

who for these purposes I will identify with the letter “C”, from the Bailiwick of Guernsey to reside in France. Although the Applicant’s application was also for shared parental responsibility and a sole residence order and there were a cross application on behalf of the Respondent, who for the purposes of this case will be referred to as “B”, for some change to the contact arrangements established in a Consent Order dated 4 July 2011, alternatively some form of residence order, the focus at the hearing was very much on the permission to remove C from the jurisdiction to live in France and this judgment is confined to that application.

2. At the conclusion of the hearing, I rejected the Applicant’s application pursuant to Section 71(c) of the 2008 Law and outlined my reasons for doing so. I indicated that I would provide more detailed reasoning in a reserved judgment and those reasons now follow.

Background

3. The Applicant and the Respondent married in 2003 after several years of cohabitation. C was born in 2006. The parties’ relationship broke down in 2009. Since that time C has been living with the Applicant. Contact arrangements for C’s mother, the Respondent, have been settled by the Consent Order dated 4 July 2011. Prior to that time, C was having contact with the Respondent, including some overnight stays. Following the Applicant expressing some concerns about overnight stays, which arose at the beginning of 2011 when the Respondent commenced a relationship with her current partner, when overnight stays were suspended for a while, overnight stays have been resumed under the terms of the Consent Order of 4 July 2011.
4. The Applicant’s position is that he has been the primary carer of C since C was 2 years 9 months old. Indeed, he suggests that his position as primary carer goes back to an earlier age on the basis that he changed his working arrangements when C was less than 12 months old so that he would be available to, and did, carry out a number of caring duties to enable his then wife, the Respondent, to work longer hours. In part this was due to the Applicant’s health at the time and his ability to work a full day. More recently, the Applicant has not been able to find work. He worked a part-time job on contract, enabling him to be around to look after C. The last time when the Applicant was employed under such a contract was in September 2011.
5. The application to remove C from Guernsey so that the Applicant and C can start a new life in France appears, in many ways, to be a consequence of the Applicant’s disillusionment with Guernsey and the ongoing frustrations he faces in not being able to secure employment in the manner and on the terms he wishes. That said, the option of relocating to France and living with the Applicant’s family members, at least in the first instance, has been under consideration for a longer period of time than just the last year or so, i.e., since he last worked.
6. Since the breakdown of the parties’ marriage, the Applicant has provided continuity of care and stability of home for C. However, a recent development is that the parties have accepted an offer to purchase the former matrimonial home, which means that some move for the Applicant and C is inevitable. A completion date in December was mentioned. The sale of the former matrimonial home will produce equity for the parties of some £166,000. Because he has no job, and relies on benefits, the financial prospects for the Applicant are apparently quite bleak and, in particular, the potential

for him to be able to purchase another property in Guernsey looks very slim, if not non-existent. The Applicant has been on benefits since late 2011 and the money he receives just about covers the interest payments in respect of the mortgage on the former matrimonial home, meaning that all that he and C have to live on is the maintenance provided by the Respondent and the family allowance in respect of C.

7. The Applicant's family members live in Brittany and have done so for a number of years. One has recently qualified as a tradesman and earns a living as such. The Applicant's plan for relocation revolves around initially living in part of his family's house and taking stock. That house is large enough to be refurbished in such a way as to accommodate him and C. That refurbishment work has not yet been undertaken, but could be completed within a short period of time. Further, the Applicant plans to work with the newly-qualified tradesman family member and, in particular, to begin by carrying out work on other family-owned property in the area, all with a view to those properties being brought up to a standard to enable them to generate revenue for the family. In return for carrying out that work, the Applicant and C would be accommodated and given their board by the Applicant's family. The Applicant would not, however, actually earn any real income for himself.
8. There are two schools in the vicinity of the family's home, one of which is a primary school for the public. It is a small local school with approximately 130 pupils on the roll. The Applicant provided some limited information about the school and indicated that, if his application to relocate were granted, C would secure a place at that school. The Applicant further explained that the French school system of term-times involves a number of two-week holidays and one longer holiday over the summer and that his intention was that he and C would come to Guernsey for six weeks in each year to enable C to visit the Respondent and her family here in Guernsey. In addition, an offer for the Respondent to visit C in France has been extended and such visits could occur at whatever frequency the Respondent chose.
9. The Applicant acknowledged that C spends time with C's maternal family. The fortnightly pattern under which the family operates appears to involve C's maternal grandparents seeing C on six days in each fourteen-day cycle. The relationship between the Applicant and C's maternal grandparents and other members of C's family on C's mother's side appears to be a strong relationship. Indeed, the Applicant explained that he has facilitated that contact so that C knows all of the family. This is a factor that goes to the Applicant's credit and demonstrates that he is alive to the need for ongoing contact with both sides of C's family.
10. The Applicant explained that C had met C's paternal grandparents approximately six times. Two or three of those visits had taken place in France. The last occasion was in 2010. The remainder of the visits were in Guernsey. Because of the distances involved in getting transportation from one place to the other, the pattern established was for longer visits than might otherwise be the case.
11. The last occasion on which the Applicant visited his family was in August 2012. Despite having a three-week break from Guernsey, during which C was cared for by the Respondent, the Applicant chose only to spend a couple of days with his family. During that visit he did not look at any properties in the vicinity of the family's house, although he has produced details of properties showing that he would, with the money he realises from the sale of the former matrimonial home, be in a position at some

point to purchase a suitable property in that area. During the August 2012 visit, he did not spend any time conducting further research into C's potential future schooling.

12. In response to some questions posed by the Safeguarder, the Applicant indicated that there was very little information about the proposed school for C available online and he was not sure if the French system involved doing school inspection reports. Very little information was provided to the Court (or previously to the Safeguarder to assist her in the preparation of her report) about the school it was envisaged C would attend. What the Applicant did say was that he had been told by friends of his family whose children went to the school in question that, compared to the schools in the south of England, it was a very good school.
13. The Respondent's overall position was that, if she believed that C would have a better life through relocating to France, she would give the move her blessing. However, her belief is that C needs both parents father, especially in C's early years. The pattern of C's life is such that C is very close to the Respondent's family and also sees the Respondent's new partner's family on a regular basis. In addition, the Respondent is concerned about C's ability to overcome the language barrier that would be part and parcel of moving to live in France. There would also be upheaval in relation to C's education, C having settled well into primary school in Guernsey.
14. The Respondent acknowledged that some of her behaviour in the past had been inappropriate. She explained that she had tended to agree to the Applicant's suggestions about contact because of the situations in which she found herself. More recently, however, her life has become settled, especially since commencing a relationship with her partner. Accordingly, her ability to play a fuller role in C's life and wish to become more, rather than less, involved in C's care have motivated her cross-application.
15. The Respondent accepted in cross-examination that the Applicant's application is genuine and that its purpose is not to frustrate the contact that she enjoys with C.
16. The Safeguarder in this case is Miss Sadie Gill. Her report, dated 9 October 2012, does not recommend that permission be granted permanently to remove C from the jurisdiction. The Safeguarder's recommendation is that both parties should have a shared Residence Order in respect of C, based on each parent caring for C for equal periods arranged on an appropriate repeating pattern.
17. In her evidence, the Safeguarder stood by the conclusions set out in her report. She accepted that the Applicant had been C's primary carer since he was an infant. The Safeguarder expressed her concern that the whole of the Applicant's life has become focused on moving to France. She further thinks that the Applicant should reassess what level of work he can sensibly undertake in Guernsey, whilst still caring for C. On behalf of the Applicant, she was closely questioned about the view she set out that, in her opinion, it is "vital" for C to stay in Guernsey until he is 10 on the basis that if he were to leave before obtaining that age he would not become a Qualified Resident under Guernsey's housing laws. She explained that she held that view, both professionally and personally (being a local person), because the subject-matter of acquiring residential qualifications is all about an individual's choices and her job as Safeguarder is to represent the views of the child. On being pressed, she did

acknowledge that this is one factor amongst many and should not be elevated above others.

18. As regards the proposals for C's schooling, the Safeguarder was critical about the amount of information provided to her by the Applicant. On the occasion of her visit to the Applicant's family's home, she had managed to see the outside of the school buildings, but had not had the opportunity to go inside at all. She mentioned the sorts of things that she would like to know before being able to assess the appropriateness of the proposed school. By way of examples, these included the class sizes and whether there are any other non-French pupils on the roll and, because of C's situation, more about speech and language therapy. In summary, she struggled to believe that the Applicant had provided all the information that he could have had access to about what the proposed schooling would entail. Her conclusion, therefore, was that relocating to France would appear to be a positive experience for the Applicant himself and would potentially address his financial situation because he would gain support from his family, but she struggled to come to this same conclusion in respect of C, which is why her recommendation did not support the application.

The Law

19. The law in relation to applications for permission to relocate a minor child outside the jurisdiction of Guernsey is reasonably well-settled and was given full consideration by the Bailiff in his judgment delivered on 22 June 2012 in a case known as B v B. There is no need for me to repeat in any great detail the principles set out in that judgment, which I gratefully adopt and summarise as follows.
20. The Court is obliged (see sections 3(1)(a) and 4(1)) to have regard to the welfare principles and the welfare checklist contained in the 2008 Law. The way in which those principles and the checklist have been approached in other cases offer helpful guidance, but no more, as to the approach to take.
21. In particular, I found the helpful summary, based on legislation that is, in my view, properly comparable with the 2008 Law in this regard, provided in the English Court of Appeal case of Payne v Payne [2001] 1 FLR 1052 (at paragraph 85) a useful reference point:
- (a) The welfare of the child is always paramount.
 - (b) There is no presumption created by s 13(1)(b) [of the Children Act 1989, and which is not, in any event, replicated in quite the same way in the 2008 Law] in favour of the applicant parent.
 - (c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.
 - (d) Consequently the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end.
 - (e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.
 - (f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.

- (g) The opportunity for continuing contact between the child and the parent left behind may be very significant.

22. Another explanation of the approach to follow was set out in paragraph 40 of *Payne v Payne* as replicated in Advocate Brown’s helpful skeleton argument (with appropriate modifications to reflect that this is a father’s application rather than a mother’s application):

- “(a) *Pose the question: is the [father’s] application genuine in the sense that it is not motivated by some selfish desire to exclude the [mother] from the child’s life? Then ask is the [father’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 [mother’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 [her] and [her] 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 [paternal] family and homeland?*
- (c) *What would be the impact on the [father], either as the single parent or as a new [husband], of a refusal of [his] realistic proposal?*
- (d) *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.”*

23. This guidance applies where the applicant parent establishes that he or she has been and is the primary carer of the child. It involves the Court looking at all the information provided and assessing whether the application passes the first hurdles of being genuine and well-researched. If so, then a balancing exercise must be undertaken, always returning to the child’s welfare as the paramount consideration. Such a balancing exercise requires careful consideration of the child welfare principles set out in section 3(2) of the 2008 Law.

24. I have, therefore, borne in mind the principles set out in the following paragraphs in section 3(2) of the 2008 Law:

- “(a) *that a child’s welfare is normally best served by being brought up within his own family and community,*
- (b) *that, where it is not possible for a child to be brought up within his own family or community, his welfare is normally best served by maintenance of regular contact with his family and community,*
- (d) *that any delay in determining a question about a child’s upbringing is likely to be prejudicial to the child’s welfare,*
- (e) *that irrespective of age, development or ability, a child should be given an opportunity to express his wishes, feelings and views in all matters affecting him,*
- (f) *that, except where it is shown to the contrary, it is presumed that a child is capable of forming a considered view from the age of 12 years,*

- (i) *that it is expected that parents and others responsible for a child's welfare will consult and co-operate with one another, and where possible resolve matters by agreement, in an atmosphere of openness and non-confrontation, with recourse to formal proceedings (whether court or tribunal) only as a last resort,*
- (j) *that it is normally in the best interests of a child to have ongoing contact with both parents and it is the responsibility of the parents and any public authority to take reasonable steps to promote such contact”.*

25. I have also had regard to all of the matters listed in section 4(2) of the 2008 Law (the “child welfare checklist”) because, in my view, each of them is, to some extent at least, relevant to my determination of the Applicant’s application.

Discussion

26. Everyone accepts that, in period leading up to the hearing, the Applicant has consistently been the primary carer of C and, therefore, the guidance contained in Payne v Payne is the appropriate guidance to follow. Everyone also accepts that the Applicant’s application is genuine in the sense that it has not been motivated by some selfish desire to exclude the Respondent from C’s life. Accordingly, I am satisfied that the first part of the first question identified in paragraph 40 of Payne v Payne has been satisfied. The second part of that first question is, however, harder to answer.
27. I have reached the conclusion, on the evidence presented on behalf of the Applicant, that his application has not been sufficiently well-researched and investigated for me to conclude that it is realistic, in the sense of being founded on practical proposals. As noted in Payne v Payne, a failure to satisfy that requirement inevitably means that the Court will not be persuaded that the application should be considered further. That is the reason why I have dismissed this application.
28. From the paperwork and the evidence given at the hearing by the Applicant and the questions raised on behalf of the other parties to the proceedings, I feel that there are too many unknowns regarding the prospects for C were C to be removed from Guernsey to live in France. Put simply, the Applicant has not satisfied me that he has done as much homework in preparation for making his application and pursuing it through to the hearing as he should have done. I am left with the impression, particularly at this time, that the Applicant has rather approached his application on the basis that, because he is the primary carer of C, he only needed to provide the barest of information about what they would do on being allowed to move to France. I was particularly troubled by the fact that, with the hearing already having been fixed, the Applicant did not make a greater effort to lay the foundations for the benefit of the Safeguarder and also the Court when he visited France during the summer.
29. This is not a case where the application has, of necessity, had to be rushed. I consider that there was plenty of time for the Applicant to provide as much information as he could practicably find out about what would happen in relation to C’s education and other important decisions about C’s upbringing that the Applicant would have to resolve on moving to France, as he so clearly wished to do. I share the concerns expressed by the Safeguarder in her report that the Applicant “*would only focus on the move to France and refused to discuss any arrangements if the application were refused*”. The Applicant has, I feel, taken rather a blinkered approach and has

allowed his own wishes to dominate rather than putting together the strongest case on the materials that he could.

30. By way of analogy with the issues that have to be determined by people with shared parental responsibility in respect of a child, as set out in section 9(1) of the 2008 Law, I could approach the question in relation to “*choosing the school or other educational institution which the child is to attend*” as set out in paragraph (c), as if the Court were being invited to reach a conclusion where a parent required to give her consent is not so giving it. In order for the Court to be in a position to determine such a choice, the Court necessarily has to have adequate information on which to base its decision. If the Court does not have sufficient information, its decision will lack reason. The same approach would apply in respect of any other person required to reach such a decision. The risk here is that an ill-informed decision would be questionable on the basis of irrationality.
31. Taking into account all the evidence presented on behalf of the Applicant, I cannot reach the conclusion that I know enough about the proposed school to which C will go should the Applicant and C move to France to be able to form a proper view on whether that is an appropriate school for C to attend. I accept, as I must, that the local school where a person lives is likely to be the most appropriate school for the person to attend. However, in this case, I consider that the Applicant is encouraging the Court to make a leap of faith rather than having provided the sort of information that should, in my opinion, have been provided to assist the Court reach a decision on his application. Accordingly, for this reason, the application to seek leave to remove C from the jurisdiction fails.
32. Before deciding to dismiss the application, having regard to the possibility of the Applicant ascertaining more information and renewing his application, I thought very carefully about the impact that such a delay would have on the overall decision-making process about C’s upbringing, having particular regard to section 3(2)(d) of the 2008 Law. However, I concluded that the advantage of being provided with more information outweighed any disadvantage to C’s welfare from taking a decision prematurely in order to avoid delay before the place of C’s upbringing is resolved.

Other considerations

33. On the basis that I have reached my conclusion to dismiss the application because of the lack of evidence of the proposals having been researched and investigated as fully as they should be, I am not obliged to move on to consider the other elements mentioned in *Payne v Payne*. However, in case it is relevant for any other purpose, I can comment briefly on the approach I would have been minded to take had the information provided satisfied me that the application was realistic. This is necessarily artificial because of the absence of further information I have found should have been made available but, on balance, I can indicate that I would not have been minded to grant the Applicant’s application at this time.
34. Reverting to the issues derived from the judgment of Thorpe LJ in *Payne v Payne*, the first question to consider would be whether the Court is satisfied that the mother’s opposition to the application for relocation is motivated by a genuine concern for the child’s welfare, or is it driven by some ulterior motive. Having had the benefit of seeing and hearing the Respondent, I am satisfied from her answers that she has C’s

best interests in mind in opposing the application and, therefore, has a genuine concern for the welfare of her son, rather than being driven by some ulterior motive relating to something else.

35. The Applicant's application appears to be predicated on what he perceives is right for him. Whilst I accept that he portrays his position as having regard to what he considers to be best for C, some of his answers during his oral evidence led me to believe that he is primarily concerned with his own position and the fact that he finds it intolerable now to remain in Guernsey. This appeared to me to have been a result of the breakdown in his relationship and marriage with the Respondent. In particular, his evidence included the comment that "*if permission were not to be granted I would be left in a place causing me problems. I have financial concerns and will be back to where I was*". Further, he explained that "*I have been resident here for [all my life] and I cannot be here any longer*". I am left with the impression that, because the Applicant desperately wishes to leave Guernsey and start a new life because that is what is best for him, he has concluded that, as C's primary carer, this must be the best, indeed the only, solution, that is best for C.
36. It has been against that background that the Respondent has seen fit to oppose the application for permission to remove C from the jurisdiction. Whilst her position must be based in part on her concerns about ongoing contact with C, I am satisfied that her opposition is a result of her wider concerns for C's welfare and how C's welfare fits into the situation in which the Applicant now finds himself. I do not think that the Respondent is deliberately taking steps to thwart the Applicant's wish to relocate if that is what the Applicant most wishes to do.
37. The next question to consider is what would be the extent of the detriment to the Respondent and her future relationship with C were the application to be granted. In addition, in this context it is necessary to consider the extent to which that detriment would be upset by the extension of C's relationship with C's paternal family and their "homeland".
38. Because the Applicant is not returning to a jurisdiction from which he has come, unlike the situation in some of the cases to which I was referred, where the parent applying for permission is a national from another country wishing to take the child to that foreign place, I do not consider that there is any issue arising from the "homeland" point. I do recognise that the Applicant's main family are resident in France and that his application is based on living in the same house as them, at least initially, which would mean that C would inevitably have more contact with those members of C's paternal family than has been the case up to now, but I regard "homeland" as being more a factor relating to the child's national identity, which is not an issue in the present case.
39. It is self-evident that, if C were to relocate away from Guernsey, it would have an impact on the relationship between C and the Respondent. The Safeguarder's report indicates that a shared Residence Order or at least a more extensive range of contact would be envisaged as the next stage if C were to remain in Guernsey. I am also conscious of the fact that C's maternal grandparents and the rest of C's extended family on that side currently play a significant role in C's care. Once again, this is something that would be significantly impacted if C were to leave Guernsey.

40. I acknowledge that it is the quality of contact that is more important than its quantity. It is possible that the periods of contact envisaged by the Applicant bringing C back to Guernsey for one-week periods six times a year and facilitating such other contact as may be feasible in France would work, but I take the view that this would be quite a different sort of contact from the regular week in week out contact that has occurred up until now. Accordingly, I am satisfied that switching from the frequency of contact currently in place would have a detrimental effect on C's relationship with the Respondent and her family.
41. In relation to whether that detriment can be offset by the extension of C's relationship with C's paternal family, I note from the evidence that C has had intermittent contact with C's paternal extended family. I accept that C has a good relationship with them but, on balance, the relationship with the maternal side of the family appears stronger than with the paternal side of the family. That imbalance would inevitably be redressed, indeed potentially tipped the other way, were C to relocate to France with the Applicant. In those circumstances, this factor is finely balanced. I believe that there would be problems in the relationship with the Respondent and her family going forward, if only because of the distance involved and the change in the pattern of how C sees them on a regular basis. However, those problems are clearly not insurmountable, meaning that this particular factor viewed in isolation would not lead to a conclusion one way or the other on the application.
42. The next factor to consider is the impact on the Applicant if there is a refusal of his proposal. I am genuinely concerned about the impact that any rejection of his application will have on the Applicant. The way he presented during the hearing was very much as a person who had put all his eggs in one basket. One of the aspects that caused me to reflect very seriously about whether to grant or dismiss his application is that there did not appear to be a "plan B". Indeed, when asked how he would feel were his application dismissed, the Applicant said quite simply that he would be devastated.
43. That said, the impact on the Applicant of a refusal of his application to relocate, on its own, would not sway me to determine that his application must be granted. Just as with the effects that a move would have on C's relationship with the maternal side of C's family, this is a factor to be weighed in the balance. In my view, it is not an overriding factor displacing all other factors, but it is something that has to be taken into account and, in particular, what effect rejection will have on a primary carer's ongoing care of the child in question. In my view, in the absence of any different indication, it is appropriate for the Court to draw an inference that a primary carer of a child would still wish to put his or her child's welfare at the forefront of what happens next, despite the disappointment experienced in having a relocation proposal rejected. Accordingly, because of the way in which the Applicant has devoted himself to caring for C, I expect him to pick himself up and continue in the way he has.
44. The question of C becoming a qualified resident under the Housing (Control of Occupation) Law, 1994 is also not a determinative factor. As the Bailiff said in *B v B*: "*I do not see the need to obtain local residential qualifications as an overriding consideration. In my opinion, it is one of the issues that need to go into the balancing exercise*". I adopt exactly the same position.

45. Unlike in *B v B*, and also the case of *I v I* (unreported, 10 October 2005, Lieutenant Bailiff Finch), C still has a good number of years to go before C will become residentially qualified under Section 10 of the 1994 Law. That is a long period of time during which C and the parent with whom C will reside, if that were only one of his parents, would be bound to stay in Guernsey. In those circumstances, the balance potentially lies more in favour of granting permission to leave the jurisdiction rather than considering whether to delay permission for a short period of time to allow that qualification period to be completed. However, each case will turn on its own facts, and there can be no hard and fast rule about whether this factor becomes more important if only a short period of time is required before residential qualification will be obtained.
46. As I have already explained, the issue about a child staying in Guernsey to complete the qualification period under the 1994 Law is a further factor to be weighed in the balance. It is unfortunate, especially in the light of the recent ruling of the Bailiff in *B v B*, that the Safeguarder, in this context, has used the word “vital” in her report. I regard that terminology as expressing the position more extremely than is appropriate in any application to remove a child permanently from the jurisdiction. This is particularly the case when the Court has expressed the view that it is not an overriding consideration. I acknowledge that people can have strong views about the desirability of obtaining residential qualifications and I understand that “*a Safeguarder’s principal and overriding duty is to promote the interests of the child throughout ... proceedings*” (section 44(1), Children (Miscellaneous Provisions) (Guernsey and Alderney) Ordinance, 2009), but a more balanced approach would, in my judgment, be preferable rather than using such emotive language, which serves only to deflect attention from how properly to consider this element as another factor to be weighed in the balance.
47. I appreciate the importance for a person’s future of having options open to him or her. The option of becoming permanently resident in Guernsey at some future point would not necessarily be lost to C were C to leave at this stage. However, this is the type of decision that needs to be taken conscientiously by parents. Parents with joint parental responsibility should, in any event and so far as is practicable, discuss what the various options entail before taking decisions as to whether to leave Guernsey at any given time (see, e.g., section 3(2)(i) of the 2008 Law). When they cannot agree what is in the best interests of their child, the Court will have to intervene, but ideally there would be some indication of how far apart the parents are on what should or should not occur for the best. In this case, there is the further complication that there are a number of years still required for C to be ordinarily resident in Guernsey before residential qualifications are gained and the uncertainty surrounding what regime might be in place if the 1994 Law is replaced with something different. Accordingly, whilst this aspect is clearly a factor to be borne in mind, I do not regard it as being a particularly significant factor in favour of rejecting the Applicant’s application.
48. I have not as yet touched upon another feature of this case, namely the speech and language provision that would be available, if needed, in France. The Applicant appeared to downplay the possible need for such ongoing support. The Safeguarder was unsure as to what arrangements would be available were C to need to access them in France. This level of uncertainty is another facet of the incompleteness of the information being provided to assist the Safeguarder to compile her report and the Court to reach a well-informed decision. The Respondent expressed herself satisfied

with what is available to C in Guernsey, which was an additional reason why she was opposing the application as not accepting that a move away from Guernsey would be in C's best interests.

49. Although I find myself unable to reach any firm conclusion about the impact that this issue has on the outcome of the application, I am troubled that something potentially as important as this has not been addressed more fully by the Applicant. I believe it is appropriate for me to take into account the generally perceived wisdom that learning a second language at a young age usually makes it easier than coming to the language later in life. However, I do not know how, if at all, that perceived wisdom would apply in C's case. Given the amount of involvement the speech and language therapy service has had, I believe something more concrete is needed to explain how a move to a country where English is not the main language will affect C. In my view, it is not enough to say that C will cope or else whatever provision is available will be sought. There might have been some additional preparation of C to get C more familiar with the concept of using French. This would have been beneficial whatever the outcome of the application to relocate to make future visits to the Applicant's family more enjoyable. Accordingly, had I been weighing all these considerations in the balance, this factor would have led me towards dismissing the application.
50. All of these issues would need to be considered in the light of the overriding objective principle that the child's welfare is the paramount consideration. That is a requirement set by the States of Deliberation in Section 3(1)(b) of the 2008 Law and one which binds the Court as much as everyone else. In reaching a decision about C, it is important for everyone involved to recognise that C's welfare is the paramount consideration and that decisions do not turn on what is best for the Respondent, the Applicant or C's wider family. On the information provided at the hearing, I am left with the impression that C's interests are not going to be best served at this stage by permitting the Applicant to relocate with C to the Applicant's family home in France.

Final comments

51. I recognise fully that with the acceptance of the offer to purchase the former matrimonial home this will inevitably be a time of change for the Applicant and C. One way of looking at the timing of the sale is that it provides an ideal opportunity for C to be taken away from Guernsey, thereby only having to put him through one home move rather than two, should an application be made in the future and be successful. Alternatively, the house sale in Guernsey will mean that a new home will need to be established for C and this step provides the opportunity to review the arrangements for his care as between the Applicant and the Respondent and indeed their wider families. C has settled well I am told, into life at primary school and, given C's speech and language issues, it is potentially appropriate for this period of C's education to continue for the time being. If it transpires that the move in Guernsey is an unsettling experience for C, then that will be another factor to bear in mind in the event of a renewed application to relocate to France.
52. Although the Safeguarder's report addressed the Respondent's application for a revision of the contact arrangements, or alternatively the application for a residence order in her favour, and recommended a shared Residence Order on the basis of equal time under one or other of the patterns set out therein, I did not feel able at the conclusion of the hearing to make such an Order. This arose because the focus of the

hearing had been principally on the question of relocation. In particular, because of the tunnel-vision of the Applicant, I did not believe that he had properly addressed his mind to changes in the contact or residence arrangements and so had not attended recognising that these might need to be determined at the same hearing.

53. I gave an indication that I believe that more contact of a more settled pattern of shared residence would be appropriate, but equally that I was not entirely convinced that a move directly to equal shared residence was the right thing for C, especially in the light of the inevitable upheaval brought about by the sale of the former matrimonial home. In those circumstances, I adjourned the application for modification of the July 2011 Consent Order, in the hope that the parties would discuss the position and agree some alternative arrangements, prior to the former matrimonial home being sold. If agreement could not be reached, I directed that the matter should be re-listed in the Matrimonial Interlocutory Court at an appropriate time, ideally before the date on which the Applicant and C need to vacate the former matrimonial home.

Conclusion

54. The application made by the Applicant under section 71(c) of the 2008 Law is, therefore, dismissed for the primary reason that it was not founded on well-researched and investigated practical proposals. For the brief reasons just explained, the Respondent's application for a Residence Order or increased contact is adjourned to a date to be fixed but no later than the sale of the former matrimonial home.