para.1 of the EC Regulation No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and its enforceability. Additionally, according to art. 28 a judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The art. 47 states that enforcement procedure is governed by the law of the Member State of enforcement.

3.2. Furthermore, in line with the Polish law judgments of foreign state courts issued in civil matters shall be recognised by operation of law unless there are obstacles listed in Article 1146 (Code of Civil Procedure Art. 1145) as cited below.

3.3. Art. 1146 states - § 1. A judgment may not be recognised if: 1) it is not final and non-revisable in the state where it was issued; 2) it was issued in a case which falls under the exclusive jurisdiction of Polish courts; 3) the defendant who did not defend on the merits of the case had not been duly served with an originating pleading in sufficient time to enable him to arrange for his defence; 4) a party was deprived of the possibility to defend the proceedings; 5) an action involving the same claim between the same parties had been brought before a court in the Republic of Poland before it was brought before a court of a foreign state; 6) it is irreconcilable with an earlier final and non-revisable judgment of a Polish court or an earlier final non-revisable judgment of a court of a foreign state recognised in the Republic of Poland, given in a case involving the same claim between the same parties; 7) such recognition would be contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause). § 2. The obstacles listed in § 1

(5) and (6) shall apply mutatis mutandis to cases pending before a Polish authority or foreign state authority other than a court and to decisions issued by a Polish authority or foreign state authority other than a court. § 3. The provisions of § 1 (5) and (6) do not apply if the judgment of a foreign state court confirms, in accordance with the provisions on the domestic jurisdiction of that state, that a person who resides or has his registered office in the Republic of Poland has acquired the estate which, at the time of the deceased's death, was located in the territory of a foreign state.

3.4. Pursuant to Art. 1147 of the Code of Civil Procedure § 1. a person seeking recognition of a judgment of a foreign state court shall furnish the court with: 1) authenticated copy of the judgment; 2) document certifying that the judgment is final and non-revisable unless it is evident from the content of the judgment that it is final and non-revisable; 3) certified translation into Polish of the documents referred to in subparagraphs 1 and 2 and in § 2. § 2. If the judgment was given in proceedings in which the defendant did not defend on the merits of the case, a document must be presented to confirm that the originating pleading was duly served on the defendant.

3.5. Polish law further states (Art. 1148) § 1. any person who has a legal interest may move the court to determine whether or not a judgment of a foreign state court may be recognised. § 2. A motion to determine whether or not a judgment of a foreign state court may be recognised should be accompanied by the documents listed in Article 1147, and a motion to determine that a judgment may not be recognised should be accompanied by an authenticated copy of the judgment together with its certified translation into Polish. § 1. The motion referred to in Article 1148 shall be heard by a regional court which would have jurisdiction over the case decided by a foreign state court or in whose district the competent district court is located or, failing that, by the Regional Court in Warsaw (Art. 11481.). § 2. A party may present the case to the court within two weeks of the motion being delivered. The court may hear the motion in camera. § 3. A decision of a regional court concerning the recognition of a judgment may be appealed, and an appeal against the decision of the appellate court may be filed with the Supreme Court; moreover, reopening of proceedings which ended in a final and non-revisable judgment on the recognition of a judgment may be requested, and a petition for a final and non-revisable judgment to be declared unlawful may be filed.”

- 66) The upshot is, as Mr Nother suggests in his note about the position, that one or other of the parents should apply promptly in Poland for a declaration recognising this judgment and the order that will follow (exequaturing the judgment). I will direct that both this judgment and the order are disclosed to the Polish authorities.

Assessment of the mother, father and W

The mother

- 67) The evidence identifies a number of positives about the mother:

- a) the parenting assessment of October 2019 confirms her ability to meet W's practical care needs;
 - b) the relationship between her and W has been observed as warm and loving;
 - c) she has made a good recovery from her psychotic episode and is now mentally well having progressed from a point when she lacked litigation capacity and was, to the court, observably unwell to the point where she has for some time been plainly stable;
 - d) although a relapse cannot be ruled out, the mother has engaged well with the mental health team and medication and has good insight into her condition and what is required to avoid relapse (although she told Dr Jefferis that she stopped taking her medication after initial discharge from hospital after learning she was not legally required to take it and stopped as she did not see the need for it – this contributed to her second admission in May);
 - e) from a psychiatric point of view the mother's treating psychiatrist, Dr Searle, could see no reason why she should not resume care of W;
 - f) she has been committed throughout to securing the return of W to her care;
 - g) she produces positive character references from friends and from her landlord, who describes her as a problem free tenant who has always been up to date with her rent.
- 68) The point is made on the mother's behalf that many of the concerns in respect of which the local authority seek findings arose at a time when the mother was unwell through depression. That is true, but there are pervading concerns which we see consistently from the separation in April 2016, through the Polish proceedings in 2017, removal of W to the UK in June 2018, acute psychotic episode in February/March 2019 and persisting now. As Ms O'Hara points out, while these proceedings started with a focus on the mother's acute mental health crisis, wider underlying concerns have emerged.
- 69) I have heard the mother give evidence on two occasions, both of them at times when, on the evidence, she has been well. What has come through both from her oral evidence and the surrounding evidence is concerning:
- a) it is clear from the Polish psychiatric assessment and the findings of the Polish court (which I am obliged to recognise) that the mother sought to control care of W and exclude the father from W's life, instilling in W a negative image of the father;
 - b) it seems likely (and I find therefore) that, by the time the mother brought W to the UK in June 2018, she had for some time been suffering from depression;
 - c) I am prepared to accept therefore that the mother's thinking at that time was conditioned by her mental state;
 - d) I also accept, as she wrote to the father in January 2018, that she planned moving because at that time he was applying to the Polish Court to halve

- the amount of child maintenance he had to pay and she needed financial security;
- e) nonetheless, the move to the UK was ill-thought out, unplanned and idealistic in its aspirations;
 - f) part at least of the motivation for the move was to further exclude the father from W's life by making contact more difficult;
 - g) the mother has maintained a negative view of the father and has nothing positive to say about him, even when prompted by me to try;
 - h) in particular the mother endorsed what amounted to a tirade of negative criticism of the father and his family by the maternal grandmother in her statement and evidence;
 - i) against this the mother (supported by the grandmother) presents herself as a paragon without fault;
 - j) in this context I consider it unlikely that the mother is capable of presenting the father in a positive light to W or promoting contact with him in an uncomplicated way.
- 70) The mother was not a satisfactory witness. Aside from her pervading negativity about the father she was evasive and claimed misunderstandings because of language difficulties. In fact, her use (although heavily accented) and understanding of English is very good, to the point where on one occasion when corrected the father's interpreter.
- 71) While the mother may explain some of her behaviours and parenting by reference to her poor mental health at the time, and says she understands the impact on W, she adamantly denies aspects of that behaviour in the face of strong evidence, rather than accepting it may have happened but forgotten by her in the context of depression (as envisaged by Dr Doherty).
- 72) This analysis is borne out by Dr Jefferis' assessment of the mother. He found the mother keen to present her personal history as straightforward and unproblematic. She did not regard her lack of relationship with her own father (who left before the mother was 3 years old) as disadvantageous in any way.
- 73) She talked about W seeing her father as "*an enemy rather than a father*". In evidence the mother did not think 'enemy' was the right word. I allow for the fact that this may have been a linguistic misunderstanding, just as the father similarly questioned the use by him of the word 'hatred' in relation to the mother¹. Nonetheless, the negative sense remains, in both cases. While she denied saying to W that her father only wanted contact with her for financial gain, she was prepared to acknowledge to Dr Jefferis the possibility that W may have heard her saying something along these lines when talking to the maternal grandmother by telephone.

¹ The Equal Treatment Bench Book has just been updated with a caution about linguistic misunderstandings in court: "*Individuals in court who speak English as a second language may make crucial grammatical 'mistakes' because they are reproducing the grammar of their own language. The highest risk of misunderstanding is when you are not on guard because the individual seems to speak English fairly fluently.*"

- 74) The mother talked to Dr Jefferis about W being old enough to make her own decision about contact, a classic response, in my experience, by parents who fail to genuinely promote and support a relationship with the non-resident parent. She said of the paternal family “*you don’t want to be friends with them*”.
- 75) Dr Jefferis concluded that there are questions about the mother’s psychological functioning which go beyond her psychotic illness indicating a number of problematic personality characteristics. She came across as an individual who tends to be brittle and inflexible, lacking insight, finding it difficult to understand and accept points of view of others and who has difficulty approaching interpersonal problems constructively. She was not able to engage meaningfully in consideration of issues where evidence from other sources (including W) is inconsistent with her own.
- 76) Dr Jefferis considered that these characteristics have contributed to the mother’s difficulties in the past and are likely to have some adverse implications for her parenting capacity. He also considered the possibility (without forming a concluded view) that persistent low level defensive paranoia is a personality characteristic colouring the mother’s interpretation of events in her relationship with the father and contributing to an obstructive and negative attitude towards contact between W and her father.
- 77) The mother minimised the duration of her delusional beliefs after she was admitted on the second occasion in May 2019, saying to Dr Jefferis that she had very quickly gained insight, whereas Dr Doherty noted she remained delusional for several weeks (at least until 17 June 2019). Dr Jefferis had the impression of a degree of minimisation by the mother of the extent and severity of her mental health difficulties, which begs the question whether she would be able to fully recognise symptoms in the future and the extent to which W had been adversely affected by her mother’s illness.
- 78) Dr Jefferis was also concerned by the mother’s dismissal of W’s reports (for example about being left alone and hit with a hairbrush). The mother may have no recollection, in which case it would have been more hopeful if she simply said so, or she may be choosing to deny things she knows happened, which would be of great concern in terms of her ability to prioritise W’s needs, or what the neighbours and W have said may be an untruthful account.
- 79) Dr Jefferis formed a generally favourable impression of the maternal grandmother who he thought would be supportive and able to mitigate risks from the mother of neglectful or insensitive parenting. He also noted the genuinely affectionate relationship between W and her mother.
- 80) Dr Jefferis summarised the cause of the mother’s breakdown by describing an inflexible and narcissistic personality style coupled with a habit of defensive avoidance (suppressing or denying difficult feelings) contributing to a long period of stress and a breakdown caused by depression with psychosis. Genetic factors were likely to be significant and the lack of her father in her upbringing was likely to have been an additional vulnerability factor for depression.
- 81) Dr Jefferis doubted whether, taking the disputed allegations at their worst, W’s emotional needs would be adequately met if placed with her mother. The worst scenario would be one in which the mother suffered from low-level symptoms of paranoia including negative views of the father, alienating W against her

father and using excessive chastisement. If some or all of these conditions were to be present, Dr Jefferis considered that W's needs would not be met and she would be permanently psychologically damaged in terms of being at risk of emotional disorders such as depression, impairment in forming healthy relationships and reaching her potential academically.

The father

82) Although there has been much focus on the mother's shortcomings, the father did not escape criticism in the May 2017 Polish assessment and findings of the Court, as he was ready to acknowledge in evidence. He was described in the assessment as:

- a) taking an inadequate laid-back approach to the situation;
- b) expressing himself in a chaotic, incoherent and illogical way;
- c) not controlling his emotional reactions and reacting with agitation in relation to matters concerning the mother;
- d) talking about the mother's negative behaviours;
- e) placing himself in an excessively good light and being uncritical of himself;
- f) not seeing the point of the assessment;
- g) not seeing the impact of the confrontational nature of the parents' relationship on his contact with W;
- h) having difficulty establishing satisfying social relationships, preferring his own company and with learned ways of behaving;
- i) feeling uncomfortable about new situations, causing him to stop trying;
- j) expecting help and support from outside;
- k) displaying low self-esteem and lack of belief in his own capabilities;
- l) focussing on the past, in particular emotions bound up with past experiences, hindering his ability to adapt to new situations and problems leading to excessive and inappropriate reactions;
- m) having a rigid approach and peculiar understanding of, and low-level insight into, the child's needs, led by the fulfilment of his own needs in his behaviour towards W;
- n) leaving responsibility for care and educational matters to the mother;
- o) not knowing how to take constructive action towards achieving an understating with the mother to work out consistent parenting of W.

83) This fairly comprehensive indictment of the father may be seen as contra-indicating him as a primary carer now for W. It certainly contributed to the Polish court's conclusion that the mother should have custody of W with access to the father but with limitation of his parental responsibility.

84) There are a number of points about this:

- a) the father told Dr Jefferis, and said in evidence, that rather than be given an opportunity to express himself in narrative style he was confronted in

- this assessment with the allegations and negative comments made by the mother to the assessor so that he felt ambushed and on the back foot;
- b) notwithstanding that, the father was far readier to acknowledge the criticisms made of him;
 - c) by October 2017 the Polish court observed that the father's approach had changed immeasurably, deserving credit so that he should be supported in his further attempts to rebuild his relationship with W.
- 85) As Ms Kinloch-Jones points out, the court has not directed a full psychological assessment of the father as it has for the mother. Rather Dr Jefferis was asked "to carry out an extra piece of work seeing the paternal family including the father, paternal grandparents and W" to assist in planning for W's future placement.
- 86) The father talked about the failure of the contact order made in September/October 2017. He said W expressed the view she did not want to see him but the mother would not let him engage with her to talk to her about this. Both parents made recordings of his attempts to collect W. It seems the police were routinely involved in attempted handovers.
- 87) The father talked to Dr Jefferis about false allegations by the mother, including one dealt with in evidence when it was said he twisted the mother's arm up against a wall. About this incident he told me she had tried to create a situation. He didn't grab her arm. The mother had tried to grab his phone from his inside pocket (it was being used to record) and he instinctively placed his hand to stop her. She started behaving "*like an actress*" shouting, "*why are you twisting my arm*", and then going to W's room saying to her, "*look what he did to me*" and falsely accusing him of bruising her. He thought the mother had hidden microphones to incriminate him (and that may have related to her later claims that microphones were hidden in the house).
- 88) The father talked about emotional challenges for W as a result of her experience. He thought she would need some help to become emotionally stabilised. He said she sometimes struggles to cope with difficult situations, giving as an example getting very upset if she loses when playing a game and requiring a lot of effort talking to her to get her back to a more settled state. This reflected Dr Jefferis' own observation of contact and demonstrated, he thought, some level of insight by the father. The father thought W had some similarities to him – they are both stubborn, although W lacks his patience.
- 89) The father acknowledged to Dr Jefferis a degree of passivity in his parenting of W and he felt a degree of anger that he had not been more assertive. Dr Jefferis asked the father's view about contact with the mother should W be living with him. He did not see this as problematic although was a little cautious about sleepovers initially. He thought the first contact should be supervised but that supervision would not be needed in the long-term, although he could not rule out a risk of abduction. He seemed less concerned about a risk of manipulation of W by the mother during unsupervised contact because, he said, he would have the opportunity to correct any misinformation. Dr Jefferis thought the father somewhat naïve about the measures that might be needed to safeguard contact.

- 90) The father did not want to believe W's reports about being left home alone as it would be extremely irresponsible but thought perhaps it might have occurred in the context of the mother's mental ill health. He was inclined to believe W's report about being hit with a hairbrush as it fitted with the mother's "*very strict*" style of parenting.
- 91) The father accepted that he had not taken steps to trace the mother or W's whereabouts after they moved here in June 2019. Instead he continued enforcement proceedings in Poland, the sole purpose of which seemed to be to fine the mother for each missed contact. That seemed to me rather pointless in the circumstances.
- 92) The father didn't learn about W's circumstances until he received an email from the mother on 20 March 2019, the day after her first discharge from hospital. A translation of that email has been provided. It is very concerning, even accepting that the mother was still unwell at that time (albeit well enough that she had just been discharged).
- 93) Essentially the purpose of the email was to demand that the father provide the mother with a letter she could show the authorities here to say she had always been a perfect mother, without any mental health history and to tell the father not to say anything beyond that or give any further information to anybody. It was a clear attempt to manipulate the situation. Thus it was that the father learned for the first time that W was in foster care, enabling him to contact the Consulate who within a few hours had located her.
- 94) I asked the father why he hadn't taken those steps sooner. It seems he thought, first, that W was happy with the mother and safe and, secondly, that without an address, it would be difficult to find them. I did not find that a convincing explanation of his acquiescence in the move and same laid-back approach identified in the Polish proceedings.
- 95) That said, the father has played an active and committed part in these proceedings, coming to the UK from Poland for hearings and assessment and engaging fully.
- 96) Dr Jefferis also spoke to the paternal grandparents. He found them reluctant to be critical of the mother. They acknowledged that W "*loves her mother. You can see it*". They spoke positively about their recently resumed contact with W after a 4 year break. They were delighted when W came and hugged them at their first visit and quickly became settled and comfortable. Dr Jefferis described the observed contact session with all members of the paternal family as relaxed and lively with W appearing very comfortable. The grandparents described how they would be in the background but available to provide support.
- 97) Dr Jefferis' impressions of the paternal family were favourable. The father engaged openly and was not defensive. His account was coherent. This reflected my impression of him as a witness. Dr Jefferis thought he showed signs of attunement in W's emotions. Although the family were not motivated to criticise the mother excessively, there was consistency in conveying an impression of the mother as someone with an abrasive interpersonal style who tends to rub people up the wrong way and a tendency therefore to isolate herself.

- 98) Dr Jefferis thought it was quite likely that there had been “*potentially problematic aspects of the father’s psychological profile*” based on his experience of private law family proceedings where it is rarely, if ever, the case that blame lies entirely with one party. It has been noted that the father has limited awareness of his father’s first child and family which Dr Jefferis thought could be seen as a little odd.
- 99) What was clear, when Dr Jefferis was tackled about this, was that he saw no need for a full psychological assessment of the paternal family, based on his observations of them. I agree with Dr Jefferis about this. He considered the father had put thought into his plans for placement of W with him and gave the impression he was able to see things from W’s point of view.
- 100) I found the father to be a straightforward and balanced witness. His account was coherent.
- 101) The father has had unsupervised contact with W on his visits here, without issue. An attempt to move from supervised to unsupervised contact with the mother in the community in January resulted in concerns that she had used the opportunity to influence W, so that contact reverted straightaway back to supervised. Ms Kinloch-Jones complains on behalf of the mother that she has not had the same opportunities for unsupervised contact as the father, possibly giving the father an opportunity to influence her and leading W to favour him. No concerns have been raised, as they have been with the mother, about the father’s unsupervised contact with W.

W

- 102) Dr Jefferis saw W at school over a 3 hour period on 16 September. She presented initially with flat affect, giving the impression of being emotionally detached, rather sad and possibly traumatised. She became more emotionally expressive and tearful when talking about her experiences. She engaged well in the assessment and seemed to enjoy the attention she got.
- 103) Asked if she knew the reason for her placement in foster care, W gave a straightforward explanation, “*because Mum leaves me alone at home*” which happened “*a lot*” and which she found “*a bit scary*”, adding that “*Mum wasn’t very well – ill in her head*” and shouting about snipers being around the house. W thought her mother had been unwell for some time, since before coming to the UK.
- 104) Asked by Dr Jefferis where she thought she should be living in the future, W looked uncomfortable and initially said “*I don’t know*” before going on to say she would prefer to be living with her father in Poland whilst continuing to have contact with her mother. Asked why, W said it was because her mother might become ill again and “*it could all start again*”. She went on to say “*but I never spent much time with her anyway ... she was always writing stuff on her computer ... I was in my room*”. She talked about seeing her father every two weeks for two hours and wanting more time with him.
- 105) Dr Jefferis asked W whether it might help her to talk to somebody about her mother’s illness so she could get some reassurance. Surprisingly W said she had little interest in this, seeming to think that, even if her mother was well, she would have little time for her and she would be with her grandmother. Her

biggest worry was that “*everything will go wrong again*” if she lived with her mother.

- 106) W clearly misses Poland and has done since soon after the move to the UK.
- 107) One feature which stood out was W’s relatively high secure score, reflecting representations within her Story Stem Assessment Profile of normal and enjoyable domestic life. This tends to be absent in chronically neglected children. There was also little defensive avoidance. Of greater concern were some bizarre or unusual themes in her narratives with a disconcerting quality, suggesting to Dr Jefferis disruptions in attachment security through frightening behaviour by a parent or insensitive or unavailable parenting (physically or emotionally). W also made a number of representations of the child acting in a parentified manner, taking charge of situations normally managed by responsible adults, suggesting she has experienced lapses in parental availability or competence leading her to develop an unhealthy degree of self-reliance and not trusting adults to act in a responsible manner.
- 108) In the Family Relations Test, W allocated approximately equal numbers of positive items to each parent, with few negative allocations to either (although notably she did allocate to her mother the person “*who is too busy to have time for me*”). She tended to allocate to groups of adults (including grandparents and her foster carer) in a way that suggested several adults with whom she has affectionate relationships, but with rather weak primary attachments – so probably not a really robust and secure attachment to either parent. She did not know the father’s partner to make any allocations to her, although I believe she has met her by Skype.
- 109) In response to an FRT item ‘*the person who hits me a lot*’, W described being smacked by her mother who hit her with a hairbrush because she didn’t want to shower every day.
- 110) W said there was a lot she hates about herself. She found it difficult to concentrate. She talked about a number of talents but nevertheless had an underlying negative view of self-worth and personality. She had elevated scores on the Millon Pre-Adolescent Clinical Inventory suggesting low self-esteem and vulnerability to anxiety, sadness and tension consistent with her rather flat presentation. There was a sense of feeling alone. Shy and socially anxious with some indication of post-traumatic stress, specifically in relation to her mother’s psychotic episode and removal by the police.
- 111) W’s foster carer described to Dr Jefferis how W was initially rather insular and withdrawn, giving the impression that it was “*her and mum against the world*”, but had settled and sought comfort and affection from her carers. She was always “*worried about mum*” in the sense of being worried about her welfare. She had said she wanted to go back to Poland with her father. She had been anxious and avoidant before first meeting him but, having met him, enjoyed his company and looked forward to his visits. She was upset when he couldn’t visit in September as planned. She spoke positively about the father’s partner’s son F.
- 112) The foster carer and W’s school thought W very independent and “*thinking she can do more than she can*”, over-estimating her ability and not accepting help.

She will take on books that are above her level of ability, for example. She was not progressing academically as well as might be expected.

Discussion and findings

- 113) I am bound by the findings made by the Polish Court. They seem to reflect the position as that time in respect of both the mother and the father.
- 114) The mother's move to the UK in June 2018 may not have been unlawful but it was ill-thought out and lacked child focus. At worst the move was designed to undermine the relationship between W and her father, at best it made future contact much more difficult. I find that part of the mother's motive in moving was to put distance between W and her father.
- 115) It seems likely, although there is no mention in her Polish medical records, that the mother was already depressed when she moved to the UK. While that may have had some impact on her decision-making, it does seem to me that the mother's actions at that time were consistent with her continued attitude and approach now, at a time when the mother is mentally stable.
- 116) I also accept that part of the mother's motivation for moving was the father's application to the Polish Court to reduce child maintenance.
- 117) The mother failed to tell the father where she and W were living in the UK. She should plainly have let him know.
- 118) The evidence shows a consistent pattern of the mother's negative attitude towards the father.
- 119) I find therefore, as did the Polish Court, that the mother continued to fail to support, indeed obstructed, contact throughout from separation in April 2016 until W's removal on 28 February 2019 and has maintained her negative attitude towards him since, including in assessment with Dr Jefferis and in evidence. It was notable when I asked the mother towards the end of her evidence whether she could find anything positive to say about the father her response was "*What can I say about him? For the first time I discovered in the UK he is making an effort to see [W]. For many years he was choosing for himself and travelling*". So even with that encouragement from me a rather half-hearted attempt to find something positive quickly turned into a negative.
- 120) It may be that, in practical terms, the maternal grandmother would act as a support to the mother and mitigate some risks around practical parenting as Dr Jefferis anticipated. However, I was very concerned about the maternal grandmother's vitriol in respect of the paternal family, much of it based it seems on unsubstantiated and third hand tittle-tattle. It was equally concerning that the mother signed up to the grandmother's negativity so unquestioningly and without any apparent insight into the potential impact of this attitude on W's relationship with her father. I do not consider that grandmother would act as a positive emotional support but would rather reinforce the mother's negative attitude towards contact, restricting her ability to gain insight and increasing the risk, if W were to live with her mother, of contact with the father being further obstructed.
- 121) So far as the allegation that the mother left W alone at home is concerned, the mother maintained that she left her alone on a few occasions for no more than 10-15 minutes at a time to top up electricity. I reject that explanation. The local

authority have satisfied me that the mother left W alone for extended periods during the day while she went to work and occasionally late at night when she went out for reasons that are not explained. I make that finding for the following reasons:

- a) W has given a consistent and coherent story to a number of professionals, including the social worker, Dr Jefferis and the guardian about being left alone at home for extended periods;
 - b) W has no reason to lie about this; if anything her loyalty towards her mother and anxiety about her vulnerability would suggest a motive to cover it up;
 - c) the finding is consistent with the impression W gave Dr Jefferis of a child whose emotional needs had been neglected and who had become self-reliant;
 - d) I was very impressed by the neighbour who gave evidence about how she and two other neighbours had become sufficiently concerned about W being left on her own (with some detailed evidence about their observation of her) to make a referral. One of the neighbours had even taken W to the beach on an occasion when she was left alone to give her a change of scene. None of them had the experience of making a referral before. They left it some time before doing so, hoping that the situation would resolve itself after the summer holidays. It was clear that they had heightened concerns for W's welfare and reported only reluctantly;
 - e) the neighbour was very clear about coming across the mother leaving her flat late at night/in the early hours of the morning, without W and at times when nobody else was living there;
 - f) while it is not for the mother to prove anything, I did not find her evidence about this credible; while she has produced payslips, they tell us nothing about her working hours.
- 122) I also find that, as she admitted, the mother spent much of her time on her computer, she said dealing with this case, and failing to give W appropriate attention and time. Although that may be more understandable than leaving W home alone, this lack of attention and tendency to leave W to her own devices is again reflected in some of the more concerning observations by Dr Jefferis about W's presentation.
- 123) Although I do find there is sufficient evidence to conclude that the mother has a harsh parenting style, I do not make a finding that she hit W with a hairbrush. The only report about this comes, unsurprisingly, from W herself. It is possible, as the mother suggests, that she was hurt when having knots in her hair brushed out. It remains of concern however that W had the impression (as I accept) that her mother had hit her. This indicates W's perception at least of a mother with a harsh and punitive parenting style.
- 124) Nor I do I make a finding that the mother burnt her mobile phone. The neighbour smelt something which smelt like plastic burning and confronted the mother. She gave the neighbour what I accept was an unconvincing explanation of having a barbeque at an odd time, in cold weather and away from the available barbeque area. But the neighbour was quite unable to say what the

mother was burning. She has produced telephone accounts showing that she maintained the same number. The evidence about this does not prove she burnt her phone.

- 125) I do find that the mother shouted about snipers in the house in W's presence and told the neighbours that there was something wrong with W's brain (when there wasn't). Both of these findings are in the context of the mother's mental instability at the time.
- 126) I also find that the mother's actions on 28 February 2019 would have been frightening for W. This was again in the context of her acute psychotic breakdown.
- 127) The mother produces supermarket receipts to prove food purchases. Notwithstanding that I accept that when the police attended on 28 February there was a shortage of food in the house, that W was in damp pyjamas and had few toys. The shortage of toys is likely to have been a more general state of affairs. The shortage of food and damp clothing may simply have reflected the mother's acute mental instability at that time. It is clear that at that point her parenting was seriously compromised.
- 128) Finally, findings are sought in relation to two occasions when it said the mother has said things in contact to W to influence her views.
- 129) First, on 9 January 2020, contact between the mother and W was unsupervised in the community for the first time. On 10 January W's school sent an email to say that W had had a very difficult day at school. She had a meltdown in class, became very tearful and unable to focus in her learning. She told the teacher that, at contact, her mum had told her that, if she went to live with her dad, her mum would not see her again. She reported that her mum would not be able to go to Poland as she had started a new job and had signed the contract, meaning that she would not be able to take time off every month. W said her mum had been waiting a long time for a job like this and it was important. She on went to say that she was scared about seeing her dad, although it was not clear why. She was trying to be brave and keep her feelings inside. She was encouraged by the teacher to talk about her feelings and worries.
- 130) The mother denies saying this to W. I have no doubt that she did. W's report of the conversation is coherent and consistent with the mother's attitude generally. It is the sort of behaviour I am sorry to say is to be expected of her. The reported discussion gives the context for W feeling scared about seeing her father. The emotional impact on W of what her mother said is self-evident from the school's report. It is a further demonstration of the mother's lack of insight into the consequences of her actions. This is not something that happened at a time when the mother was unwell.
- 131) Secondly, during the final contact before the hearing in March, the mother broached with W the allegations of hitting her with a hairbrush and leaving alone and reported her responses – that the mother had been brushing knots out of her hair and had not left her alone for long periods. This is again a clear example of the mother using her 9 year old child to further her own ends, this time evidence gathering, without appreciation of the confusion and emotional harm such behaviour causes.

The welfare checklist

(a) *W's ascertainable wishes and feelings (considered in light of her age and understanding)*

132) To be taken into consideration W's wishes and feelings need to be ascertainable. That is not an easy task given her circumstances. It does not appear to me that, obstructive though the mother may have been about contact and negative though the messages to W about her father were, W is actively alienated against her father – if there was an attempt to turn her it did not succeed. This may reflect W's resilience and a distancing from her mother's views. It may also reflect W's understanding that at times her mother was not well and what she was saying was not representative of reality.

133) W also has anxiety around her mother's condition which remains unresolved. It is a pity that the work proposed in December has not been undertaken. The excuses given were not convincing. That means that W may have unrealistic worries about her mother becoming ill again. That could lead to W not wanting to live with her for fear it could start all over again (as she has said) or wanting to live with her to protect her, which does not appear to be what she is feeling (indeed she didn't seem very interested in knowing more about her mother's condition).

134) W seems not to mind with whom she lives. If anything she expresses a preference for her father. But she has also said "*I don't know*". I suspect she does not want the responsibility of that decision. In her 'letter to the judge' she did not express a clear view, saying she had been in care for a year (to the day), that wanted me to decide and that it was complicated for her to decide about everything. So, I form no clear view as to W's wishes and feelings about which parent she lives with.

135) What does come across more clearly (and has done from the start) is that W misses Poland, which she clearly regards as her homeland. It is noticeable that the mother does not appear attuned to that wish. She paid little regard to whether W wanted to move to the UK in the first place. Even now her plan would be to remain in the UK with her mother and W, unless it became clear W wanted to return to Poland. I wonder what freedom W might feel she had to express a clear wish to return to Poland if in her mother's care or whether she would simply put up with staying here.

(b) *A's physical, emotional and educational needs*

136) W's primary need is for attuned, sensitive, stable and consistent parenting. In particular she needs emotional stability and freedom from parental conflict or negativity about the other parent. She needs to grow up with emotional permission to enjoy meaningful relationships with both her parents and to have them involved in her life.

137) I see W's educational needs as fitting very much within her emotional needs. I see her lack of educational attainment, surprising to some, as a foreseeable consequence of emotional instability and, in particular, low self-esteem confused with self-developed resilience and tendency to take on more than she can cope with. This is a consequence of her upbringing by her mother.

138) Of course W's physical care needs must be met too.

(c) The likely effect on W of any change in her circumstances

139) W has been in foster care for over a year and has settled there. Whether she returns to the care of her mother or her father, there will be a change in her circumstances which she is keen should happen sooner rather than later. Return to Poland would be another change in her circumstances, but one which would be welcome to her and in fact a return to the homeland she knew until June 2018.

(d) W's age, sex, background and any other relevant characteristics

140) At nearly 10 W can be expected to question more her circumstances and environment. She will soon be approaching adolescence. The need for emotional stability takes on special significance. I have set out Dr Jefferis' impressions of W in some detail and I agree all his observations about her.

(e) Any harm which W has suffered or is at risk of suffering

141) W has suffered significant emotional harm principally because of (a) her mother's neglect of her need for a relationship with her father, including the move to the UK, (b) experiencing first-hand the deterioration in her mother's mental health culminating in an acute and frightening psychotic episode and (c) her mother's neglectful parenting as I have found it.

142) This harm is amply demonstrated in Dr Jefferis' assessment of W.

143) Insofar as the mother lacks insight into these concerns and shows no sign of a change in attitude towards the father, I consider it likely that W would continue to suffer significant emotional harm if placed with her mother. I do not see a significant change to the difficulties that existed over contact in Poland and since the move to the UK.

144) I do not discount risks around contact and parental relationships if W lives with her father. He has not escaped criticism in respect of his past actions, or inactivity at times. And I accept that placement with the father involves a number of unknowns, including how W would fit in with the father's partner and her son.

(f) How capable each of the parents, and relevant others, are of meeting W's needs

145) The mother's lack of insight and her continued negativity, reinforced by her own mother, do not bode well for W's emotional future in her care. I do not consider that the mother currently has the capacity to meet W's emotional needs.

146) While she is well the mother is able to meet W's practical and educational needs, as the positive parenting assessment demonstrated.

147) I accept that the mother has some understanding of her mental health condition and its management, although I accept the concerns about minimalisation and limited insight. On balance I consider it unlikely that the mother would relapse into an acute mental health episode if she had W in her care (although a disappointing outcome to her of this case could act as a trigger). There is an ongoing risk of low level depression and paranoia as identified by Dr Jefferis which, while not necessarily indicating acute mental health breakdown, is likely to contribute to the mother's continued intransigence about the father.

- 148) To some extent I accept that the father's abilities remain unknown and untested. As with the mother, he has a positive parenting assessment within these proceedings. He has shifted from the rather negative assessment in May 2017 to a more positive outlook later that year. Then we have a rather laid-back approach again around the move to the UK but with good engagement and commitment since the issue of these proceedings a year ago.
- 149) That said, all the professionals seem to have formed a favourable impression of the father and his attunement to W and ability to meet her needs. From my experience of him within the limitations of the court context I have seen nothing to cause me to disagree with the professional view.
- 150) I am, in short, much more confident of the father's ability to meet W's needs, especially her emotional needs, than I am about the mother.
- (g) *The range of powers available under the 1989 Act*
- 151) Because the local authority and the guardian see the father as a viable option for care, nobody suggests that W should remain in foster care beyond what is necessary for transitioning to his care.
- 152) The options are therefore for a child arrangements order, with or without a supervision order, providing for W to live with one parent and to have contact with the other (with a parental responsibility order to the father if the order is for W to live with him). The guardian also recommends a prohibited steps order preventing the mother from removing W from the care of the father. I should not make a prohibited steps order to achieve a result that could be achieved by the making of a child arrangements order (section 9(5) of the 1989 Act).
- 153) It would seem sensible to make additional directions (or recite agreements) regarding an application to the Polish Court to ensure that any order I make is recognised and enforceable there.

Discussion and conclusion

- 154) I have not addressed in detail the parties' submissions. Ms Kinloch-Jones relies in particular on the following matters:
- a) the May 2017 assessment of the father in Poland;
 - b) lack of evidence of W being left home alone in Poland;
 - c) the father routinely calling the police to contact handovers;
 - d) the financial pressure on the mother caused by the father motivating her move with W to the UK
 - e) the lack of evidence of alienation and lack of child protection issues arising from Dr Jefferis' report (albeit that he identifies some concerns);
 - f) so far as the mother's mental health is concerned, the lack of prior history, her good recovery and insight into management and medication and the positive prognosis, with low risk of relapse;
 - g) the failure of the local authority to do the work recommended by the court in December 2019 regarding W's understanding of her mother's illness.
- 155) I accept these are all valid points. Placing W with her father is not without risk. We know little about his partner or her son. Reliance is placed in what the

father says about their willingness to integrate W into the family. Negative points about the father have been raised and accepted.

- 156) I need to consider the pros and cons of the two options holistically. The unknowns in respect of placement with the father are obvious cons. The pros are:
- a) lack of any indication that the father's partner or her son would resist integration of W, indeed positive comments from them reported by the father;
 - b) the father's current commitment and engagement over the last year, contrasting with his laid-back attitude before that; essentially he seems to have been content to leave it to the mother to meet W's needs until March 2019, but stepped up to the mark at the point he realised she was not doing so and there was a crisis;
 - c) the marked difference in attitude by the maternal towards the paternal family and vice versa; the maternal family continuing its theme that the paternal family can do no right while they can do no wrong, the paternal family's attitude being much more balanced and supportive.
- 157) W's emotional stability is key. That includes her opportunity and permission to enjoy meaningful relationships with both parents. I have little confidence that could be achieved by placing W with her mother. I have more confidence in the father to meet those essential needs.
- 158) While I do not have a full assessment of the paternal family, I do not have any evidence to indicate any risk of neglectful parenting by the father or his partner. The contrary is indicated by his positive unsupervised contact with W over the last year and the positive parenting assessment of him. It appears the partner has successfully raised her son. I do not regard placement with the father as carrying with it a significant risk of significant harm.
- 159) While the mother has recovered her mental health and also has a positive parenting assessment, there remain concerns about her parenting of W, more so emotionally than physically, that indicate an ongoing risk of significant harm in her care.
- 160) For these reasons, I conclude that W's welfare would be best served by her living with her father and his family in Poland under a child arrangements order and having contact with her mother. (I have used the expression 'contact' throughout in this judgment rather than 'spend time' bearing in mind the need for the order to be recognised in Poland.
- 161) I make a parental responsibility order in favour of the father pursuant to section 12(I) of the 1989 Act.
- 162) I give permission for the father to remove W from the UK to enable her relocation to Poland.
- 163) I agree with the recommendation of the guardian:
- a) that there should be a period of one month during which there is no direct contact with the mother, but with Skype contact twice a week, to allow W to settle and readjust to her new circumstances and given the mother's likely upset and inability to accept this court's decision, initially at least;

- b) that W's contact with her mother should be supervised by an independent person to be organised in Poland; it may be over time that a change in the mother's attitude will enable supervision to be lifted, however I cannot at the moment predict when that will be – what happens when supervision is lifted is demonstrated by the contact of 9 January.
- 164) I do consider that a prohibited steps order should be made preventing the mother from removing W from the care of the father or anybody caring for her, including her school. This is necessary as a clear marker for the Polish authorities. It is likely that the mother will find it difficult to accept this decision. There is a risk she will take matters into her own hands and seek to rely on the existing Polish orders. That order will remain in effect until further order.
- 165) It is also clear that the family will need support of Polish social services to help them implement this order and contact with the mother. It is unlikely that will run smoothly. I will therefore make a supervision order, the terms of which should be agreed. I suggest the parties liaise with the Polish Consulate as to the wording which is most likely to enable the support in Poland that is required.
- 166) The order will be certified in accordance with Article 41.
- 167) Finally, this judgment is, I appreciate, critical of the mother and maternal grandmother. I have not sugar-coated it. I consider it necessary that the judgment speaks plainly so that there is no misunderstanding by the Polish authorities regarding the reasons for this Court's conclusion. That said, I am conscious of the risks of the decision to the mother's mental health as identified by Dr Doherty. Before this judgment is shown to the mother (initially in draft) I would ask that her legal representations, in conjunction with the social worker, liaise with her mental health team and adult social services to ensure that the mother is given all support necessary to deal with what will be a very unwelcome decision for her.

Postscript

- 168) I sent the above judgment out in draft on 16 March. During the afternoon of 17 March I received an email from Mr Alloway asking that I give an immediate direction to the mother's solicitors to release W's passport to enable her to travel back to Poland before flights there from the UK stop on 20 March as a result the Covid 19 pandemic). I listed the matter for an urgent hearing on 18 March when Ms Kinloch-Jones attended in person with the mother and her solicitor, while the other advocates attended by telephone.
- 169) The request for release of the passport (which was in fact being held by the local authority) was supported by the local authority and strongly supported by the children's guardian (who had given instructions to Ms O'Hara while on leave). The guardian was very clear that on a welfare basis W should be returned to Poland now. The plan had been for a return on or about 20 March in any event but the current health crisis and the prospect of Poland closing its borders and incoming flights made it imperative that arrangements be made immediately. Ms O'Hara pointed out that if W does not go now it is not clear when she would be able to go. She would have to remain in foster care in uncertain circumstances. She may not even be able to have contact with her mother here given the health situation. W had been clear she wanted a decision earlier that

has been possible and further delay for an unknown period would be contrary to her welfare.

- 170) The mother had been taken through some of my draft judgment and knew the decision. She was obviously disappointed by it, but it is to her credit that she wanted to work with the order proposed and to work with the father and the Polish authorities to improve her contact with W. She did not oppose the immediate release of W's passport to enable her to fly to Poland.
- 171) Ms Kinloch-Jones raised three matters:
- a) First, that it is usual to time limit prohibited steps orders and she suggested 12 months. I am not aware of any such principle and the prohibited steps order shall remain in force until further order. That will enable reconsideration whether the order is still required rather than impose an arbitrary time limit unrelated to the circumstances requiring protection. If matters settle to the point that risk of removal from the father's care is no longer significant I hope the parties will be able to agree relaxation of the prohibited steps order.
 - b) Secondly, the mother does not share my confidence that the father will arrange Skype contact from Poland and I was asked to fix a date by which that should happen. I said that the first Skype or other contact by visual electronic communication must take place within 7 days of W returning to Poland.
 - b) Thirdly, I was told that the cost of independent supervision of contact in Poland would be about £50 a session. Ms Kinloch-Jones asked me to order the father to meet those costs in full, particularly given that he was pursuing enforcement of missed contact in Poland by way of fines. Mr Alloway said the mother should pay the cost of supervision. I have no information about the parties' financial resources or needs, now or when the mother relocates to Poland as she now plans. I said that as a matter of equity the cost should be shared between the parties equally unless and until the Polish Court, seized with information about the parties' financial resources and needs, orders otherwise.
- 172) Given the urgency of this hearing I asked Mr Alloway to take instructions from the father as soon as possible whether he would undertake to return W to the UK in the event he was required to do so by a court here. I do not understand that the mother seeks permission to appeal but I consider this to be an appropriate safeguard. Mr Alloway did not anticipate any difficulty with such an undertaking being given but would need to take confirmatory instructions.
- 173) I directed the immediate release of W's passport and permission with immediate effect for the father to relocate her to Poland.
- 174) We do not yet have the advice of the Polish Consulate about the wording of the supervision order to ensure appropriate help and support in Poland and it may be some time before that advice is received. I have said that I will hand this judgment down at 10am on 19 March by which time the parties must submit an agreed final order for approval. Any advice from the Polish Consulate will be dealt with in an amended or supplementary order in due course.
- 175) That concludes this judgment.

