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Neutral Citation Number: [2023] EWFC 237 (B)

Case No: ZW22P00735

**IN THE FAMILY COURT**  
**SITTING AT WEST LONDON**

Date: 15 August 2023

**Before :**

**DEPUTY DISTRICT JUDGE HARRISON**

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**Re: Sophia (A Child) (International Relocation)**

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Ms Indira Ramsahoye (instructed by Crisp & Co Solicitors) for the lead Applicant  
Mr Jonathan Evans (instructed by Rose & Rose Solicitors) for the lead Respondent

Hearing dates: 21, 23 June, 25 July, 15 August 2023

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**ANONYMISED JUDGMENT**

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

**The date and time for hand-down is deemed to be at 10.00am on 15 August 2023**

**DDJ Harrison:**

**The names used in this anonymised judgment are not the names of the child or the family.**

**SUMMARY OF ORDERS**

1. Sophia will live with her mother, who has permission to relocate to Eastern Europe with Sophia.
2. The mother must ensure that the Sophia spends time with the father as follows:
  - a. At least every month for one weekend, with the parents taking turns to travel to Eastern Europe or UK. Where F travels to Eastern Europe, M is to provide rented accommodation for F and S, at her own expense.
  - b. For half the summer holidays in UK, Eastern Europe or Central Europe (with F being able to choose the venue). This to be divided with the first three weeks with F, and the last two weeks with F.
  - c. Every winter break in UK, Eastern Europe or Central Europe (with the father being able to choose the venue).
  - d. Every other Christmas in UK, Eastern Europe or Central Europe (with the father being able to choose the venue).
  - e. Every other Easter in UK, Eastern Europe or Central Europe (to include the feast days in Holy Week).
  - f. At any other time that the parties may agree.

## **INTRODUCTION**

3. The Court is concerned with the welfare of Sophia (S), a girl rising six years old. She was born in 2017 to her mother Agnes (M) and her father Hugo (F).
4. I will refer to the parties using the shorthand indicated in brackets. I do so for ease and continuity of reference; I mean no disrespect in doing so.
5. This is my judgment at the final hearing of two applications involving S:
  - a. M's application for a child arrangements order defining the care and living arrangements for S, and a specific issue order permitting her to move with S to an Eastern European Country, made by notice dated 20 May 2022, and;
  - b. F's cross-application for a child arrangements order defining the care and living arrangements for S, and a prohibited steps order to stop M leaving the jurisdiction with S, and re-locating to Eastern Europe, made by notice dated 20 May 2022.
6. Both parents have been represented through the proceedings by solicitors, and before me at this hearing by counsel: M by Miss Ramsahoye of counsel, and F by Mr Evans of counsel. Both counsel have been of great assistance to me, and both put their respective cases with considerable skill. I am grateful to them both.

## **BACKGROUND**

7. S is the only child of M and F. M is Eastern European, and F is Central European. The pair met in 2011 in UK, and became friends on social media. After a couple of years of corresponding, they began a relationship in 2013. The relationship was a 'long distance' relationship, with M working and living in Central Europe, and F in UK.

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8. The parents moved in with each other in 2014, living in Central Europe, before moving to UK in 2016. The family did not intend to stay in London. Indeed, the plan was to move to Central Europe in 2017/18. As it happens, M fell pregnant in 2017 and so the family remained in UK for a little longer. In 2018, F began a job in Central Europe. This was cut short in 2019, and so the family returned to UK to rented accommodation in London.
9. The parents' relationship subsisted until Autumn/Winter 2021, whereupon M explained that they separated. F considers that the separation took place in early 2022. Whichever account is correct, both parents agree that F moved out of the family home in March 2022 and found accommodation. M remained in London with S.
10. The parties began mediation shortly after F vacated the family home as they could not agree the arrangements for S. In May 2022, M sent a 'relocation pack' to F, outlining her wish to return to her homeland with S. The first application followed thereafter, in addition to F's cross-application.
11. The present pattern of contact is as ordered by this court at the FHDRA in August 2022. S lives with M, and sees F:
  - a) Each Wednesday evening.
  - b) On a fortnightly pattern, in week 1 from Friday after school until Saturday at 6.30pm and in Week 2 from Friday after school until 3pm on a Sunday.
  - c) Indirect contact twice a week.

**PROCEDURAL HISTORY**

12. M and F's applications have been heard together, having been consolidated by DDJ Edwards on 5 July 2022. The hearing on 5 July 2022 was the first hearing, listed only to consider F's application for a prohibited steps order pending finalisation of the proceedings.
13. The case thereafter was case managed by District Judge Rollason, who case managed the matter through to this hearing. This included a FHDRA on 22 August 2022, and a DRA on 25 January 2023, at which the parties remained at odds. The matter was listed for final hearing on 7-10 February 2023, but this was vacated owing to judicial unavailability. The matter was released to me by the DFJ for West London on 23 May 2023, and I gave further directions on the same date, with the matter listed before me on 21 and 23 June, and 6 July 2023. The hearing was to take place remotely, which it ultimately did by CVP.
14. The day before this hearing began, I received an email from Mr Evans (on behalf of he and Ms Ramsahoye) informing me that the Cafcass reporting officer, Daniella O'Hare (RO), had contacted the parents to say that she was unwell. The email said that RO was *"currently unsure whether I will be well enough to participate. My concern is whether this will cause delay to proceedings or whether there is an alternative way I may answer your questions via writing, should I not be well enough tomorrow."*
15. I replied explaining that given the financial commitment and emotional energy expended by both parents, and that Court time had been set aside, that I expected evidence to be provided if the hearing could not take place. I saw no reason to treat RO differently to any other witness or parent in such a scenario. I re-assured RO that I

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would accommodate her in any way that I could, including regular breaks and the opportunity to take refreshment during her evidence.

16. Regrettably, on the morning of the hearing, a service manager from Cafcass contacted the Court to explain that RO had called in sick and would therefore not be attending the hearing. The Cafcass manager was obligingly helpful but unfortunately could not speak to somebody else's report. This left the Court in a difficult position, and both parents were bitterly disappointed.

17. Despite the unavailability of the reporting officer, neither parent invited me to adjourn the case. Both parents were keen to proceed with the hearing of this watershed moment in S's life. I gave a short judgment where I explained my view that such a further delay would be destructive for both S's welfare, and the parent's ability to co-parent, as they would remain stuck in limbo for a period of about six months more. I explained that I considered such a delay to be unconscionable, and antithetical to S's welfare.

18. I therefore made arrangements for further dates to be found, before me, some six weeks after the first day of evidence. This was the earliest date that myself and the court service could accommodate, but at least avoided an adjournment to Winter 2023/24.

19. It is regrettable that this hearing has been so fragmented. I do not criticise RO for being unwell, although it is unfortunate that this matter was not communicated until shortly before the hearing, and that the Court was not furnished with alternative dates or solutions by RO to ensure that the case was heard. This process was undoubtedly stressful and disruptive to the parents.

20. To ensure the matter could be heard within a reasonable time frame, I heard the parents' evidence first. I did not consider there to be any prejudice to this approach, as the Cafcass report and statements outlined the contentious issues in plain terms.
21. The hearing therefore took place over three days, with the first being given to the mother's evidence, the second to the father's and the final to RO's evidence when she was well enough to attend for cross-examination, and submissions, some six weeks after the first two hearing days. All of the hearing days took place remotely; M joined from her counsel's chambers, F joined separately, as did F's counsel.
22. This hearing was also listed to hand down judgment and for consequential directions to be considered. In advance of the hearing, on 9 August 2023, I sent a draft of my judgment around to counsel only. My email said:

*"I attach my draft judgment for typo corrections, requests for clarification in accordance with the CA authorities. Can I ask you please to collate any amendments you suggest or requests for clarification into the same document. Feel free to use comment bubbles on Word, but not track changes."*

23. The reference to Court of Appeal authorities was not expanded upon to vastly experienced counsel, however, was of course referring to **Re I [2019] EWCA Civ 898**, which sets out the appropriate approach to such requests. This refers in addition to FPR2010, PD30A para 4.6, and the responsibility on advocates to draw so called 'material omissions' to the court's attention prior to seeking leave to appeal. From para 33, King LJ said:

*"In my view, the exhortations as to the limitations on counsel in seeking amplification of a draft judgment over and above correction of typographical and*

*factual errors, is a principle which applies equally to all areas of civil procedure, including family cases. The Practice Note in Re A, saying in terms at [16] that it is the responsibility of the advocate to raise with the judge “any material omission in the judgment, any genuine query or ambiguity which arises on the judgment and any perceived lack of reasons or other perceived deficiency in the judge’s reasoning process” is not, in my view, inconsistent with Lord Judge’s observations in Mohamed.*

*34. The question, rather, is as to where one draws the line between a reasonable and appropriate request for amplification of the type identified by Munby LJ in the Practice Note, which request will properly be an example of the rare occasions where it is appropriate to go beyond typographical and factual errors in order to clarify issues in a judgment, as against a request which goes beyond the Practice Note and seeks to reargue the case. Unhappily, to my knowledge, such requests can, on occasion, be frankly confrontational and disrespectful in tone.*

*35. Judgments... are often given by a judge under immense time pressure whether extemporary or reserved. It is right that issues of the type identified in the Practice Note should be raised with the judge if appropriate and, in so doing, avoid the necessity of an appeal and therefore further delay for the child the subject of care proceedings.*

*36. Mr Howling however confirmed the perception of this Court that requests for extensive clarification, going well beyond the perimeters identified in the authorities, have become commonplace in both children and financial remedy cases in the Family Court. It has become, as we understand it, almost routine for*



*a draft judgment to be followed up with extensive requests for ‘clarification’ which in many cases can be regarded as nothing other than an attempt to reargue the case or, as here, water down the judge’s judgment...”*

...

*38. The family court is overwhelmed with ... cases. Judges at all levels often move seamlessly from one trial to the next without judgment writing time between them. Routine requests for clarification running to a number of pages are not only ordinarily inappropriate, but hugely burdensome on the judges who have, weeks later, to revisit the evidence and their judgment when their thoughts and concerns have long since moved onto other cases. This is not conducive to the interests of justice.*

*39. That excessive demands for clarification are not limited to care cases is evidenced by the observation by Mostyn J in *WM v HM* [2017] EWFD 25, when he said: “39. Finally, I would observe that the demands by [Counsel] for correction and amplification of the draft judgment went far beyond what is permissible, and amounted to blatant attempts to reargue points which I had already rejected. This practice is becoming commonplace and should be stopped in its tracks in the interests of efficiency and the conservation of the resources of the court. Suggested corrections should be confined to typographical or plain numerical errors, or to obvious mistakes of fact. Requests for amplification should be strictly confined to claimed “material omissions” within the terms of FPR PD 30A para 4.6.”*

*40. Provided that the term “material omission” found in paragraph 4.6 is taken to embrace the totality of the matters included in paragraph 16 of Munby LJ’s*

*Practice Note, in Re A, I would agree and endorse the observations of Mostyn J. 41. It is neither necessary nor appropriate for this court to seek to identify any bright line or to provide guidelines as to the limits of the appropriate nature or extent of clarification which may properly be sought in either children or financial remedy cases. I would merely remind practitioners that receiving a judge's draft judgment is not an "invitation to treat", nor is it an opportunity to critique the judgment or to enter into negotiations with the judge as to the outcome or to reargue the case in an attempt to water down unpalatable findings. (my emphasis) Requests for clarification should not be routine and should only be made in accordance with the Practice Note which I repeat is: "to raise with the judge and draw to his attention any material omission in the judgment, any genuine query or ambiguity which arises on the judgment, and any perceived lack of reasons or other perceived deficiency in the judge's reasoning process."*

24. Having made it clear that I expected clarification requests to be made in the manner identified by the Court of Appeal, I was a little surprised to receive Mr Evans' requests for clarification which ran to 19 requests, some with compound requests. Many of the requests are simple clarification or further reasons, which I have included or woven into the judgment in this final form. Some of the requests amounted in my view to an attempt to re-argue my findings, in particular the role of M in promoting F and S's relationship. I have set out my reasons for my findings below. The trial is the "first and last night of the show" and in formulating my reasons, I have had the benefit of hearing the parents in extensive evidence. Any further challenge to my findings or orders, as they have crystallised in this final version of my judgment, are matters for another court, if pursued.

## **THE LEGAL FRAMEWORK**

25. How must I decide this case?

26. S's welfare is my paramount consideration. Welfare is conceived of with reference to the welfare checklist in **s.1(3) Children Act 1989**. An order is an intervention in the right of a private and family life of S and her parents and therefore, the degree of intervention must be both necessary and proportionate as required by the European Convention on Human Rights. If there is a conflict between S's rights and those of her parents, S's rights necessarily prevail.

27. In cases of international relocation, a long line of authorities informs the approach to be taken by the court, including **Re F (A Child) (International Relocation: Welfare Analysis) [2015] EWCA Civ 882, P v P [2001] EWCA Civ 166, and Re C (Internal Relocation) [2015] EWCA Civ 1305**.

28. In **V v M (Child Arrangements Order: International Relocation) [2020] EWHC 488 (Fam)** (also reported as *Re K*), Williams J drew together the authorities to recommend that a composite checklist is adopted and applied. These factors were laid out at [50] of his judgment:

*“i) The ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding.*

*ii) Physical, emotional and educational needs.*

*iii) The likely effect on the child of any change in their circumstances. Within this some specific questions might be what changes to housing, schooling and relationships are likely if they remain in England? How realistic is the plan in the sense of how likely is it to be implemented as conceived? Will there be positive effects in respect of the removing*

*parent's ability to provide care for them if they move abroad? What are the other positives and negatives about country X in terms of environment, education, links with family? What will be the impact on the child of moving permanently to another country in respect of their relationship with the left behind parent and other extended family? To what extent may that be offset by on-going contact and extension to other relationships in the new country?*

*iv) The child's age, sex, background and any characteristics of his which the court considers relevant.*

*v) Any harm which he has suffered or is at risk of suffering. There is obviously a significant overlap here with the effects of change and so within this, what may be the impact on the child of the change of their relationship with the left behind parent? How secure is that relationship now and how likely is it to endure and thrive if the child moves? How realistic are the proposals for maintaining contact? What will be the impact on the removing party of having to remain in England, contrary to their wishes? What will be the consequent impact on the child? What will be the impact on the left behind parent of the child moving? Will the ability of either parent to provide care for the child be adversely affected by the refusal or grant of the application and if so to what extent? To what extent will loss of contact with the left behind family be made up for by extension of contact with the family in the new country.*

*vi) The capability of the parents, how capable each of them are and any other person in relation to whom the court considers the question to be relevant is of meeting the child's needs. How are the parents currently meeting their needs? Are there any aspects of their ability which may be particularly important in the context of a relocation, for instance their capability of meeting the emotional need of the child for a relationship with the left behind parent? Is the application to relocate wholly or in part motivated by a desire to exclude or limit the left behind parent's role? Is the left behind parent's opposition to the move genuine, or is it motivated by some desire to control, or some other malign motive? Will the parent be better able to care for the child in the new country than in England? What role can the left behind parent play in the future?*

*vii) The range of powers available to the court under this Act. Can conditions of contact be imposed in terms of provision of funds, or frequency of visits? Can court orders be made in the other country, either mirror orders or orders*

*which will allow reciprocal enforcement?”*

29. Per *Re C (ibid.)*, the approach as between s.8 or s.13, as it is here, is analogous.

30. It is pertinent to note that the Court of Appeal has been clear that where the future division of the child’s time with each parent is in dispute (irrespective of any relocation proposal), the court should not resolve that dispute first before considering relocation; all issues should, rather, be considered as part of one holistic evaluation of the child’s welfare: **L v F [2017] EWCA Civ 2121**.

31. The guidance of Thorpe LJ in *Payne* (whilst not of elevated importance over the lodestar of J’s welfare) is useful in this case:

“

a. *Pose the question: is the mother’s application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child’s life? Then ask is the mother’s application realistic, by which I mean founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow.*

b. *If however the application passes these tests then there must be a careful appraisal of the father’s opposition: is it motivated by genuine concern for the future of the child’s welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child’s relationships with the maternal family and homeland?*

c. *What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal? ...”*

32. Both of the parents in this case are inviting me to go against the conclusions and recommendations of a welfare report. I can only do so if there are good reasons to do so, and I reason such a departure in my decision: **(Re P (Custody of Children: Split**

**Custody Order) [1991] 1 FLR 337); (Re J (Children) (Residence: Expert Evidence) [2001] 2 FCR 44).**

**EVIDENCE**

33. I have considered a bundle of documents stretching to 423 pages. This includes a welfare report, a litany of statements and purported ‘expert’ evidence from an Eastern European lawyer. In addition, I have considered position statements filed on behalf of both parents. I also heard live evidence from M, F and RO, and submissions.
34. It is not possible during this judgment to refer to every strand of evidence that I have read and heard. I have read everything. I have listened intently and noted the evidence faithfully. Nor is it the task of a judgment to rehearse each piece of evidence. I will refer in this judgment to the evidence as I consider it to be relevant. If I do not mention a particular source of evidence or thread of evidence, that does not mean that I have not considered it and weighed it in the balance.
35. I will discuss and analyse each key witnesses evidence in turn.

**CAFCASS’ EVIDENCE**

36. I have the benefit of a welfare report prepared by Daniella O’Hare of Cafcass, dated 12 January 2023. In that report, RO went through her enquiries which included considering the written evidence filed by the parents, an interview with both parents, enquiries with school and other agencies.
37. RO described S as “*an incredibly sweet, engaging and animated little girl, with bright eyes and an infectious smile to match.*” Although she was shy in her meeting with RO, S came to life. S was warm about both of her parents; RO described S speaking

warmly of her mother, and of the time she spent with F. She showed RO a leaflet from a park they had recently visited. RO summarised the experience of meeting S:

*“I had no concerns when meeting with Sophia, who presented as a very happy and content little girl, who was evidently settled in her home and in the care of her mother. Mother was incredibly patient with Sophia, affectionate, nurturing and responsive to her needs. Whilst Sophia was immersed in play, she spoke of her father affectionately and I had no reason to believe that the views she shared were not her own.”*

38. Although at the start of the case, M made allegations against F that he was coercive and controlling toward her, M was keen with RO to focus on S as opposed to F. RO described that M *“was keen to assert that she did not wish to focus on F’s behaviour towards her, as previously raised in proceedings... M advised that she was in full support of F maintaining a relationship with S,, further stating ‘He loves Sophia, I know that and I know that he would never harm her, ever’.”*

39. RO noted that both parents found the period post-separation to be difficult. M explained to RO that she found being a single parent to be challenging, having limited sleep and sustaining her career, as well as dealing with an often-sickly daughter. M told RO that she felt *‘isolated and alone’* in UK. RO was left with the impression that M was *“calm and considered”* but emotionally depleted.

40. Likewise, F has found proceedings difficult and described them to RO as *“inflammatory”*. RO described F being disdainful that M has been perceived as S’s primary carer: *“[He advised] that Sophia has two equally loving parents and detailing his significant involvement in caring for Sophia, during the relationship and post separation.”* F told RO that he wanted to spend more time with S but he felt that

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M was resistant to this. He told RO that M was isolated “*by choice*”. F was worried that M’s application was in effect a plan to “*cut [him] out.*” Although RO considered that F seethed with “*injustice in the UK judiciary system whereby... his role as a father and parent has been overlooked.*” Having said this, RO observed F to be a doting and adoring parent who was child focussed.

41. In terms of the changes that either parent seeks, RO did not support any major change from the *status quo* at present, save for the progression of a mid-week teatime contact to an overnight visit between F and S. RO does not consider it to be in S’s best interests for her to move to Eastern Europe, nor move to an equal division of time arrangement between M and F. Her reasoning is:

- a. S has experienced several transitions in the previous two years: adjusting to separation, a re-defined relationship with F and the start of her schooling. Any significant adjustment should be avoided as it may undermine S’s sense of stability.
- b. The parental relationship is volatile and untrusting. The parents are not resilient enough to co-parent whilst withstanding a move to Eastern Europe, or a progression to an equal division of time.
- c. S’s relationship with F is important and would be harmed by distance.

42. In evidence, RO explained that she had advised in about five or six cases involving relocation. She was asked by Miss Ramsahoye whether she was up to date with the case law, but she rightly pointed out that she is a social worker and not a lawyer. I say at the outset that I have no issue with RO’s experience: RO is an experienced social worker who provided elegant and thoughtful evidence and analysis. Although, as I



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shall explain, I do not agree with her recommendations, that is not for a lack of experience or ability.

43. RO's evidence was the first time that the Court received her considered view of M's plan for S's life in Eastern Europe. RO plainly approved of the education options and the plan for accommodation in Eastern Europe. RO seemed impressed with M's efforts to find a school that delivers formal language lessons, and noted that the school found was partnered with an Embassy in Eastern Europe. RO recognised that M was attempting to promote S's heritage: this is concordant with the fact that M has learned F's native language. I formed the impression through RO's answers that she looked upon the Eastern European option as positive. However, she was keen to underline the need for "*stability: reality testing, strengthening co-parenting; there needs to be consistency.*" She described this as "*the most important thing*".

44. RO was unconvinced, however, with M's proposal that F fly to Eastern Europe every few weeks. She told me that it was not a "*sustainable option*" for F to avail himself of, and that this would impact on the relationship between F and S. This had a twofold cause: first, there would be a diminution in time between F and S made necessary by distance. Second this is not a commitment that F could make and therefore it may lead to inconsistency. In addition, RO was concerned that a move to Eastern Europe would be a barrier to any future progression of the relationship. She did however temper this with an observation that this may not be as affected if the attachment between F and S was "solid".

45. RO found the acrimony that S is exposed to at present to be a barrier to either an equal division of time or a move away. She noted a lack of trust between the parents, with a disparity with how they view the future. This is made worse by the parties'

experiences of the past few months. RO was “*concerned that the mother was quite tearful and found it to be emotionally difficult*” although she was open about this to S. It was obvious from both the report and her evidence that RO was concerned about this, although RO did not consider that M’s upset had tipped over into any sinister attempt to exclude F from M’s life. She was simply upset by the situation in which she found herself, and therefore found it difficult to accept help from F. RO had a considerable amount of sympathy with M: she hoped that she would not feel that her “*fate had been sealed*” or that previous decision making about moving to London was in any way contractual. RO’s prognosis for the parental relationship was poor whether in UK or Eastern Europe, although she noted that litigation was inflammatory. The parties had a “*very long way to go.*”

46. Mr Evans asked about the suggestion that M would seek to limit F’s relationship. This was something that RO did not engage with and was clear through her evidence that there was no ‘alienating’ behaviour from M. She showed empathy with M’s ‘*difficult situation*’.

47. This concern with stability led RO to reject F’s proposal that the parties share care of S. She described this as being inappropriate in a case of parental acrimony and noted that this is a significant change for a five-year-old. She did not consider that this was child focussed. She told me:

*“This takes a lot of skill and communication. F should have some more time, but seven on and seven off [by that she means nights with each parent] is a very significant change for D. She is very young. I am concerned about this being successful where we have parental acrimony and a lack of trust. Seven nights with F is quite a lot for a five year old too – in my view this is a significant*

*change for S. There is an issue too with school pick ups, this creates additional travel time for S.”*

48. Mr Evans was critical of Cafcass’ analysis in respect of what he called the starting point. The force of this argument was that the RO was wrong to take the *status quo* as the starting point and start by asking why there should not be a division of time. The thrust of this submission was that the *status quo* was effectively an engineered position, whereby M imposed a limited regime of contact upon F post-separation, and this has been accepted as the starting point, as opposed to *status quo ante* which was co-parenting (albeit under the same roof).

49. I did not find this to be a helpful line of questioning: RO’s role is to advise on S’s best interests. The *status quo* is the logical starting point for this analysis when assessing potential changes and its effect. I do not consider that RO’s report started from the wrong point, in particular because RO picked up from the outset on the need for stability and continuity in what has been a time of change for S. By the time of the report, the arrangements had been endorsed by the Court and had been in place for a significant period of time. In my view it would be artificial to treat the previous arrangements when the parties were (at least) living under the same roof as the starting point as this in no way reflected S’s lived experience at the time of the assessment. S had adjusted to life in this way. It would be wholly artificial.

50. Likewise, RO was asked questions about her failure to meet with F directly, in spite of observing S and M together. RO explained that the practice, post-COVID, is to meet remotely with the parents and observe the child directly, wherever the child is staying at the time or at the Cafcass offices. It was said that this diminished the quality of RO’s evidence as there was no first-hand, objective account of F’s

relationship with S. In a case where conflict is rife, I am disappointed that RO did not also meet F in person, and observe S in his care. It is obvious to me that there is a need to approach both parents equally and, although I do not consider that an experienced social worker would allow the medium to skew her analysis, it is clear that this perception of inequality has made things worse, and not better. I do not consider, however, this to be a point of any great relevance, on the facts of this case, because I have nothing but praise offered from both parents and RO in respect of S's bond and relationship with F. In my view, the formulation of their relationship by RO accords with the canvass of evidence in this case that I have, and I therefore do not consider that RO's evidence is diminished on its own by a failure to meet with F.

51. I found RO's analysis to be thoughtful and helpful. There is much to rely upon, in particular the need to promote stability for a young girl whom has borne much change. I found her analysis of the relationship between the parents to be compelling. RO brought to life the poor state of the parental relationship, and the drivers for this: the mistrust between them, M's sense of emotional depletion and abandonment, F's sense of injustice with the family justice system viewing M as the 'primary carer' and his preoccupation with equality of time leading F to reject time with S as he wanted 'all or nothing'. I find her analysis in respect of 'shared care' requiring practical and emotional alignment between the parents to be compelling. I reject the suggestion that this is legally wrong: the law requires me to look at S's welfare and assess practically whether any proposal is workable. RO's view was not based on a hard and fast legal rule: it was a case specific observation about this family and this child. I have no reason to consider that RO hasn't taken this seriously.

52. RO's primary concern was stability for S. Without a smooth parenting relationship, I agree that S's experience of shared care is likely to be fraught with tension and perhaps even fractious. RO described in evidence as the parents having a 'long way to go' in terms of their co-parenting ability, and this is borne out by the evidence I have seen and heard.
53. I was less assisted by RO's analysis in respect of the relocation question. In my view there was a poverty of analysis on two key matters of substance: the comparative analysis, and why F and S's relationship could or could not withstand a move abroad.
54. In respect of a comparative analysis, the task of the welfare officer is to offer a comparative analysis of the various options. This involves building a comprehensive picture of S's life in London with the *status quo*, with shared care, and in Eastern Europe, and weighing the relative advantages and disadvantages against the other. This can be done with reference to S's needs: which option insulates S best from conflict? Which offers stability? *Et cetera*.
55. In her evidence, RO relies on the disruptive effect of a relocation on S to effectively take against it as a recommendation. RO says in effect that a move to Eastern Europe is a change, and this would be de-stabilising for her. What is missing is a comparative analysis of what S's life in Eastern Europe would be like, or how she may find threads of stability in Eastern Europe with M. There is no consideration of the ways that life in London may be destabilising for her now, or in the future, save for an acknowledgment that F's suggested solution was not a panacea for instability. It is clear from Miss Ramsahoye's cross examination that RO regarded the education and living arrangements in Eastern Europe favourably, but this was regrettably missing from the report RO provided. Likewise, RO referred to M as being '*emotionally*

*depleted*' and painted a bleak picture were M to remain in UK with S, which did not factor into her analysis in terms of welfare. This is important as I cannot simply separate S and M artificially: their interests are relational and inextricably linked. RO has in my view not given any consideration to the relational effect on S of one of the two most important people to S being in such a state for a prolonged period. This would undoubtedly be damaging for S.

56. The second is a failure to engage meaningfully with whether and how F and S's relationship would really be affected by a move to Eastern Europe. RO formulates her report on the understanding that a reduction in time spent between F and S would cause the relationship between S and F to stagnate or regress. This was the focus of the analysis, and the concerns about the impracticality of M's proposal that F visit Eastern Europe every few weeks was one of the significant tenets of RO's analysis. She told me in cross-examination that this was her '*primary concern*'. She questions whether regular travel to Eastern Europe for F is '*practical or sustainable*'.

57. In my judgment this is a superficial analysis of why the relationship would be in any way harmed. First, there is no consideration of F's work commitments and pattern, and how spending time with F around these considerable pressures – and in large part in wraparound care – would impact the relationship. F's support network is no more extensive than M's in UK, and his parents remain a flight away in Europe. This is as opposed to intensive periods of holiday contact where S would have F's undivided attention. Second, there is no recognition of the capability of M to promote the relationship between F and S. In the past 16 months, S has continued to build an excellent relationship with F despite a reduction in the time they spent together, and despite of M's feelings towards F. This simply would not have happened without the

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support of M. It is inherently unlikely in my judgment that M is anything other than highly supportive of the relationship between S and F. S adores her father; she speaks highly of him, and enjoys the time they spend together. S has a vivid and well established picture of who her father is, and I see no reason why this would not continue. There is no evidence in my view to support the proposition that distance leads to fracture, on the facts of this case, where M is supportive of S and F's bond. Although the time they would spend together would be less frequent, it would be of no less quality. I am satisfied that the relationship meets the condition set down by RO herself of being "solid."

58. There are some aspects of RO's report and evidence that I have found of assistance: S's character shines through the page for me, and her need for stability and security is well stated and evidenced. RO has comprehensively explained why a shared care arrangement for M, F and S in UK would be harmful for S at this time, and I find this to be compelling. However, in my judgment, the report in respect of M's relocation proposal contains a poverty of analysis of the options available to me, and fails to unpick F's suggestion that a move to Eastern Europe would be damaging to his relationship with S. The weight I can therefore place on this analysis is diminished.

**MOTHER'S EVIDENCE**

59. M has filed two extensive statements within the proceedings: 2 September 2022 and 21 January 2023. The first statement encompasses a "relocation pack", which is a 39-page document dealing with every aspect of S's life in Eastern Europe. It is an impressive, accessible and well organised document, complete with table of contents. It is clear that a great deal of thought was put into this document, which has brought M's application and proposals to life.

60. M's essential reasoning for wishing to move to Eastern Europe is thus:

- a. She never intended to settle in UK with S (and F). The family are an 'international family' who have their roots all over Central and Eastern Europe.
- b. S would be closer to her family and family friends in Eastern Europe. In London they are marooned between two homelands; in Eastern Europe there is the maternal grandmother, a cousin and aunt a drive over the border in another nearby country, and many members of the extended family and friends network in the town M intends to move to. This also gives M the benefit of family assistance and the option of familiar wraparound care.
- c. As a half-Eastern European child with an affinity to Eastern Europe, S would be immersed in a familiar culture.
- d. The cost of living in the UK is prohibitive. Conversely, the standard and quality of life in Eastern Europe far exceeds that possible and affordable at present in London.

61. In her evidence, M outlines that she would like to relocate to a village in her home country. This village in the west of her home country in Eastern Europe, about 15km from a major city, and near to the border another nearby country. The village is a fast-growing place with plenty of amenities. Here she would live in her ancestral home, which has been renovated extensively, and is about 3200 square feet with four bedrooms and a large garden. M has mapped out S's life and schooling. M identified a number of alternative education provisions, all of which seem to me to be adequate and one which has close links to the Embassy in the country of choice.



62. In evidence, she told me that she had reflected on RO's evidence in respect of the best environment for S and F to spend time in Eastern Europe. M explained that, as a result, she has looked at apartments for rent close to the family home, about 5-10km away. This is cost neutral to F, who would be accommodated from his own maintenance payments to M.
63. In cross-examination, M told me that F was a capable parent. M raised no issue with F's ability to parent S, and acknowledged that S and F's relationship was an important one. M told me that she always promoted the relationship between S and F, but was frustrated because she did the "lion share" of caring. She pointed to the fact that M was responsible for looking after S whilst she was sick. M explained the background when she was asked about using the word 'limiting' in her application, when describing F and S's relationship. Much time was spent exploring the suggestion that M's choice of words in her application were evidence of malintent, but I do not consider this to be a good point. The application was prepared in M's second language, against a context where S was spending less and less time with F. The passage of time has shown the opposite to be true – M has promoted F's relationship and ensured that S has spent plenty of time with F. This is against a high-conflict background where the parties and their lawyers have been at odds about a seemingly endless list of issues. In addition, M suggested in response that S was unsure and uncertain about her new environment. I find it inherently likely that this is correct – S was a very young child, dealing with the fracture of her care givers' relationship that she was unable to understand. It is credible that S's reactions were unpredictable and that she may have been resistant to visits away from M.

64. Mr Evans explored the timing of M's application. It was put to M that a move to Eastern Europe was not mentioned during mediation. M told me that "all that was discussed were care arrangements in this country." It was put to her that there was no suggestion within mediation that she may wish to move to Eastern Europe. M told me that she had had conversations previously. Given that the mediation was taking place concurrently with the preparation of the location pack, I have some sympathy with F's unhappiness. I do not accept that M has been malicious in making her application, and there is not enough evidence for me to find that the application was reactive; it is clear that M has put a great deal of thought into relocation and her suggestions. However, it is unfortunate that such an important issue was not transparently aired during an important flashpoint in the parents' relationship. As M rightly criticises F for his 'all or nothing' attitude to shared care from the outset of the separation, F can properly criticise M for her coyness at this stage.

65. M was asked about the family support. It was put to her that only the maternal grandmother was in Eastern Europe, with the rest of her family elsewhere. It was put to her that the only important people to S in any easy radius was maternal grandmother. M answered rather tersely "my mum has other family members – she is not an orphan" before describing a network of godmothers, goddaughters and family friends, all of whom have descendants. Mr Evans put to M that she was misleading the Court by presenting me with a family that is not really her family; I do not accept this. I see no reason why the concept of the 'psychological parent' cannot apply to the family. The people M described are important attachment figures in M's life; they are not a disparate collection of strangers. To suggest that important figures are outwith a family because of a lack of direct biological connection is in my view a retrograde conception of the family. I reject that submission in its entirety. M is correct when she

notes that this support network allows S to be “taken care of by people that love her [as opposed to wraparound paid care in London]”.

66. M described Eastern Europe and the UK as opposites. She told me that her suggested life in Eastern Europe is a green and prosperous village. She described the facilities of the town, and how many families have moved from a nearby big city as it is such a nice place to live. She described the environment as safe, and that she envisaged S settling in well, and being well supported. She described her life in London in bleak terms. She told me “My life in London is working and caring for S.” I shut down what I considered to be an undertone of criticism of M’s parenting by F, which set an unpalatable undertone to parts of cross-examination. F ultimately makes no such criticism; however, M was candid about her struggle to care for S. She told me “I was struggling but no longer struggling. I need that recovery at weekends [when F sees S] – it has been beneficial.” It was obvious that M needed respite, and F was an important source of this.

67. There are times when it was obvious that M allowed this frustration with F to affect her parenting. One example that was unexpectedly contentious was F’s absence from a WhatsApp group with S’s classmates’ parents. F was obviously hurt that he was not part of this group. M explained how the group came to be, and the organic way that the parents were added. It was put to M that she was exclusionary in the way this was discussed, and she made comments on the group that could have led to a negative perception of F. Those comments were that S could not attend a birthday party because she was spending time with F. The point being made was that M has acted to exclude or isolate F from S, and would likely continue this. Hence the questions about

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F being able to participate in a group with Eastern European parents, when he does not speak the language.

68. Another example is the issue of the TV. It is common ground that M told S that F would take “our TV from us.” M was forthright in saying that this is what happened, and that S was left without her cartoons or TV, but there was little recognition in that concession of how S may have experienced this kind of comment.

69. It is important, however, not to blow such vignettes out of proportion, and I return to my overarching feeling in this case that M has done what she can in challenging circumstances to promote S’s relationship with F. I do not excuse what I consider to be carelessness with how M has spoken about F, or treated him in the aftermath of separation, but I would not say it was anything more. That S not only sees F regularly but holds him in the warmest of affection has happened, in my view, because of and not in spite of M. F and S’s relationship has blossomed post-separation. There is no evidence that M has repeatedly made such comments to S, nor sought in any meaningful way to limit F and S’s relationship once a post separation rhythm was established. There is little evidence to suggest that she would seek to do so in the future. In fact, the relationship between F and S could not be better.

70. To set out my key conclusions, I found M to be meticulous and sincere. It was obvious that she had put great thought into her proposals, and I believe that she genuinely considers Eastern Europe to be the best option. I had no sense that her evidence was in any way contrived. She was straight talking in the face of robust challenge. It was clear that she was able to see S at the heart of this case.

71. M’s actions in the past few months match her words when she tells me that F is a very important person to S. It is clear that M has found this very difficult – she has been on

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somewhat of a journey in respect of promoting this relationship. She expressed earlier on in the proceedings significant reservations about overnight contact, and S spending extensive time with F. I note that notwithstanding this background, RO found no evidence that any alienating behaviour was present, and it is obvious to me that the home and the family in the aftermath of separation was a pressure cooker of emotion and mistrust.

72. I found M, as she appeared before me at this hearing, to have overcome these reservations. I do not consider that I should place a significant amount of weight on the evidence she hitherto provided on this point – she plainly is more trusting of F and can see the tangible benefits to S of a close and warm relationship with F. This relationship has blossomed of late. In my view, this is because M has tried to promote this relationship, even though she feels abandoned by him and clearly found parenting S alone to be a difficult experience with little respite. An example of this insight was the way she adapted the proposal for F’s accommodation in Eastern Europe – she has moved to an expensive but sensible solution of hiring out an apartment, at her own expense, to host F in Eastern Europe. This will enable S to have consistency of environment, and for F to be a part of S’s life in Eastern Europe for the time he is there. I was impressed by this.

73. To tie up this analysis, I very much see M as instrumental in the success of F and S’s relationship post-separation. M’s evidence gave me a broad basis of faith that she is able to promote F’s relationship with S and that she treated it with the respect that F deserves.

**FATHER’S EVIDENCE**

74. F has provided two statements in the proceedings dated 29 September 2022 and 23 January 2023. F's position in summary is that he opposes S's move to Eastern Europe, and wants me to order an equal division of time. In support of this, I paraphrase his reasons to be:

- a. F is an accomplished parent who can ably care for S without concern.
- b. M will not facilitate a relationship between F and S, and therefore a move abroad is the death knell of their relationship.
- c. He expects M to apply in the native court of the mother's home country to vary any Order I make to remove his contact rights.
- d. There is a psychological impact on F as well as M.
- e. Eastern Europe is near to Russia, where the military situation is febrile.
- f. He would like an equal share of S's time to reflect his status as an equal parent, and to ensure that S develops her Central European heritage.

75. In his oral evidence, F began by speaking of his affection for S. He described S as: "very sweet... very very clever, affectionate, active." His sense of pride was obvious and shone through. I agree with RO that he was "doting."

76. F outlined the simple welfare basis of his proposal of equal division of time, which was that there should be an equal split that ensures that S does not have too many changes during the week. He explained that he wanted a shared Lives With Order (as opposed to a Spend Time With Order) to ensure that S's legal status reflected the reality of her life with two capable and equal parents.

77. In cross-examination, F told me that he did not think M would promote the relationship. He referred to M “controlling” how he saw S at the outset of their separation. He told me that he never refused, but he didn’t want to accept anything other than overnight contact. He explained that he did not think that what M was offering him was meaningful. First because he didn’t agree with the virtual element to the contact – “I don’t believe in video calls; I have 9 months of proof.” And second that the parents still lived closely and therefore he could see no reason why S should not stay overnight with him. It was clear that F had a set view of what his relationship with S should look like post-separation, and has remained faithful to this view to the last.

78. F gave extensive evidence that described M’s alleged hostility towards him. I have already set out my conclusions in respect of S’s relationship with F and the big part M has played in promoting that. There were occasions where F made claims to fortify his position that weren’t true. In his evidence, F told me that M has ensured that S did not see her paternal grandmother and uncle. It became clear very quickly that this was not true, and such visits had happened and been promoted several times in UK by M. S saw her grandmother in February 2023 and summer 2022 with M’s agreement. Likewise, in his statement, he described being marginalised from the outset of separation. In fact, contact was happening from the off, and F was visiting M and S at their home. I accept that contact stuttered at the start, but I found the gloss which F put on this throughout his evidence to be confusing and unhelpful. When it was put to him that he did not have good words to say about M, and this was clouding his recollection, he replied “I don’t say things positively, I am just describing facts.” This was a disappointing level of insight.

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79. It was plain that F had concerns about Eastern Europe as S's childhood home. In his written evidence, he appended a number of documents and sources. They were:

- a. A Wikipedia article on ethnic minorities in Eastern Europe.
- b. A Wikipedia article on 'Second Language attrition'.
- c. A blog about the top 10 countries in the world for education.
- d. A further blog about the top 15 countries in the world for education.
- e. Data on the best European universities.
- f. A blog about the countries with best healthcare.
- g. An article about health care.
- h. Statistics on purchasing power.
- i. A study of the EU Parliament entitled "Protection against racism, xenophobia and racial discrimination, and the EU Anti-racism Action Plan".
- j. An article from a journal Sexuality, Research and Social Policy.
- k. An article from Wikipedia.
- l. An extract from UK statute and Home Office guidance on nationality.

80. The purpose of these documents appears to be to demonstrate that Eastern Europe is a retrograde country where S will experience oppression, poverty and discrimination. F bolstered this evidence by telling me about the attitudes experienced by his previous girlfriend. He speculated "If I had been in a big city near the mother's home – if you



are a foreigner, you highlight – would she be treated differently?” I found his speculative and unhelpful. I was much more assisted by:

- a. F’s acceptance that S was at least a half-Eastern European child who speaks perfect native language and is part of an Eastern European family, and therefore she was unlikely to experience discrimination in the way F portrayed;
- b. The UK too is afflicted with social and political issues, where many parts of the country are poor and oppressed; and,
- c. M has taken the trouble to learn F’s native language. She can speak fluently and will talk to S in both languages. She is therefore able to keep this going and there is less of a likelihood that S’s language skills will suffer.

81. I formed the impression that F struggled to see where S fits into this case. When describing the situation post-separation in 2022, and collecting S from nursery, F gave suspicious evidence about S’s behaviour and words. He interpreted her reticence and nervousness during a time of immense change and instability as part of a subterfuge against him. He described her behaviour for the first time in oral evidence as “really scary” and suggested that M was unsettling her. He presented this as a situation cultivated by M, but conceded that he had taken S home three times from overnight visits because she was so confused and unsettled. He rejected video calls because they were “not meaningful.” F’s evidence on these points firstly showed an inability to situate himself with S and understand her experiences at this time, and secondly showed me that during this time he allowed his own perceptions and wishes to vitiate his judgement where S’s needs were concerned.

82. F conceded that a move to Eastern Europe would not interrupt the relationships with S's Central European family, as only F lives in UK. They remain a flight away and can be seen in Central Europe.
83. F is a difficult witness to analyse. On the one hand, I found his evidence to be troubling. His intense mistrust of M shone through and he spent his evidence largely venting about M, making fresh allegations and launching into speeches. It was obvious that the breakdown of the relationship was raw to him, and his desire to control the evidence according to this narrative was clear. This unfortunately diminished my assessment of him as somebody who could provide me with an objective assessment of what he thought best for S, and whose negative view of M and the situation ultimately clouded his views.
84. On the other hand, I do not think that F's manner is informed by malice or a desire to be obstructive, but out of frustration that nobody has listened to him. At the end of his evidence, F thanked me in a fulsome way for my time and for listening to what he had to say. This makes perfect sense when one considers the background: M has taken on the primary caring role for S, which has caused F to feel relegated. The prospect of S moving to Eastern Europe has left F feeling hoodwinked that such things were not discussed in mediation, and left out of the loop when a significant amount of preparatory work has been done by M. I have criticised a lack of transparency and what I consider to be a carelessness with M's approach to F, and I have the resounding feeling having listened carefully to his evidence that this carelessness has made it worse. Carelessness when it takes place in high octane litigation breeds mistrust. I found F to be a witness whose evidence was laced with the sadness of this feeling, but regrettably has let it cloud his assessment of where S's interests lie.

## **ANALYSIS – WELFARE CHECKLIST**

85. I draw my analysis together with reference to the welfare checklist. I will consider the framework described by Williams J, but for brevity will not reproduce the headings in full.

### **Wishes and feelings**

86. S is still young. RO does not give me an account of S's wishes and feelings, save that she may in future be able to better express them. I gather that they were not ascertainable in terms of the enormity of the issues that her parents are litigating.

87. S however will have the same wishes as any child of her age: she wants to be well looked after in a stable home, with a stable routine, and stable care. I can infer that she would want to see both of her parents, who she simply adores, and who adore her. I gather that she would want to spend as much time with both of her parents as possible.

88. I also gather that S would want to spend time with her wider and extended family and benefit from their rich love and experience.

### **Physical, emotional, and educational needs**

89. Both parents can meet S's physical needs. S's educational needs are being met in London at present. They could also be met in Eastern Europe. Her educational needs are significant. By that I mean she is a bright girl. She speaks three languages. She

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requires a level and quality of education that can stimulate her very obviously significant intellect from an early age.

90. In terms of her emotional needs, she needs, in my view, the consistency that stability brings to her. Before Spring 2022 she had that from both parents; since then, she has had that from M who has assumed a primary caring role. Save and except for some carelessness with how M has insulated S from her feelings about F, there is little, in fact nothing, that can be said to criticise the mother's ability to meet S's needs.

91. F is equally capable of meeting S's needs in the short term. Their interactions and bond are of good quality, although I have no base of evidence to draw upon when assessing F's ability to support S's emotional needs on a day-to-day basis, although I have already made observations about how S has become a little lost in F's strength of feeling about this case.

92. S's emotional needs are also met by her wider family. Maternal grandmother is a short distance from the home in Eastern Europe, which would be accessible easily. Likewise, the paternal parents are in the Central Europe. S loves both sets of grandparents equally. They will play a big part in S's emotional and social development. F's parents however are always, and would remain, a flight away. It seems to me that there is an advantage to having the grandmother and extended family an accessible distance away.

93. F has questioned M's ability to promote him in S's life. I do not consider this to be a significant issue. As I have explained, that the bond between S and F is so strong is in part testament to how well M has supported the relationship. On the contrary, however, I do consider that M's relationship with S would be undermined by S

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spending long periods of her week with F, whilst F remains swamped in conflict and a feeling of injustice. I do not consider that at present F has shown an ability to extract his own ill feeling from his evidence and outlook. In all likelihood, I find that this would affect his parenting. I am concerned that there is a real risk that F may allow this ill feeling to permeate his interactions with S. I am concerned that F would continue to put pressure on M, if I maintain the status quo, to progress contact, and is showing no signs of understanding how his protestations of equality harms, and does not help S.

94. So, whilst there is a broad base of evidence to suggest that M can meet S's emotional needs, there are significant areas of doubt where F is concerned. This is a key factor in the balance.

Likely effect on S of a change of circumstances

95. Each of the menu of options I have before me constitutes change. If I maintain the *status quo* as Cafcass advises me to, it will have a significant effect on M and her feeling of being marooned, which will in turn affect the child. Likewise, the vague nature of how F's contact will develop will embed further conflict and pressure about the next phase of any 'progression'.
96. If I allow S to go to Eastern Europe with M, this too is change. S's life as she knows it will change beyond recognition. She will have a new country, a new school, new networks of reliance, new friends.
97. If I accede to F's application and divide S's time equally between him and M, S's life likewise will change. In addition to the school, she was due to start in September, she will have to re-adjust to F as a long-term caregiver. She will have to adjust to having

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two homes, two sets of friends in the locality, some days she will have to adjust to having longer to travel to school and the effect this may have on her ability to take part in school life fully. Likewise, she will be exposed to her parents attempting to make sense of a new kind of co-parenting relationship; she will be in the middle of miscommunications and mix-ups. Whilst this is both inevitable and normal, she will further be exposed to the conflict which presently exists and shows no sign of abatement.

98. It follows that each of the options, as I have said, represents a change of circumstances. I have no evidence before me that S cannot bear change. Although RO considers that S needs stability and security, it is not suggested that she is not adaptable or that the instability she has experienced is a barrier to further change. Nor does RO say that S is particularly brittle at present. She would benefit from the plan that would offer her the most stability. I agree; her needs in my view require me to approve a plan that best guarantees long term stability and consistency for S.

99. In terms of the changes that I am faced with, I must also consider how likely each option is to lead to long term stability. The advantage of Eastern Europe is that, after an initial change and adjustment, S will be in a settled routine with her family and friends, seeing her father at set and regular intervals for generous periods of time.

100. I see the *status quo* argument as fraught with risk – this preserves a situation that neither parent is happy with, and ultimately S will be caught in-between. I see this as an invitation for further conflict, and would undermine stability. The promise of ‘progression’ to both parents will entrench their positions at present, not bring them together. I suspect that F will always have a sense of ‘jam tomorrow’ – the hope that is never fulfilled to his satisfaction.

101. An equal division of time will lead to long term stability, although this may well be undermined by M's feeling of being marooned in a country she never wished to stay in, and the fact that such a division does not give S a settled base and is a significant undertaking for such a young child. In addition, the success of such a plan requires skilled co-parenting. This is not something in my view that the parents in this case are capable of. In my view, were I to order an equal division of time, I would be ordering future conflict and instability to be present in S's life. RO's evidence that S is simply too young to bear this change, and the parents' relationship too poor, resonates firmly with me.

102. How realistic is the plan in the sense of how likely is it to be implemented as conceived? In my view, the plan to relocate to Eastern Europe is detailed and well thought through. The housing proposal is certainty. The educational options are near-certainties, with places possible at a number of education provisions, and the home being the substantially renovated family home. The Court has been furnished with every detail of S's existence in Eastern Europe. It has been meticulously planned.

103. The only factor that may affect the 'realism' of the move is the timing. It was said that the timing of a move, being effectively in three weeks' time, would be too soon and surprising for S, who is unaware of the proceedings. In my view, for the plan to be realistic and for S's welfare interests to be protected, the move should take place as soon as possible. I do not consider that it would be satisfactory for S to start school in UK, and deal with the upheaval and routine changes this brings, and then have this disrupted with a bigger life change. S's long term stability and ability to invest in her new home and environment are contingent upon this move being completed in a timely way. In so far as this may be difficult for S, it will be for both parents to

manage this process with S, and it is not for me to micro-manage two capable parents in how they do this.

104. Will there be positive effects in respect of the removing parent's ability to provide care for them if they move abroad? The answer to this is an unequivocal yes. The strength of the M's unhappiness at present is palpable; that RO described M as 'desolate' is a significant cause of concern. I note that M described life in England as a little more bearable in her evidence – she described being integrated in S's school life, and happier because of the routine with S's care. That M has adjusted as a necessity is laudable, but my impression through M's evidence was that she was still largely unhappy in UK. In my view, M will be happier and better supported in her care for S in Eastern Europe than in UK, where the prognosis is still much bleaker.

105. What are the other positives and negatives about Eastern Europe in terms of environment, education, links with family? In terms of environment, F raises a number of concerns in his evidence about Eastern Europe. I have dealt with these in my analysis already. I have dealt and will deal with these benefits and pitfalls elsewhere in this judgment.

106. F is concerned that the links with his family will be lessened, but the paternal family whether in Eastern Europe or London still remain a flight away. S and F would still have to travel to Central Europe to visit the paternal grandparents. The benefit of Eastern Europe as against this is that S will have – within short reach – grandparents, extended family and psychological family that make up important attachment figures.

107. F does not argue that S's education would be in any way disadvantaged. The Eastern European and English options seem to me to be on par. Given the links between one of the proposed Eastern European schools and the Embassy in the



Eastern European country, it may be that the Eastern European school has the edge in terms of a guarantee of S's Central European heritage being protected. In UK, S's formal education of languages would likely have to come from other sources. This in my view should be M's first port of call for schooling, although this case does not turn on schooling.

108. What will be the impact on the child of moving permanently to another country in respect of their relationship with the left behind parent and other extended family? To what extent may that be offset by on-going contact and extension to other relationships in the new country? I accept that there may be some effect on F's relationship with S – they will plainly lose the itinerant contact that comes with being relatively close by. I have no doubt that they will miss each other and I accept that it may be weeks at a time when S and F do not spend time together. However, in my view the impact will be substantially ameliorated by the following:

- a. Long periods of quality time, including important festivals together – I emphasise quality because I do not consider every day interactions to be 'quality time'. F has a stressful job and life. The letter he has filed from his employer shows me that F will have to juggle S around his work and busy life. I applaud this attempt, but this can hardly be said to be quality time. The benefit of holiday contact is that S and F will enjoy each other's undivided attention. I do therefore not accept that the distance would lead to a diminution in the quality of F and S's relationship.
- b. Relatively frequent contact – F has a degree of flexibility in his week, including weekends. He has produced evidence that his employer is content to assist him in promoting the relationship between F and S. I was given no good

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reason why F cannot work remotely out of the jurisdiction on his 'remote days', but even if he is shackled to England and Wales there is a degree of flexibility at weekends that mean F can build in regular trips. I do not accept that for parents who are both of means, with good jobs, able to spend thousands of pounds each on Rolls Royce legal representation, that the cost of short haul flights is in any way prohibitive.

- c. The possibilities of video contact – There is no reason why F cannot play a day-to-day part in S's life through technology. The pandemic opened opportunities to keep in touch that transcends time zones and borders.
- d. The presence of M, who promotes F's role in S's life – I have made findings about the role of M in developing F's relationship. There is no reason to consider that M would not continue to do this in Eastern Europe.

109. It seems to me that the option which assures stability the most is Eastern Europe. If S were to remain in UK, either with the status quo, or an equal division of time, I am concerned that the circumstances would undermine her feeling of stability and security, and the prognosis for such change is poor.

Age, sex and background

110. S is fortunate enough to speak three languages and hold two nationalities. She is half Central European, and half Eastern European. She requires caregivers and an environment that can nurture both of those sides of her identity.

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111. M speaks both of S's native languages, and English. She has taken the time to learn F's language for both F and S's benefit. This is a measure of how seriously M takes identity. I believe her when she tells me she has worked hard to ensure formal tutoring is available at the school she would like S to attend.
112. F does not speak M's language, and so can only communicate with F in English and his language. He plainly takes the issue of S's heritage seriously. He wants S to be brought up in both traditions, although it is obvious from the evidence he has filed that he is uneasy about many aspects of life in Eastern Europe.
113. These constituent parts of S need to be nurtured.

Any harm?

114. I have outlined through this judgment my analysis of the potential harm that may come from each of the options I am faced with. There is an overlap with the discussion under the change limb of the checklist, and I have set out my conclusions there.
115. In respect of the impact on S on the relationship with F, and how secure the relationship is, I have every faith that this will continue fulsomely. I have no reason to doubt M's commitment to promoting that relationship, which she has done faithfully and in pressured circumstances. I have already explained why I consider that relationship to be well established, secure, and likely to be promoted by regular contact.
116. How realistic are the contact proposals? F has produced evidence of his ability to be flexible where an equal division of time is concerned, but not of what I would hope was similar flexibility and understanding with a child abroad. Although F suggested

in evidence that “I would be sacked” if he were to work abroad remotely, there is no evidence to suggest that this is the case.

117. I do consider that the original proposals for contact were unreasonable. It seems to me that asking S to stay in hotels on a regular basis with F would be confusing and destabilising. However, M’s proposal that an apartment is rented for the purpose of contact provides appropriate threads of stability, and reduces the financial and logistical pressure on F when making arrangements at short notice, as he may wish to. I consider this to be an appropriate offer, and one that reassures me that M takes F’s relationship with S seriously. It will form an important part of any Order I make. Additionally, and even if visits every three weeks are not achievable for F, it seems that M is more than willing to travel to UK with S and it could be that these visits are rotated, so F would only have to travel for one weekend every eight or so weeks.

118. In M’s first statement, she outlined a number of contact proposals with which I broadly agree. There are some areas that I disagree with. They are:

- a. 2/3 of the summer holidays: I do not consider this to be driven by a need to preserve S’s stability and sense of continuity. 2/3 of the summer is a long time to be away when one considers that the Eastern European summer holiday lasts for a 72 days (about 10 weeks). I have already outlined that S’s needs require an arrangement where consistency is promoted as much as possible. This means allowing S to embed in her home and school, see her new friends and family, and take part in the full ambit of community and school life. It would be harmful to S’s sense of permanency to permit such a long time away from home, where she would be unable to attend clubs with her friends, playdates and embark on the sort of capers with friends that the long holiday is for. In my view, the best balance

would be a half and half arrangement, with the first three, and then the last two, weeks being spent with F in UK, Eastern Europe or Central Europe.

- b. Likewise Easter. I consider that Easter should be alternated instead of spent every year with F. Easter again is as much a calendar event as a religious feast, and I consider that S should be allowed to spend this in two familiar locales on an alternating basis.
- c. Extended weekends each Bank Holiday – I do not consider that it is necessary for me to be prescriptive as to this issue. I will not Order it, least of all because the holidays in UK and Eastern Europe are not perfect matches of each other. I will recite in my Order that I expect some flexibility around Bank Holidays should S's monthly visit be arranged for a Bank Holiday, but being overly prescriptive in my view risks embedding further conflict into this family, which would undoubtedly be a source of harm, and I have already identified being firmly against S's welfare needs.

119. What would be the impact on M of having to remain in UK? I have already set out my conclusions in respect of this. M is emotionally fragile as a result of her feeling of being trapped. RO described this in strong terms, and I have no doubt that this feeling of helplessness and unhappiness would likely continue. This would affect M and, importantly, S.

120. Will the ability of either parent to provide care for the child be adversely affected by the refusal or grant of the application and if so to what extent? I have set out the effect on M of being forced to remain in UK. I find that her feeling of emotional desolation will likely continue, which will be in my view destructive for S's welfare and stability. M's ability to provide care in Eastern Europe seems to be a much

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happier prospect. F's ability to provide care if I grant the application will be unaffected – he is a capable parent who I know will do what he can to make the time he spends with S enjoyable. He loves S desperately. I know he will be disappointed, but the effect on him of S moving in my view pales into insignificance when I weigh up the emotional toil that being in the UK effectively against her will has had on M.

121. I have already identified the risk of being exposed to conflict if S lives half of the time with F, or if I maintain the status quo. I have outlined why I consider this to be destructive.

122. All of this feeds into my view that the balance of harm tips in favour of removal to Eastern Europe as the best chance of insulating S from a risk of continuing emotional harm.

Capability of the parents

123. S is a wonderful, well mannered, intelligent and switched-on little girl. That she is so resilient and polite is testament to her parents. There are no welfare issues in terms of either of their parenting. I have no evidence to suggest that either M or F cannot meet her needs. M has done this well; F has done this well during his staying contact.

124. Is the application to relocate wholly, or in part, motivated by a desire to exclude or limit the left behind parent's role? In my view, it is not. It is clear that the mother is worried about desolation. She is genuine. She wishes to be closer to her home and support networks. She sees Eastern Europe as a more pleasant and peaceful environment than London. I have explained why I consider F's position to be unfounded that M is intent on harming the relationship between him and S. I have recognised M's important role in developing this relationship in this judgment.

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125. Is the left behind parent's opposition to the move genuine, or is it motivated by some desire? The father's opposition is not aspersive. It is sincere. F adores S. I genuinely believe that F is opposing the relocation because he thinks it is best for S to stay in London. He is angry with M, and he feels ignored. He has allowed this ill feeling to cloud his objectivity. But there is no bad intention – there is, regrettably, pure and simple dejection.

126. Will the parent be better able to care for the child in a new country rather than England? What role can the left behind parent play in the future? I have every faith that F will play a full role in S's life – directly through visits, indirectly through video calls, and during holidays and trips to Central Europe. I have explained why I consider M will be better able to provide S with stability, security and an enduring quality of care than she could in UK.

**Range of powers under CA1989**

127. The parents do not agree on the arrangements for S. I have to make an Order.

128. I can make a direction that the mother obtains a mirror order in Eastern Europe, a signatory, of course, to the 1996 Hague Convention and so reciprocal enforcement will be no issue. I have no doubt that this order will be respected in the relevant jurisdiction.

129. The 'expert' (as it is headed – this report was not directed or is in any way compliant with FPR25) report dated 23 January 2023 outlines the position in respect of this, and F argues that this means that once M moves, his position is brittle and at the whim of the Eastern European Jurisdiction. This is echoed vividly in Mr Evans' preliminary document. However, as I have set out I have no concern that M would

attempt to vary the Order. On the facts of this case, I am satisfied that M will safeguard the relationship between F and S, even if the law in Eastern Europe is perhaps ‘concerning’ (to quote Mr Evans) with regards to its obligations under the treaties.

## CONCLUSIONS

130. Tying these threads together, it is, in my judgment, overwhelming in S’s welfare interests to move to Eastern Europe with her mother. This will best give her the stability that she needs, and insulate her from harm, which I have found that the alternatives do not. The balance firmly and wholly falls on the side of a move to Eastern Europe. I have no doubt that she will continue to thrive in M’s capable care. I have no doubt that she will have a wonderful relationship with F through direct and indirect contact. I have every faith that the certainty that this Order brings to the future will reduce S’s exposure to parental conflict, and allow the parents to adjust to the future as it has now crystalised.

131. I am of the view that contact between F and S must be regular, and both direct and indirect. I am of the view that both M and F must ensure that this happens, and I will share the responsibility for travel. S needs to know that both of her parents support the relationship with F, and see that promotion in action. That contact must follow the significant events in the calendar and S’s parents’ lives.

132. I have departed from the Cafcass recommendations in this case. I have explained my reasons for doing so above.



**Approved Judgment**

133. This will be a significant change for S. The parents must work together to break this news to S in a child focussed and sensitive way. I have explained that I consider it in her best interests for this move to happen as soon as possible. The benefits of this for S's long-term stability outweighs any concerns about such a move taking place abruptly.

**ORDERS**

134. I give permission to the mother to move to Eastern Europe with S. This must not be before 1 September 2023.

135. S will therefore live with her mother.

136. Although contact for the Summer 2023 is agreed, I express the view that F should be allowed some time with S before she goes to Eastern Europe. I will Order this if necessary.

137. Contact between F and S will be as follows:

- a. At least every month for one weekend, with the parents taking turns to travel to Eastern Europe or UK. Where F travels to Eastern Europe, M is to provide rented accommodation for F and S, at her own expense. The costs of travel and other accommodation are to be met by the parent who is bringing S.
- b. For half the summer holidays in UK, Eastern Europe or Central Europe. This to be divided with the first three weeks with F, and the last two weeks with F. The travel costs are to be shared between the parties.
- c. Every autumn break in UK, Eastern Europe or Central Europe. The travel costs are to be shared between the parties.

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- d. Every other Easter in UK, Eastern Europe or Central Europe (to include the feast days in Holy Week). The travel costs are to be shared between the parties.
  - e. Every other Christmas in UK, Eastern Europe or Central Europe. The travel costs are to be shared between the parties.
  - f. At any other time that the parties may agree.
138. I have specified either UK, Eastern Europe or Central Europe to give flexibility as to venue, which will be at F's choice. It may be that he wishes to take S abroad during this time to another country – I consider that a holiday is key to quality time and my Order must reflect this ability.
139. There was an agreement as to daily video contact. I will direct that this continues.
140. In terms of schooling, I give M permission to apply for a school in Eastern Europe forthwith. The first option should be the school with links to the Embassy to ensure appropriate language provision. If S is not offered a place at a school with language provision, M should source this outside of school.
141. To give effect to my judgment and welfare analysis, I discharge the prohibited steps order made on 5 July 2022.
142. That is my judgment.

**DDJ Jack Harrison**

**West London Family Court**

**15 August 2023**

**Approved Judgment**