Case No: NN23P00687

Neutral Citation Number: [2025] EWFC 31 (B)

In the Family Court at Northampton

Before :

[HHJ Wicks

- -

Between :

F

Applicant

- and –

M **Respondent**

JUDGMENT

As approved and handed down on 15 January 2025

Introduction

1. This case concerns the parties' son, A, aged 21 months. I shall refer to the parents as M and F in this judgment.
2. There are two broad issues in this case:

a. Which parent should A live with?

b. How much time should A spend with the parent with whom he is not living?

3. A is presently living with M in Scotland, but F asks for orders that A be returned to Northamptonshire and live with F. This is opposed by M, who says that A should continue to live with her.

4. A spends time with F in accordance with an order made by DJ Searl on 14 February 2024. Under that order, A spends every other weekend with F, from 10 am to 4 pm, on Friday, Saturday and Sunday. The venue alternates between Scotland and Northants. F will travel to Scotland on one contact weekend, and M will travel with A to Northamptonshire on the following contact weekend. Handovers had been facilitated by the maternal grandmother in Scotland and the paternal grandparents in Northamptonshire. The order also provided for video contact four times a week.

5. M proposes that this should continue, with some modifications. On the Friday, contact will be from 12.30 to 5.30; on the Saturday, contact will be from 9.30 to 5.30 and on the Sunday, contact will be from 9.30 to 12.30. Handovers are either to be facilitated by the paternal grandparents or are to take place at a contact centre. Video contact is to be reduced to twice a week.

6. F puts forward three proposals:

   a. If A lives with him and M returns to Northamptonshire, F says that the care of A should be shared roughly equally between the parents. A would live with F on Monday and Tuesday, M on Wednesday and Thursday, and the weekends (Friday-Sunday) would alternate, one weekend with M and the following weekend with F. There would be one video call each Saturday evening.

   b. If A lives with F but M remains in Scotland, the care of A would be shared as follows. A would live with M:

      i. every third weekend from 12 noon Friday to 12 noon Tuesday until A starts school, when he would return from M's care on Sunday (time not specified);

      ii. for all the half term holidays;

      iii. for the first week of the Easter holiday;

iv. for weeks 1, 2, 5 and 6 of the summer holiday;

v. for one week at Christmas, to include Christmas Eve, Christmas Day and Boxing Day in alternate years, those dates in 2024 to be spent with F;

vi. video contact three times a week minimum;

vii. such further time as may be agreed between the parents.

c. Handovers to take place at nursery or school, or at Lancaster Station (said to be midpoint).

d. If A lives with M in Scotland, he is to live with F as follows:

i. every third weekend from 12 noon Friday to 12 noon Tuesday until A starts school when he would return to M's on the Sunday;

ii. for the Easter holiday;

iii. for weeks 1, 2, 5 and 6 of the summer holiday;

iv. for the October holiday;

v. for 1 week at Xmas, to include Xmas Eve to Boxing Day in alternate years, those dates in 2024 to be with F.

e. Handovers at nursery or school or Lancaster Station, as before.

There are no half-term holidays in Scotland. Scottish schools break for Easter, summer and Xmas, with an additional holiday in October.

Background

7. I take this from the chronology in the bundle.

8. The parents are both aged 38. They began their relationship in 2016 and moved in together in 2017. They married on 22 May 2021. Both parents work.

9. The parties separated in July 2023. The circumstances of the separation are set out in the chronology and are not in dispute. Between July and August 2023, substantial building works were being carried out at the family home. Given the disruption, it was agreed between the parents that M and A would travel to Scotland to stay with the

maternal grandparents, who moved to Scotland themselves some years previously. M and A travelled to Scotland on 13 July 2023. Thereafter, F travelled to Scotland each week, to spend time with A.

10. It is clear that there were some problems in the marriage as at the end of July 2023, M and F attended couples counselling at Relate. Although the date of the parties' separation is given in the chronology as July 2023, M and F had at the beginning of September 2023 agreed to attend further counselling at Relate in December 2023.

11. On 7 September 2023, F's solicitor wrote to M, asking her to return with A to Northamptonshire. F had discovered in shared electronic calendar appointments that M had booked to visit nurseries in Scotland. On 15 September 2023, M's solicitor responded, saying that M had permanently relocated to Scotland with M. This was the first time that M's intentions had been communicated to F. On the same day, M issued an application in the Scottish courts, without notice to F. On 19 September 2023, F issued an application in the English courts. This application proceeded in the Family Court at Newcastle before being transferred back to Northampton.

12. Except as set out below, I do not propose to deal with the litigation history. There was a dispute over jurisdiction which was eventually resolved in favour of the English courts, the proceedings in Scotland being dismissed. The case was thereafter listed before me on 3 and 4 October 2023, with a further hearing on 5 and 6 November 2023. The parties delivered written submissions, after which the case was adjourned for judgment. Unfortunately, ill health prevented me from delivering judgment on the day originally fixed, and the case was re-listed on 15 January 2025.

13. I must mention just one aspect of the litigation history.

14. On 8 February 2024, M filed a Form C1A in which she asserted that she had suffered emotional and psychological harm and that A had suffered physical, emotional and psychological harm. She provided further details, which I summarise as follows:

    a. Between 2018 and 2023, F consumed alcohol, making him "spiteful", he would be silent for "many days at a time" and would shout, sometimes when A was present.

b. F would “lose control” and would shout about “small issues” and would become “more controlling” of M. This was said to have happened throughout the relationship but to have worsened from February 2022.

c. F was physically aggressive towards A when changing his nappy and became angry when handling A.

d. F exercised “coercive control” of A and M, stopping M from playing with A; insisting that M either breastfed A or stopped breastfeeding him; poking him awake; and telling M that she was “too soft”.

e. F was “controlling and aggressive” towards M, “controlling her access to food, drink, rest and washing”, leading to her being admitted to hospital for exhaustion in May 2023 and July 2023.

15. M stated that she had made a report to Police Scotland on 5 October 2023 and had sought advice from Women’s Aid West Lothian; Refuge Warwickshire; a clinical psychologist; Relate Northampton; her doctor in Scotland; and social services.

16. There was a First Hearing Dispute Resolution before District Judge Searl, in the Newcastle Family Court, on 14 February 2024. M was represented by counsel. She did not invite the court to consider a fact-finding hearing, and Cafcass did not recommend a fact-finding hearing in their safeguarding letter. There followed a number of hearings, before District Judge Searl, Her Honour Judge Carter, and me. M was represented by solicitor or counsel at each of those hearings. At none of them did M invite the court to consider a fact-finding hearing. Speaking for myself, I would not have considered a such a hearing to be necessary, on the basis of the allegations set out in M’s Form C1A, although I might have asked for further details about the reasons for M’s hospital admissions in May and July 2023. There is a reference in the statement of the paternal grandfather that M had been taken to Warwick Hospital on 9 July after feeling faint and unwell whilst staying with her brother and that she had subsequently discharged herself. Other than that, I would question whether what M has set out in her Form C1A is capable of amounting to domestic abuse, as defined in paragraph 2A of Practice Direction 12J of the Family Procedure Rules.

Evidence

17. I heard from both parents and the Cafcass Officer, whose report is dated 5 June 2024.

18. I have been provided with two bundles of documents, including the parents' witness statements and selected correspondence passing between them and/or their solicitors. I have read these bundles, with particular focus on the documents that were referred to in the oral evidence.

19. I do not propose to summarise all the evidence I have heard and read but I have kept it all in mind when reaching my decision.

20. The evidence of F and the Cafcass Officer was taken quite shortly.

21. The Cafcass Officer confirmed her report. She did not visit F's home or observe contact between F and A because the question of F's care was not in issue. She was aware of the Cafcass toolkit for relocation cases and she assumed that she would have used it, although she did not refer to it specifically in her report. She was concerned about M's decision to relocate without consulting F; that decision cast doubt on M's ability to promote a relationship between A and F. She agreed that A needed a "significant relationship" with F. He would come to no harm if he went without breastmilk during his time with F. She agreed that A was meeting his developmental milestones, although his nursery was concerned that he was caught in a battle between his parents. She considered that a transfer of A to F's care would be disruptive but could be managed, although it was not, in her view, in A's best interests.

22. F confirmed his position that, ideally, he would want a shared care arrangement whereby A spent equal amounts of time with each parent. He accepted that this could only work if M returned to Northants with A. He had no idea that M wanted to end the marriage, and he believed that M had moved temporarily to Scotland with A as a respite from the disruption caused by the extensive building works then being undertaken at the family home. He knew nothing of the allegations which M had apparently made to the police, learning for the first time on reading the Cafcass Officer's report that these included a serious allegation of rape. He was not aware of any police investigation and to date has not been spoken to by a police officer as part of that investigation or invited to a voluntary interview. A move to Scotland for him was out of the question as there were fewer employment opportunities and he would have to take a pay cut. He and M did communicate via a parenting app, but that communication was limited.

23. M’s evidence took longer than had originally been anticipated. It was often hard to follow her evidence, as she tended not to answer the questions put to her directly. She hesitated in accepting that F was a “great” father, saying that he was “sometimes”. She also hesitated over accepting that care of A was shared between them when they were together. She did not think that F was as able to meet A’s needs as she was, although she was unable to give any specific examples of this. She said that difficulties over contact came from both sides, although she was unable to give a single example of F causing any difficulty. She said that her life in Scotland was settled and that she could not see how she could re-establish herself in Northamptonshire. My overwhelming impression of M was that she was excessively anxious. That said, she did not appear to accept that her behaviour in moving to Scotland without telling F was wrong, nor was she able to say when – if ever – she told F that the relationship was over and she wanted a divorce. M gave details of A’s current breastfeeding regime, saying that when she tries to refuse a breastfeed, he will cry or throw a tantrum, although she is sometimes able to distract him with toys or other activities. She agreed that the breastfeeding was a barrier at present to A having overnight contact with F.

24. The hearing was adjourned part-heard to two further days in November 2023. M had not completed her evidence and was given the usual warning by me. Despite that, M arranged, through her solicitors, to obtain a report on breastfeeding from a lactation consultant employed by Nursing Matters, an organisation which advocates for breastfeeding. Apparently, this report was funded by M’s legal aid. No application had been made for permission to instruct the consultant. I have considered the report but am unable to attach any weight to it. The report was prepared on the basis of an online questionnaire completed by M. It fails to comply with the requirements of Practice Direction 25B. It is no more than a document which seeks to promote A’s “right” to be breastfed. Indeed, the consultant introduces the document by saying “We are *advocating on behalf of* [my emphasis] A … a breastfeeding child …”, having been asked to do so by M. To the extent that there may be any conflict between what is contained in this document and the views expressed by the Cafcass Officer in her report, I unhesitatingly prefer the latter.

Legal Principles

25. There is no dispute on the law. Both counsel have provided helpful expositions of the relevant law in their written submissions, for which I am grateful.

26. Section 1 of CA 1989 provides, so far as is relevant to this case, as follows:

1 Welfare of the child.

(1)When a court determines any question with respect to—

(a)the upbringing of a child;

…

the child's welfare shall be the court's paramount consideration.

(2)In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(2A)A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B)In subsection (2A) "involvement" means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

(3)In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

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

(b)his physical, emotional and educational needs;

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

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

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

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

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

(4)The circumstances are that—

(a)the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings;

…

(5)Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

(6)In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned—

(a)is within this paragraph if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm; and

(b)is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement.

…

27. M in this case is in effect applying for retrospective permission to re-locate to Scotland. The relevant principles to apply in relocation cases were set out by Williams J in *Re C A Child* [2019] EWHC 131 (Fam) at [15]-[16]:

15. The most recent and authoritative appellate decision on the approach to permanent overseas relocation cases is *Re F (A Child) (International Relocation Case)* [2015] EWCA Civ 882; [2017] 1 FLR 979. The material paragraphs of the judgment are 3, 4, 30-35 (Ryder LJ) and 45-52 (McFarlane LJ). *Re F* together with the earlier authorities of *Payne*, *Re F*, *K-v-K* and *Re C (Internal Relocation)* makes clear that that whether the applications are configured under s.8 or s.13 Children Act 1989 the following framework applies.

(a) The only authentic principle is the paramount welfare of the child.

(b) The implementation of section 1(2A) Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent.

(c) The welfare checklist is relevant whether the case is brought under s.8 or s.13 Children Act 1989

(d) The effect of previous guidance in cases such as 'Payne' may be misleading unless viewed in its proper context which is no more than that it may assist the judge to identify potentially relevant issues.

(e) In assessing paramount welfare in international relocation cases the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent. In complex international relocation cases this may need to be of some sophistication and complexity.

(f) In addition to Article 8 rights – indeed probably as a component of the Art 8 ECHR rights and s.1(2A) one must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis (unless that is contrary to her interests) in accordance with Article 9 of the United Nations Convention on the Rights of the Child ("UNCRC").

(g) Furthermore, the court must also take into account the Article 8 rights of the parents. In the usual case the child's Art 8 right will take priority over the parents but that should not cause the court to overlook the Art 8 rights of others affected and the court should balance the competing Article 8 rights.

(h) The effect of an international relocation is such that the Article 8 rights of a child are likely to be infringed and the court must consider the issue of proportionality of the interference. There remains some degree of uncertainty as to how the proportionality evaluation is to be applied in relocation cases. In *Re F* it was said one should be undertaken. In *Re Y* [2015] 1 FLR 1350 it was said in private law cases it doesn't need to be. The Court of Appeal in *Re C (Internal Relocation)* expressed doubts about how it was to be undertaken. I consider that in most cases in practice the proportionality issue will be subsumed within the overall holistic evaluation in particular when considering effect of change and risk of harm. In reality, in the judicial consideration of the welfare checklist it simply is likely to mean the judge will be that much more alert to the importance and thus weight to be afforded to the child's right to maintain contact with the left behind parent and their rights to a stable and secure family life with their primary carer, if there is one.

Insofar as it may assist in identifying the relevant issues a court may (but is not obliged to) deploy what may be described as the 'F, K, C, Payne' composite. This is no more than an integrated approach to the welfare checklist and the 'Payne' guidance/discipline incorporating within the welfare checklist relevant Payne criteria and any other particular features of the individual case which appear relevant. Of course in some cases it may be that one or more particular aspects will emerge as carrying significantly more weight than others – a contour map with high peaks and low valleys; in others the factors may be much more evenly weighed and present a gently undulating landscape. In the former the balance may fall more obviously in one direction if it is dominated by peaks with no valleys in others the peaks may be balanced by the valleys creating a finer balance. In the latter the overall undulations may make the balance a very fine one. Ultimately every case is fact specific.

28. The ‘Payne Factors’ were reiterated by Morgan J in *H & Another v S and Another* [2024] EWHC 730 (Fam) at [32]:

32. I have found that exposition by Williams J, albeit a first instance consideration, to be helpful … The reference to the “Payne factors” is once again something that is familiar within the family justice system but since it was thought it might be less so to the respondent the passage at [40] of the judgment in Payne where they appear was set out for her benefit and I repeat that here:

“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.

“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?

“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?

“The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate.”

Discussion and Conclusions

29. The primary issue is whether A should remain in Scotland with M or whether he should return to Northampton. Once that issue is resolved, I must consider the appropriate division of A’s time with each of his parents. Both these issues must be evaluated by reference to the welfare checklist and the need to afford paramountcy to A’s welfare.

Ascertainable wishes and feelings

30. A is not old enough to give voice to his wishes and feelings

Physical, educational and emotional needs

31. A has the physical, educational and emotional needs of any child of his age and sex. He has been diagnosed with a genetic abnormality, May-Hegglin Anomaly, a rare disorder of the blood platelets which causes them to be abnormally large. A is suffering no symptoms at present. Neither parent suggests that the condition affects his daily life. Emotionally, he requires a secure environment where he can develop, and his needs can be met. He needs a secure and meaningful relationship with both his parents primarily, and his wider family. In the shorter term, he has an emotional need which arises from his continued breastfeeding. M acknowledges that A is no longer dependent on breastmilk for sustenance. He is now eating solid foods and enjoys a varied diet. The breastfeeding is intended primarily to soothe him. It is right therefore to characterise it as an emotional rather than a physical need.

Likely effect of any change in circumstances

32. Inevitably, given the circumstances, A’s primary attachment is to M. The Cafcass Officer noted in her report that A was reported to cry on leaving M. This is unsurprising. However, he appears to settle well when with F. The Cafcass Officer’s view was that A would be able to transfer his primary attachment to F, should he move to live with F. There may be some short term upset, but in the longer term there is no reason to suppose that A would not settle in the care of F and form as secure an attachment with him as he has with M. Then there is the question of the breastfeeding. The Cafcass officer’s view was that A would suffer no harm, either emotionally or physically, if he were not able to have breastmilk. He is eating solid foods and no longer relies on breastmilk for sustenance. M’s position on the continued need for breastfeeding is somewhat confusing. In the closing submissions filed on her behalf, M appeared to accept that the breastfeeding was to soothe A, it being given to him when he asks for it. However, this is contradicted by M’s own oral evidence, in which she described A’s current breastfeeding regime thus (from my notes):

> ‘… 2 breast feeds on waking at 7 am; he then has breakfast around 8.30, e.g., scrambled eggs, toast, cereal with cow’s milk and whole fat cow’s milk to drink; we leave at 9.20 to take him to nursery, he has a breastfeed in the car shortly before going in; he remains at nursery until 5 pm, I come at around 1 pm to give him a breastfeed; he will have a lunch of baked beans on toast and fruit or scones, and water to drink. Picked up at 5 pm or 5.30 pm. He has a breastfeed when I collect him from nursery; he has supper at 6.30 pm, cottage pie, rice, pasta, fruit or stewed fruit, water to drink. Then there will be playtime until bath at 7.3 pm, he sometimes asks for a feed before bath; then bed. He will wake 12.30 to 1 am, has a breastfeed; then wakes again at 4 am, has another breastfeed; sometimes wakes for a third time at around 6 am, will have a breastfeed.’

33. This is a total of nine breastfeeds over 24 hours. This compares with up to eleven breastfeeds in 24 hours in September 2023 (as deposed to by M in documents filed in the Scottish proceedings) or ten in July 2024 (as set out in an email from M’s solicitor dated 26 July 2024). M has evidently not made any appreciable efforts to reduce the number of breastfeeds or to wean A off breastmilk. On 26 January 2024, M’s then solicitor wrote to F’s solicitor, saying ‘Once A is one years [sic] old, he can have cow’s milk during the contact day and therefore [F] can feed this to A himself.’ This never happened. On 19 April 2024, M’s solicitors wrote to say that A would have to be weaned off breastmilk over a period of ‘around a month’. Again, this did not happen. There has been no real change in the regime of breastfeeding. M continues to insist that A’s time with F is interrupted to allow her to breastfeed and to oppose any

overnight contact with F because of A's need to have breastfeeds at night. M intends to return to work in January 2025, when inevitably the breastfeeding will have to reduce, but she has taken no steps thus far, it seems, to start that reduction. Indeed, my impression was that M had given it very little thought. She told me that she would reduce her working hours so that she could leave in order to give A a breastfeed, but she had not yet spoken to her employer about it and had evidently not thought about what might happen if her employer was unwilling to allow her to work reduced hours. M may be right in saying that her employer will be flexible, but I would have expected M by now to have discussed this with her employer and to be able to produce something in writing to confirm the employer's position.

34. A no longer depends nutritionally on breastmilk. That is accepted by M. It is more, as I have said above, an emotional need. M told me that A will ask for a breastfeed from time to time. F's evidence, which I accept, is that A has never asked for a breastfeed whilst in F's care. Despite this, M has continued to insist that F's time with A is interrupted, to allow her to breastfeed A, and she has rejected any suggestion that this should cease, certainly in the short to medium term.

Age, sex, background an any other relevant characteristics

35. A's age means that he is entirely dependant on his parents to meet all his physical and emotional needs. There has been no suggestion by either parent that A's gender has any bearing on the decisions to be made by the court, and there are no other relevant characteristics to consider.

Any harm that A has suffered or is at risk of suffering

36. The surreptitious removal of A to Scotland by M has interfered with A's relationship with F. He has spent only a limited amount of time with F since that removal, and even that has been curtailed by M's insistence on giving a breastfeed to A (see above). In her report, the Cafcass officer remarks on the significant change for A. F has gone from "primary attachment figure and everyday care giver" to a parent with whom A spends time at weekends, with no overnight stays. In her opinion, this has "undoubtedly impacted on A's opportunity to bond with his father in infancy and will likely impact the nature of A's relationship and attachment to his father longer term".

37. Should A remain in Scotland, then simply by reason of the geographical distance between the parents, his relationship with F will continue to be curtailed. A meaningful relationship between father and son will only be maintained in those circumstance with the commitment of M. Sadly, I have seen little sign of any such commitment in either the history of this case or in M's own evidence. I consider this in more detail below.

How capable each of the parents is of meeting A's needs

38. The Cafcass Officer did not observe any contact between F and A. Her reasons for that was that the court had already determined that contact did not need to be supervised and that F had shown a good understanding of A's needs when she interviewed him for the purpose of her report.

39. It was no part of M's case at the final hearing that F was not able to meet A's needs. However, M had previously sent a lengthy email to Cafcass on 7 January 2024. Her case, as set out in that email, was that:

    a. F was not always able to identify A's cues or needs;

    b. F drank daily and M was concerned that F 'did not have control of his alcohol consumption';

    c. M was subjected to coercive control by F both during the relationship and after it had ended;

    d. M had made a report to Falkirk Council's social services department, because F was insisting on overnight contact and she was 'frightened for A's welfare'.

40. The Cafcass Officer reports that M raised 'serious concerns' about domestic abuse. Again, the allegations centred on F's alcohol use, his anger, and his coercive and controlling behaviour. M also alleged (for the first time) that F had raped her. She had reported this to Police Scotland. The case has since been transferred to Thames Valley Police. F has yet to be contacted or questioned by the police and in the absence of disclosure of police documents, it is unclear what stage the investigation, if any, has reached.

41. M has been legally represented in both the English and the Scottish proceedings. At no time has she asked the court to decide the truth of these allegations, and at no time

has she advanced these allegations as a reason for restricting contact. The Cafcass Officer refers in her report to a need for any arrangements for contact to be 'safe' for M, in light of her allegations, but this overlooks the fact that the court has never made any determination of the truth of these allegations. F denies them all. His evidence is that the end of the relationship came as a surprise to him. M herself accepted in evidence that she had not given F any indication of wanting to end the relationship. M's position has been equivocal throughout: she has denied the court the opportunity to hear evidence on the allegations and make findings, saying, through her legal team that, in effect, the allegations have no bearing on the welfare issues; but she has continued to rely on them as reasons for concealing from F her intention to relocate to Scotland with A and for refusing to permit any overnight contact. Even now, her final proposals to the court do not include overnight contact, and she gives no indication of when, if ever, she would be prepared to accept overnight contact.

42. In the circumstances, the only conclusion I can reach is that F is able to meet A's needs and that A would be safe in F's care. That is also the Cafcass Officer's view, which I accept. There have been no findings on M's allegations. M has not suggested that F should undergo testing to establish his level of alcohol use, even though that would have been open to M, given the concern she apparently has about F's alcohol use (something which the Cafcass Officer also notes in her report).

43. F has put forward detailed contact proposals on three different scenarios. He clearly recognises the importance of A having a close and meaningful relationship with M, even if A moves to live with him. I am satisfied that F would promote and support that relationship. M does not appear to doubt that herself. It was no part of her case that F would not or could not promote a relationship with her.

44. There is no dispute about M's ability to meet A's physical needs. However, I regret to say that I have reached the conclusion that M is unable to promote or support any meaningful relationship between A and F. I had the advantage of observing M in the witness box over an extended period of time. I have already given (above) a summary of my overall impression of M's evidence. In both the Cafcass safeguarding letter and the Cafcass Officer's report, concerns are expressed about this anxiety and the impact it will have on M's ability to promote contact with F. I agree with the Cafcass Officer's evaluation of M's expressed worries about F's parenting as "projections of

her own expectations of parenting". That accords with my own impression of M as an over-anxious parent. This anxiety will, in the Cafcass Officer's view, affect F's relationship with A. M will, she thinks, "struggle to promote [this] relationship". I accept that opinion. M has in truth demonstrated very little ability to support or promote A's relationship with F during these proceedings.

45. There has been no meaningful increase in contact. M has continued to insist on interrupting contact sessions for a breast feed and has refused to consider overnight contact. Whilst she has asserted that such contact would be "unsafe", she has provided no evidence in support. There was a period in the Spring of 2024 when contact was unilaterally suspended by M, because of an alleged difficulty over handovers. This suspension was not sanctioned by the court. In recitals to her order of 7 December 2023, HH Judge Carter stressed the importance of A spending "quality time" with F, to build the father-son bond. The Cafcass Officer states that these contact arrangements "should not be ceased due to issues with handovers". I agree. At the very least, if there was an issue about handovers, the case should have been returned to court. It was not. M showed by this action a willingness not to abide by court orders when they no longer suited her. A further example of this occurred after the hearing on 10 June 2024 before District Judge Searl. At that hearing, a detailed interim contact order was made (see paragraph 3 of the order). Immediately after this order was made, M sought to change it, by insisting that contact start, not at 9.30 am, as set out in the order, but 10 am, and that the sessions of contact which took place in Northampton should be interrupted for a breastfeed (whereas the order provided for F's time with A on those occasions to be uninterrupted). M claimed that she was not bound by the order because she had not agreed it. She says that this was the legal advice she had been given. Having not seen that legal advice (M did not waive privilege), I can say nothing other than to remark that I find it surprising that a competent family lawyer would ever give such plainly erroneous advice to a client. In any event, District Judge Searl subsequently confirmed in email correspondence that the order stands, and binds both parties, until such time as it is varied either by agreement or further order. However, M's selectivity about what orders she chooses to obey raises a doubt in my mind as to whether she would abide by any order this court makes, unless it is one that she "agrees with".

46. M's attitude to F's relationship with A can also be deduced from her contact proposals. These in fact represent a reduction in the time that A spends with F. There is no proposal for how much time, if any, A should spend with F during holidays and there is no proposal for overnight contact. M says that handovers should be at a contact centre, although she does not provide any details, and does not explain why such an arrangement is necessary.

47. Finally, there are the circumstances in which M moved with A to Scotland. As M now accepts, this was done secretly. M has no connection with Scotland and no family members live there apart from the maternal grandparents, who moved there some years ago. Her job is unchanged – she has simply moved to a different office. Thus, she did not move to Scotland to take up a promotion or to improve her career prospects. It appears therefore that M's sole motive for moving to Scotland was to put as much distance between her and F as possible. There were no clearly thought out or well researched proposals. I conclude therefore that, of the first two tests in *Payne* (see above), M fails both of them.

48. There are essentially two options to be considered: either A remains with M in Scotland; or he returns to Northampton, where, initially at least, he would live with F.

49. If A remains with M in Scotland, he would remain with his primary carer and there would be no disruption to what has become the status quo for him. However, in those circumstances, the likelihood is that A would not have a meaningful relationship with F. For the reasons I have given above, M is unable to promote such a relationship, and there is a very real prospect of these parties being engaged in further litigation as A gets older. There has been no move to overnight contact, despite the court indicating as long ago as May 2024 that there should be discussions between the parties and Cafcass with a view to setting up a trial overnight contact, which could then be considered in any report under section 7 of the 1989 Act. This never took place. M's current proposals do not include any overnight contact. M has made no real attempts to wean A off breastfeeding. The frequency of breastfeeds has remained more or less unchanged, despite the fact that M is returning to full-time employment in January 2025, when inevitably the number of breastfeeds she can give will have to reduce. Further litigation, which would in all likelihood be in the Scottish courts, is not in A's best interests, as the Cafcass Officer rightly observes in her report.

50. The Cafcass Officer's recommendation is that A remain with M in Scotland. However, she has based that recommendation on the assumption that the court would not order a return of A to Northamptonshire. She says that such a return could not take place unless M were forced to return as well. That is incorrect. The court can order that A be returned. M may choose either to remain in Scotland, in which case A would live with F, or she may choose to return with A, in which case it would be open to the court to consider either a shared care arrangement, or an arrangement whereby A lives with M and spends time with F. The Cafcass Officer has not considered the impact on A of his remaining with M in Scotland. She considers that M would struggle to promote a relationship between A and F. She recognises that this would be to A's detriment. Yet she appears not to take these two factors fully into account when reaching her conclusion about where A should live. In the circumstances, I am unable to accept the Cafcass Officer's recommendation that A remain in Scotland.

51. A move from Scotland back to Northamptonshire would be a significant change for A, which is likely to cause emotional distress. A will be moving from M, whom he knows as primary care giver, to F, with whom he does not have – inevitably – the same relationship. It will no longer be possible for him to be breastfed, at least not at frequency he has been used to. However, these difficulties are likely to be short term only. The Cafcass Officer does not think that loss of breastfeeding will cause any harm, and she considers that A will be able to transfer his attachment to F. It appears from the evidence that there is very little separation anxiety demonstrated by A during contact. F is well able to meet A's needs and to promote a meaningful relationship with M. A turns to the breast for comfort, to be soothed. But there are alternative ways of comforting a small child, ways which F is able to employ as necessary. In the longer term, if A returns to F's care, he will be able to enjoy a proper relationship with F, something which will be denied him if he remains with M.

52. I have considered the impact on M of ordering A's return to Northamptonshire. It may be that she will feel compelled to return to Northamptonshire herself. However, she has friends and family in the area. By returning, she is not giving up a promotion or improved job prospects. She has spoken of her fear of F, but this is based upon largely unparticularised allegations of domestic abuse which she has not asked the court to determine. I have kept in mind the guidance set out in Practice Direction 12J of the Family Procedure Rules, but that guidance applies where the court has made findings.

53. The same point applies to the question of handovers. There is, on the face of it, no cogent reason why the parents should not do these themselves. The involvement of third parties is unnecessary. The only reason why third parties have been involved is because M has said she is fearful of F, as is the maternal grandmother (who now declines to be involved in handovers). As far as M is concerned, her fear is said to be based upon the unsubstantiated findings of domestic abuse. As to the maternal grandmother, I have been given no information about the basis for her own refusal to participate in handovers, nor have I been asked to make any determination on that issue.

54. Having weighed the benefits and detriments of each of the two options against each other, I come to the conclusion that A's best interests are served by his returning to Northamptonshire. It is the only way of ensuring that A has a meaningful relationship with F. He is a committed parent. As the Cafcass Officer recognises, it is to A's benefit that he should spend "regular time with each parent". The Cafcass Officer's view that, nonetheless, A should remain with M, appears to be based (see par. 42 of her report) solely on A's age. However, there is no presumption that a child of A's age should be in his mother's care. Each case must be decided on its own facts.

55. Accordingly, I make the following orders:

    a. A specific issue order that A is to be returned to Northamptonshire by no later than 21 days after the date of the order.

    b. On A's return, the following orders shall take effect:

        i. A shall live with F.

        ii. In the event that M elects to return to Northamptonshire herself, there shall be an order in the terms of F's first proposal (see above), to take effect once M has settled in the area;

        iii. In the event that M elects to remain in Scotland, there shall be an order in the terms of F's second proposal, to take effect immediately; these arrangements will also apply in the interim between the date of A's return and the date of M's return, in the even that she elects to return to Northamptonshire.

56. I am satisfied that F's proposals meet A's welfare needs and will allow him to have a proper and full relationship with M. I note what the Cafcass Officer says about the risk of further litigation in these circumstances, but I consider the risk of that to be greater were A to remain in the care of M.

57. I will invite counsel to draft the order.

HHJ Wicks