In the matter of Re X [A Child: Relocation]
Royal Court
19th September, 2018

JUDGMENT
34/2018

Application for shared residence and relocation of a child

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IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION

IN THE MATTER OF RE X [A CHILD: RELOCATION]

Case heard on 20th, 21st, 22nd and 24th August, 2018

Judgment handed down: 19th September, 2018

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court

Counsel for the Applicant: Advocate C M Fooks
Counsel for the Respondent: Advocate E Couch
Counsel for the Child/Family Proceedings Advisor: Advocate S E Wallis

Cases and Other Materials referred to:

Re C (Internal relocation) [2015] EWCA Civ 1305;

D v M (Minor: Custody appeal) [1983] Fam 33;

Re F [2015] EWCA Civ 882;

Re F (a Child) [2012] EWCA Civ 1364:

Re G-C (a Child) [2013] EWCA Civ 301;

K v K [2011] EWCA Civ 793;

Re McGrath (Infants) [1893] 1Ch 143;

Payne v Payne [2001] 1 FLR 1052;

S (BD) v S (DJ) (Infants: care and control) [1977] 1 All ER 656;

Scott v United Kingdom [2000] 1 FLR 958;

Yousef v Netherlands [2003] 1 FLR 210.

The European Convention in Human Rights, Article 8

The Children (Guernsey and Alderney) Law, 2008, Sections 3 and 4.

JUDGMENT

Introduction

1. (All references are to folio numbers and pages in the court bundles prepared for this hearing.) There were originally two matters in issue.

    (i) The father's ("F's") application dated 7th May, 2017 in respect of the child of the family ("the child") who is the subject of the present proceedings, for a shared residence order (A27-28); and
    (ii) The mother's ("M's") application dated 5th March, 2018 for a specific issue order for permission to remove the child permanently to England (A45-46).

    It is now accepted by M that in line with the Family Proceedings Adviser's ("F.P.A's") recommendation that whatever decision is reached on the main issue of relocation, such an order relating to shared residence is in the child's best interests. Shared residence is referred to at paragraph 45 below (E171). The relocation application is vigorously opposed by F.

2. A four-day hearing took place with oral evidence from M and F, Dr Briggs and the F.P.A. The child was separately represented, and both parents had legal representation. Detailed evidence was heard and counsel each made able closing submissions. There remains a side-issue on the extent of F's contact, although generally agreeing with the F.P.A.'s proposals (E173) he seeks an increase, as related in his evidence. It will be seen, however, that the big issue in this case is relocation. Before considering the facts, it is useful to set-out the legal framework. This is done reasonably concisely as none of the parties disagreed on the principles that apply.

Relevant Legal Principles

3. English authorities are not, of course, technically binding, but there have been a number of cases on this issue in the Court of Appeal. The approach now seems to be pretty settled and as they are highly persuasive it is proposed to follow them. In view of the absence of differences in the legal framework it is only necessary to refer to the main decisions. These show that the task of the judge at first instance is not an easy or simple one and that a number of important considerations are involved. The Guernsey legislation is the Children (Guernsey and Alderney) Law, 2008 ("The Law"). At Section 4 the "child welfare checklist" is set out, which the court in deciding matters such as the one under consideration "shall, in particular" have regard to. It is to be noted that the English cases refer to "external" and "internal" relocations. Moving from Guernsey to England is a change of legal system, but in many ways is more akin to an internal relocation. It is considered that in this case very little turns on such a distinction. Some mention will be made of travel later on.

4. The correct approach, it is considered, is set out by Bodey J, in the Court of Appeal case of Re C (Internal Relocation) [2015] EWCA Civ 1305, and included in the authorities prepared for this application. Bodey J's helpful summary is as follows:

    "(a) There is no difference in basic approach as between external relocation and internal relocation. The decision in either case hinges ultimately on the welfare of the child.

    (b) The wishes, feelings and interests of the parents, and the likely impact of the decision on each of them are of great importance, but in the context of evaluating and determining the welfare of the child.

(c) In either type of relocation case, external or internal, a Judge is likely to find helpful some or all of the considerations referred to in Payne v Payne [2001] 1 FLR 1052; but not as a prescriptive blueprint; rather and merely as a checklist of the sort of factors which will or may need to be weighed in the balance when determining which decision would better serve the welfare of the child."

5. Payne turned out to be something of a reef that trial judges ran into in seeking to loyally apply the principles there set-out. The importance of these factors, certainly as a rigid mould for lower courts to follow has been diluted by subsequent decisions. In Re F [2015] EWCA Civ 882, Ryder LJ stated that "the only principle to be extracted from Payne is that the welfare of the child is paramount. The case of K v K [2011] EWCA Civ 793 is "the starting-point". From that case the following principles can be discerned:

   (i) The "only authentic principle of law from Payne" was the paramountcy of the welfare of the child. All the remainder can be applied or distinguished, depending on the circumstances; and
   (ii) The judge should exercise his or her discretion and decide which orders to make applying the "statutory checklist". In the words of Moore-Bick LJ:

> "However, the circumstances in which these difficult decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interests of the child."

   Next, in Re F (A Child) [2012] EWCA Civ 1364 Munby LJ, in the lead judgment, emphasized that:

> "… since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted."

6. Finally, returning to Re F (the 2015 decision), the words of McFarlane LJ are, it seems, particularly apposite: Ryder LJ had referred to a "global, holistic evaluation", but this is merely shorthand for the familiar exercise of a comprehensive analysis of a child's welfare, seen as a whole, having particular regard to the welfare checklist. This exercise is "as old as the hills". McFarlane LJ added, relevantly it is considered:

> "If a balance sheet is used it should be a route to judgment and not a substitution for the judgment itself. A key step in any welfare evaluation is the attribution of weight, or lack of it. To each of the relevant considerations."

   Accordingly, it is proposed to follow the summary of Bodey J in Re C (supra) and regard K v K (supra) as the "starting-point".

The Welfare Checklist

7. This is as follows (Section 4 of the Law):

> "4.(1) When determining any issue concerning –
> (a) the upbringing of a child under this Law, or
> (b) the application of the child welfare principles,
> a public authority shall, in particular, have regard to the matters set out in subsection (2) (the "**child welfare checklist**").

(2) The matters for the purposes of subsection (1) are -
(a) the child's wishes and feelings (in the context of his age and understanding),
(b) the age, gender, ethnicity, cultural background, language, religion and any other relevant characteristics of the child,
(c) any harm the child has suffered or is at risk of suffering,
(d) the child's physical, emotional and educational needs,
(e) how capable each of the parents (or any other person looking after or having parental responsibility for the child) is of meeting the child's needs,
(f) the importance and likely effect of contact between the child and his parents, siblings, relatives and any other people significant to the child, and
(g) the effect or likely effect of any change in the child's circumstances, (including the effect of the child's removal from Guernsey or Alderney)."

Previous History

8. In order to place this application in some sort of context, it is helpful to look at the main events in the past, in summary, as they go some way to understanding the parties' submissions. A good place to start is the "brief history of relationships and present situation" at E134-137 at the beginning of the FPA's painstaking and thorough report. Rather than reproduce it, the main features will be summarised; it should be noted that F's Advocate has done this helpfully at paragraphs 5-22 of her skeleton argument, which was consulted at the end of the proceedings, neither of the other parties having produced one (and none was called for at earlier hearings, so this is not a criticism).

9. The parties met via an Internet dating-site in January, 2009. M was then in a refuge. Although the parties have different views as to the exact chronology, they are not particularly material to the issues in this case. From her account her first husband was emotionally abusive. F's first wife had, very unfortunately died of cancer in 2006. M had two children of the first marriage, born in 1998 and 2006. F had children of his late marriage, born in 1994 and 1998. The parties married in November 2009. The relationship has been stormy and on/off from its inception. There have been break-ups and reconciliations throughout, notably in 2010-2011. M had gone back to the UK in September 2010, after a dispute. The child was born in Portsmouth on 28th January, 2011. In August 2011, F and his daughter (then 13) relocated to Locks Heath, near Southampton. The parties renewed their marriage vows in February, 2012. They all returned to Guernsey in November 2013. M moved out in October 2014, they having formally separated in April, 2014. A shared residence order for the child was made by consent on 20th January, 2015. The Final Decree of divorce was granted on 21st April, 2015. There was a further reconciliation in November, 2016, they parted again in February, 2017. F issued an application for a shared residence order for the child on 7th May, 2017. The FPA was eventually reallocated to the case on 23rd November, 2017, having first becoming involved at the end of 2015. To the unsympathetic eye, all these events resemble a game of ping-pong. The question of whether or not the parties would get together again, because of physical attraction is a live one for this hearing. As will be seen below they have different responses to this problem.

10. An incident on 11th November, 2017 is of particular importance and featured in the evidence of all the witnesses. The child had contact with F on a regular basis, as the consent order of 2015 remained in force. On that day, F returned the child early from contact. F, on his own admission, behaved badly on this occasion. The child, understandably, was very upset. She commented, "Daddy shouted rude words to me. Some were about mum. Dad made me feel scared". F ascribes this conduct to "feelings of immense frustration and upset". F, it appears,

pushed the child over the threshold saying, "have a nice life". M suggested that this deleteriously affected the child's behaviour at home and school. On 16th November, 2017, M applied for contact with F to cease until the FPA had assessed the situation. On 28th November 2017, contact of one hour per week, supervised at the Contact Centre was agreed by consent, in the FPA's words, "a huge departure from the usual contact levels". The FPA and Dr Briggs, the psychologist employed as a witness in the case, both recommended progression of this contact. M did not agree. Accordingly, F applied for interim contact and, after a contested hearing on 14th February, 2018, it was ordered that contact should progress to "supported contact" at the Contact Centre. Dr Briggs was asked to produce a comprehensive psychological report on the parties on 13th February, 2018. The FPA recommended that contact should further progress. Another hearing took place on 21st May, 2018 where Dr Briggs gave evidence and it was ordered that contact should progress to 4 hours in the community with family support (A59-61). Overnight contact has since been agreed from 1st July 2018. This comprises Saturday noon until Monday 6 pm and Wednesdays 4 pm to 7.15 pm. Unfortunately there were disagreements about child care arrangements for the duration of this hearing, but these were resolved on Friday 17th August, 2018, a hearing having been pencilled-in for 3 pm on that day.

11. The journey to this hearing has proved even more difficult than this recital of dates, events and court appearances shows. The relevant aspects will be considered when the evidence is set-out. The fact which emerges beyond any doubt is that the parties have had a "toxic" relationship and those concerned are of the opinion that the less they have to interact the better for all concerned, including the child. We have the full report of Dr Briggs dated 18th May, 2018 (F7-50); a transcript of his evidence when he was thoroughly cross-examined (via video-link) on behalf of M on 21st May, 2018; his addendum of 12th July, 2018 and his oral evidence at this hearing. We also have a very full report from Sadie Gill, the (on the facts of this case) long-suffering FPA at E128-176, dated 2nd August, 2018 plus enclosures. There is also a plethora of other documentation, not only emanating from the parties, but school, contact centre and medical records. Even for a case of this importance this is a lot of paperwork, and cases involving abusive, addictive or sexually inappropriate parents normally add up to around a half or so of this material. As the FPA said in oral evidence, she has 20 cases ongoing, this one takes up 80% of the time and there are no child protection issues. The FPA's careful approach is exemplified by her addressing the child welfare checklist in her report (part 6) and citing the underlying "Child Welfare Principles" set out in Section 3(2) of the Law.

Reasons for the Application

12. Before considering the detailed evidence, it is helpful to outline M's reasons for making the relocation application and similarly F's objections to it. In this case we have no fewer than 11 statements submitted by M and 7 by F (D and C of the bundles and supplementary bundle). Driving down to the basics is necessary. Any risk of over-simplification is hopefully avoided by considering the evidence which emerged over the four day hearing. M concluded her position statement of 15th June, 2018, in which she addressed Dr Briggs's report, by stating that "it is felt that distance between the father and myself is critical and at the care of the health and well-being of all the children, not just [the child]. This will be easier to facilitate if we are living in England and the father is in Guernsey" (paragraph 67). In the final paragraph (68), she adds that "putting distance between the father and myself is just one element of the decision process to apply to move back to England, and the main driver is that overall our quality of life would be improved which has to be in [the child's] best interests".

13. M considers that the child would "benefit hugely" being around her side of the family. She knows the area (around Fareham) well and could work greater hours with family support. There is no benefit in waiting, now is the optimum time. Advocate Fooks echoed this in her closing submissions, saying that the case is "very finely-balanced", but letting M go removes

the potential for conflict. There is, Advocate Fooks added, ample evidence that the relationship of the child with F will survive relocation. It is agreed by all that M is a law-abiding person who would not breach any contact order upon relocation. If this is refused, she will become more anxious than she is now, due to her parlous financial position – on income-support and servicing a large overdraft. M is isolated and vulnerable and this is a good time for a fresh start, Advocate Fooks submitted.

14. M's rationale for the application in her position statement dated 23rd March, 2018, is also well put in the FPA's report at E137-139. M's family are all in England and she wants to go home to get their support and she can return to work easier, with longer hours. M feels alone and socially-isolated in Guernsey "which can be quite insular and restrictive" (paragraph 90, page D88W). M also considers that the educational system in England is "more supportive" and in Guernsey she feels it "is letting [the child] down" (paragraph 100). Relocating will be away from "the negative atmosphere here in Guernsey from the Father" (and others). The support of her family will ensure a better standard of living for her and the child. M stresses she has no wish to frustrate the contact between the child and F and understands its importance, a point made on several occasions on paper and in the hearing.

Reasons for Opposing the Application

15. F's observations are contained in his statement (and exhibits) of 27th April, 2018 (C236-251). The basic point is that F does not consider it to be in the child's best interest "to be permanently uprooted from her home in Guernsey, taken away from her paternal family and friends, her school and everything that she has known for the majority of her childhood" (paragraph 3). A principal concern is that F "has no confidence" that his contact with the child would be promoted by M. The proposed contact in the UK would be unaffordable, each weekend costing over £1,000 (paragraph 16). The history of M's attitude to contact in Guernsey, F claims, supports his concerns. He suggests (paragraph 20) that a fresh start away from him, distancing him and possible removal from the child's life to be the "main motivation for the application". He has consulted the school in Guernsey, which he praises, and does not think that the UK educational system has any advantages. "She is doing well there."

16. F also lists his concerns specifically in relation to the impact of moving on the child (paragraph 45-52). The child has, he states, "a very close relationship" with him. There is a "vast amount of uncertainty" in M's proposals which "pose a huge risk" for the child. She is now 7, and last lived in the Fareham/Whiteley area when aged 3, so has little recollection, if any, of her time there. There is also the likely detriment to the child's status as a resident of Guernsey under the laws relating to housing control. There could be a harmful permanent loss (paragraph 48). F also mentions the child's community ties and that "the extent of opportunity on the Island is simply incomparable" with that available in England. Also, Guernsey is the child's home.

Evidence of Dr Briggs

17. Before considering what the parties themselves had to say in their oral evidence, it is useful to consider the evidence of both Dr Briggs and the FPA, Sadie Gill. Both of the main protagonists offered their accounts in the light of the material put forward by the psychologist and FPA and counsel dwelt on it in their closing submissions. It is necessary to bear in mind throughout the process of considering this case that we do not have trial by experts. So in differing from either the psychologist or the FPA (or both) good reasons need to be given (see Re G-C (a child) [2013] EWCA Civ 301). These witnesses are entitled to appropriate respect, but the court must never simply abdicate its responsibilities and rubber-stamp their opinions.

18. Dr Briggs's full report of 14th May, 2018 is at F7. There is also an addendum dated 12th July 2018 and a transcript of cross-examination from the interim contact hearing of 21st May, 2018. His documents begin with correspondence dated 14th May, 2018 in relation to a specific incident involving the child. Both M and F are the subjects of the main report. Part of his conclusions is particularly noteworthy (F39-40):

> "The mother desires to leave the Island. Worryingly in my opinion she said at interview that she is unsure if she wants the father to have contact to [the child]. I have concerns that the mother is egocentric in this regard. In my opinion this is a mother who is capable of subtlety in her attempts to persuade others of the virtue of her position, one who appears more comfortable in highlighting, and perhaps exaggerating, aspects of [F's] past problematic behaviour rather than acknowledging her own contributions to the relationship breakdown, and/or conceding the possibility that her behaviour and anxieties may have had a role to play in exacerbating [the child's] anxieties."

At F41 he continued:

> "Observations of contact between [F] and his daughter were quite extraordinary but for very positive reasons."

The interaction was "loving and stable", furthermore:

> "I have spent many hours observing contact in my professional career and this was one of the most positive contact experiences I have witnessed."

19. At the interim contact hearing on 21st May, 2018, Dr Briggs was, very courteously and very closely cross-examined by M's counsel, Advocate Fooks. At page F57, Dr Briggs answered (in part):

> "…and, as I say, the evidence I have from observing this contact was that of an incredibly positive interchange between the father and daughter, a daughter who clearly loves her father, and I have to put that into the mix. I can't ignore that. I'm trying to, in this evidence, put the child's needs first."

And, later on, at F61:

> "I've seen a lot of contact over the years and that contact was remarkable for the joy and spontaneity and absence of anxiety on that little girl's part."

In connection with the relationship between M and F, Dr Briggs considered, at F63:

> "….. it is absolutely crucial now that they stay away from each other and the only point of contact should be around the wellbeing of their daughter."

20. In his oral evidence at the main hearing, Dr Briggs described M as "a highly-intelligent woman, who is anxious, with good analytical ability and careful to prosecute arguments in her favour". She has a pattern of anxiety over contact and passions are high over the relocation. He emphasized that he considers M would comply with court orders and is "quite respectful" of the process. He told Advocate Fooks that M is a very bright woman and "very astute". She is analytical and adept. He considers there is a script which is played-out to the Court, "we all have an image to portray". He has concerns about how M's anxiety "may play out in future". There was also some examination on M's comment reported by Dr Briggs at page F71 of his addendum. This reads:

> "Furthermore, she had told me that she was not sure that she wanted [the child] to have contact with her father …"

M disputes this. However, it was pointed out that both parties had copies of his factual account to check and M then had no comment. She is a person with attention to detail.

21. Two specific incidents were dealt with. F's conduct on 11th November, 2017 prematurely terminating contact was disapproved in Dr Briggs's report (at paragraphs 5.34-5.38, pages F28-29). In his oral evidence he accepted that the impact of this on M was "significant", but was not sure it had an impact on the child. This event will be considered later. F had a positive set of sessions with Dr Datta (a locally-based psychologist) involving CBT (see E238), which had very positive results, including a "light-bulb moment" of F resuming contact with his family of origin. The other matter was M's disclosure at a previous directions hearing on 8th May, 2018 that the child had apparently broken-down after school two weeks earlier, and after she had met the FPA. According to M's account, the child said she had "made a big mistake" and "why didn't I say I wanted to move to England?" The child was allegedly completely hysterical and said she wanted to kill herself (E94-E98). The child also, her school reported, placed a message in the "worry box" which read "I'm scared of dad shouting at me mum". M was told by the Court to provide a written record of this (A58, E90). The paperwork went to Dr Briggs on 10th May, 2018. Dr Briggs dealt with this in his letter of 14th May, 2018 (F2). He observed that:

> "I have to say that my immediate concern, having read of these matters, was that of whether this child is either unusually sensitive to her mother's position and as such is trying to "*keep the peace*" by trying to respond in a way expected of her by her mother, or (and worryingly) whether this is a child who has been coached in some subtle way as to the response expected of her given the mother's anxieties/hostilities to the father."

22. In his oral evidence, in response to F's Advocate, Dr Briggs agreed that the biggest risk to the girl is her mother's anxiety, clarifying that to say that he had concerns about how her anxiety may play-out in future. However, he could not "of course" rule-out the future possibility of F becoming angry and petulant. His profile, it was stated, was "relatively benign" with no major psychopathology. Dr Briggs also stated that he was not sure that psychological evidence was going to help resolve the issue of where the child lives. Other aspects of what Dr Briggs contributed to the case will be dealt with later.

Evidence of FPA

23. Sadie Gill is another experienced witness in child cases and her devotion of a disproportionate amount of her time to this matter has already been noted, at paragraph 11 above. Her report of 2nd August, 2018 is at E128-199. It is a very detailed and thorough production. Her conclusion (11.7, E173) is a recommendation to refuse the relocation application. In support of this paragraph 11.5, E172 reads:

> "If permission was given for [the child] to leave the jurisdiction then I am not confident that [M] would not in time attempt to cease the contact between [the child] and [F]. Whilst there has been progress in this area during the proceedings and I appreciate [M] is placed in a difficult position at times by comments [the child] may make due to her possible anxieties. However, [M] has been reluctant to promote and progress the contact, even when myself and the Contact Centre reports all indicate extremely positive interactions and a risk assessment had been completed, resulting in the recommended CBT work being undertaken." (i.e. by [F])

This reasoning extends to the next paragraph, 11.6 which refers to the child obtaining the right to reside permanently in Guernsey and afford her more chances for her future. This would also provide a stable environment for her 12 year old half-sibling, who might struggle moving schools, and who receives a high level of educational support, according to the report. The FPA strongly concurs with a view expressed by Dr Briggs to the effect that (in the longer term) some form of mediation would assist the parties.

24. The FPA indicates, at paragraph 10.9 at E165, what is a crucial element in this application:

> "Whilst I have no difficulty in coming to the conclusion that [M] would benefit from returning to reside in England where she has resided for the vast majority of her life and her family network is based, I am unsure if this would be the best move for [the child], at this stage in her life."

After referring to the "quality of contact" with F if the child was re-located and the (considerable) cost of travel to the UK, the report goes on to deal with the question of M's approach to contact in Guernsey. Paragraph 10.13 (E166) cites Dr Briggs's report concerning the "tensions" involved and M's "anxiety". There is then reference to the child's sea-side experience and M's reaction to it, which shows her degree of anxiety. M reposted that she has been asked to keep a record of what took place in contact. But moving on to paragraph 10.16 at E167 there is a significant exposition of the FPA's views:

> "The pattern of behaviour by the mother to date has led me to not be totally satisfied that the mother would promote contact between [the child], the father and paternal family due to contesting all attempts to promote contact to date in these proceedings, even when myself (who is independent), the Contact Centre reports and (on the second contested occasion) an independent psychologist, who undertook a risk assessment of the father, were all were in favour of the progression of contact. It is my professional view that the biggest risk to [the child] if the relocation was granted would be from this mother and her anxiety. This may lead to exaggerated allegations and then a refusal to abide by the Contact Order which would eventually isolate [the child] from half of her family and her Guernsey cultural heritage."

Similar observations are made in paragraph 11.5 at E172. In particular:

> "If permission was given for [the child] to leave the jurisdiction then I am not confident that [M] would not in time attempt to cease the contact between [the child] and F."

25. In her oral evidence replying to M's Advocate, the FPA stated in answer to a question that she does not recommend relocation, but it is "finely-balanced" she agrees. But a little later the FPA emphasized that she was not convinced that relocating is the answer. In response to F's Advocate the FPA mentioned that if relocation ensued and things went wrong it would be a new jurisdiction and F would need to attend the English court. She repeated her "finely-balanced" comment and that the proposed area in the UK is "lovely" and a positive impression of the maternal family. But the child has a good and varied relationship with both parents which she wants to continue. If she moves to England the relationship with F will change. This evidence is considered again at paragraph 41 below.

Observations on the evidence of Dr Briggs and the FPA

26. Both witnesses are used to giving evidence and are well-respected by the courts in Guernsey. Dr Briggs was refreshingly-free of the numbing jargon that can crop-up in psychological evidence and answered all questions in a calm and measured fashion. Sadie Gill was at pains to explain her conclusions fully and like Dr Briggs was very fair to both M and F. Although

independent of each other, their observations and conclusions tended to agree in the essentials. In assessing their evidence, both written and oral, the conclusion is that they were both aware of their responsibilities to the court and compellingly convincing. As indicated in paragraph 17 above, their views are not determinative of the case and must be assessed in the context of the evidence of M and F, the only other witnesses. However, in this case what was said and written is of substantial value to the court in resolving this difficult matter. A lot of detail was provided and it has all been considered, although reproducing it all would make this judgment too long.

Evidence of the Parents – Preliminary Observations

27. A good deal of what has been put forward – both in writing and orally, has already been referred to. As with the evidence of Dr Briggs and Sadie Gill it has all been noted and considered, but only those matters which are necessary to understand this judgment are alluded to. To make things quite clear both M and F were intelligent and responsible people. They are both devoted and genuine parents and neither sought in any way to throw dust in the eyes of the Court. What however became readily apparent was that they are not suited to each other and Dr Briggs's opinion on the need to keep apart is justified. It is unfortunately necessary to have to reach a decision on this important issue which will not be palatable to one of them. But this is a case concerning the child's welfare that is a paramount consideration throughout.

Assessment of the Mother's Evidence

28. M is an intelligent and personable individual. In many ways a very good and clear witness with a considerable grasp of detail – indeed the sort of person who would provide reliable evidence of a crime she had seen, without any tendency to over-egg the situation. Like F she is, as stated, a loving and dedicated parent. The difference between their styles (at the risk of over-simplification) is that she is inclined to be more cerebral and F more physical. In her evidence, she considered that the present is the "optimum time" for relocation. She knows the area well and would have the support of her family there. Her financial state in Guernsey is "desperate" and she has no disposable income and has hit her overdraft limit. She, like F, was referred for CBT, but after one telephone conversation was found within normal limits. She also attended a Stress and Anxiety Workshop. M discussed the unpleasant incident with F on 11th November, 2017, mentioning the child's confusion and distress. She was asked to report on contact and did so, and is happy now for the FPA to progress contact as she sees fit. If the relocation application failed the impact on her would be devastating; there are many difficulties in remaining in Guernsey in terms of finance, toxicity and isolation. The local school, in her view, could have done more to support the child. She was impressed with the alternative in Hampshire, especially Special Educational Needs ("SENCO"). In relation to court orders, she will obey them and is one of the most law-abiding citizens. M was concerned about F getting information from the child's GP Practice and said they had breached confidentiality and/or the Data Protection legislation. It had been stated that on one occasion she had a "face like thunder" at the Contact Centre (see paragraph 6.20 E147 of the FPA's report, which also refers to "negative body language"). This is absolutely not the case. To be fair the FPA excised the "body language" phrase when giving her oral evidence, but said apart from this it was correct. M explained that she was concerned at the time about scratching or damaging (the exact wording is immaterial) the hire car she had.

29. In dealing with her concerns over the child's sea-side visit (see paragraph 24 above), M recognized that maybe there had been an over-reaction by her. She again dealt with the requirement to report on contact, adding in response to a question from F's Advocate that there were never any positive comments that she did not need to report positively. An e-mail to M's first husband (with whom she said she suffered an "abusive" relationship) was referred to (E192) sent in March 2016. It is a very strong document and M said she did regret sending

it - people over-react in stressful situations. Reference was made to the disturbing incident of 24th April, 2018 concerning her daughter (see paragraph 21 above). M stated that there was no long-term or genuine threat for the child to hurt herself, indeed it was just an outburst, not backed-up with anything that gave her concern. There are any number of reasons she behaved like that, but she did not coach her. M does not know why the child behaved that way. If M had had genuine concerns she would have taken her to A&E.

30. Mention was made of M's other children. The oldest her son is 20 and still lives with her. He has trained as a mechanic and his plan has never been to stay in Guernsey. Her 12 year-old daughter is doing well academically, but has been bullied at school and had a mentor through a unit which provides additional support. Her friends have departed, and her best friend went back to Madeira. Her son will be better off in the UK in his work, as in Guernsey he is not being paid the going rate. The 12 year old, whilst not diagnosed with mental health problems can suffer with anxiety. However, relocation would have a positive influence on her contact with her father, who is in the UK. The son has his own life, so does not feature in child-care.

31. A good deal of mention was made of the high costs of travel between Guernsey and the UK. As indicated, M's evidence was to the effect she is right up against it financially and has nothing to spare. She pointed out that F has a good job and there is board coming from two non-dependents (from his first marriage) living with him. Funding has still to be resolved at the scheduled financial hearing. M again emphasized that she would be much better off in England, no child-care costs involved and able to get a better-paying job. Her flights to England are funded by her family. But, in summary, relocating means for M, no initial rent, the clearing of her overdraft, and establishing herself in a new job, with hopefully a higher salary than the work opportunity she has in Guernsey will provide, with a job offer in the finance team at the Princess Elizabeth Hospital.

32. M made a significant observation regarding her relationship with F, and it is to her credit that she was frank about it. When questioned on behalf of the child by Advocate Wallis, M stated that there was an element of doubt in her mind that if she remained she could not be 100% certain that the relationship might be rekindled, but a lot of water has flowed under the bridge and they were in a different place. They have split many times and got back together. M added that she was not necessarily talking about a romantic relationship, but getting into each other's lives. It would be a lot easier if she were in England.

33. The evidence, when assessed, shows that M presents as a more cerebral person than F, who is more direct and physical in his actions. Her considerable attention to detail has already been mentioned and this is evidenced by the large number of statements she has produced. There is a tendency to be too analytical in a situation where human beings, as fallible creatures will not always measure-up to her demanding standards. There is, as she accepted, the tendency to over-react. In view of her characteristics she would be expected to pick up any wording in another person's report with alacrity. Accordingly, Dr Briggs's account of what she said to him about not being sure of contact with F (E71) in his addendum is accepted on the balance of probabilities (see paragraph 20 above). From her presentation in evidence, the account given by Dr Briggs about her character and traits is accepted. There should, it is stressed, be no misunderstanding, both parents are good people and caring – but wholly unsuited. At present, contact resembles a minefield or obstacle course which needs negotiating with great care. Any distance between F and the child would, as the evidence showed, add to this. This will also be considered in the conclusions to this judgment.

Assessment of the Father's Evidence

34. F is a more direct person than M. He is a tad more impulsive and spontaneous and "up-front". Although (with respect) less cerebral than M, he is probably more practical, as befits an engineering manager. After he began his evidence he complained that M was "smirking"

at him. I was closely watching him giving his account, so cannot comment beyond saying that this element of tension is plainly not that far under the surface. No finding in this is made and it does not materially bear upon this judgment beyond what has been said. Understandably F stated that he was distressed when he heard (later and from his Advocate) of the incident when the child stated she wanted to kill herself (see paragraph 21 above). She was happy in his company. In his view it would be difficult to fund frequent contact if the child relocated. He thinks she would be "devastated" in the circumstances. He does not share M's concerns about the Guernsey school, which has been "fantastic". Indeed F has no issues with the school. In connection with his relationship with M, there is now no emotional tie. He re-established contact with his family in Guernsey after the successful course of CBT with Dr Datta. This interestingly enough, had been broken in 2009, as they did not agree with the speed of his relationship with M. Only his father attended the wedding. Dr Datta's work led to the reconciliation. F spoke about this situation with genuine feeling and his explanation was convincing.

35. F was cross-examined in considerable detail, albeit very politely, by Advocate Fooks acting for M. He readily accepted blame for the November 11th, 2017 incident and was angry and upset at the time. F accepted this responsibility throughout and regretted the consequences, particularly to the child. He and M had a "yo-yo" relationship, both parties had outbursts. Despite previous emotional outbursts he has moved on. Dr Briggs's very positive description of the "close and joyful" contact with the child was referred to and F said she wants to know how many days until she sees him, which is upsetting. He is afraid that contact would become too infrequent. M would stick to an order, but he is worried about the gap in contact and the child's welfare. He understands the benefits to M if she moves to the UK, but on balance there would be less contact between himself and the child. There was a discussion about the funding, if relocation took place. His employer (and the letter was shown confirming this) "allows flexibility". A financial hearing has been set down, but it is fair to say that F's affairs are a lot less desperate money-wise than M's. F added that his family want the child in their lives; with their help he can cut costs. He confirmed his good opinion of the Guernsey school and believes they have a grip on the situation.

36. In answer to Advocate Wallis, he confirmed that his family has his full confidence and have accepted the child into their lives. In relation to M he has completely moved-on. No reconciliation is viable. The child likes outdoor activities and his family facilitate this, they are "young and energetic". They factor this into their own routines. His son and daughter readily contribute. If relocation took place he would not have the funds to challenge in a UK court. F can continue the school run if the child remains in Guernsey. He considers that M's UK family is older and would not present the support portrayed - they are less able to facilitate contact. In re-examination F stated that although he accepted that M was law-abiding, communication is not easy. The gaps allow the child to be influenced by one side and she needs both parenting styles. This last observation is a very sensible one. Throughout his evidence, F accepted his faults and showed the child's welfare was central in his approach. It is clear that he has managed to distance himself more from the relationship than has M. This is only to everyone's good. Like M, he was an honest witness, but rather more direct and spontaneous.

Application of the Facts found to the "Welfare Checklist"

37. The matters set out in Section 4(2) of the Law will be dealt with, and, very helpfully, the FPA did the same in her report. The titles will be abbreviated, but the legislation is reproduced at paragraph 7 above. The requirements of Article 8 of the European Convention on Human Rights will be dealt with at the end of the list. (It is accepted that the checklist is not exhaustive of the matters that have to be considered.)

(a) <u>Child's wishes and feelings (in context of her age and understanding)</u>

She feels, according to the FPA, as if she has two homes. In view of her young age she has a limited concept of time, as she has said, she would like to stay one week with each parent. Plainly her young age is a factor here. There were messages placed by the child in the "worry box" at school and the "worry monster" at home (borrowed from the Contact Centre). But "she just wanted to feed the monster" and when asked she "could not remember what the worries were". With a young child of this age it is difficult to ascertain her wishes, which may vary. Everything depends on the individual child in their particular situation. Although one listens to what she says she is not of an age or level of understanding that would make her views a determinative factor.

(b) Age, gender, etc

There is a "conventional" ethnic and cultural background here and nothing which is an important factor in deciding this case. Although born in Portsmouth, the child has largely resided in Guernsey.

(c) Harm, etc

The incident of November 11th, 2017 was (as has been emphasized) highly undesirable and had an impact on the child. F's evidence in dealing with his "petulant" behaviour via CBT with Dr Datta, as well as his frank acceptance of responsibility and sensible presentation in giving evidence are reassuring. Mention has already been made (at paragraph 21 above) of the incident in April, 2018 and Dr Briggs's assessment of it. Furthermore, the quality of contact observed between F and the child is outstanding. She is joyous and manifestly not frightened. At present F is meeting the child's needs.

(d) Physical, Educational and Emotional Needs

The child has issues with literacy. She is receiving extra support as she is someone that needs such extra support, reassurance and attention (E150). An educational psychologist, Dr Friel, undertook an assessment which "highlighted [the child's] strengths and her enthusiasm for learning and her friendships". Also, she "responds well to working more one-to-one with adults" (E151). She has "sound cognitive skills" and "sound underlying learning skills". She may be experiencing some underlying anxieties/worries. I'm aware the family are going through difficulties and uncertain times, which may have further imposed on her anxieties/worries". (See Dr Friel's e-mail at E126). The child's GP wrote on 16th July, 2018 (E125):

> "My impression of [the child's] mental health at the moment would be much more towards a normal emotional reaction to a difficult and uncertain time, as opposed to a mental health disorder requiring a …….. referral."

Although M has not got the same high opinion of the Guernsey school as F, and likes the proposed school in Hampshire, an impressive amount of enhanced effort is nevertheless being provided (E152). The school has been inspected with satisfactory and good results. At this stage there seem to be rational reasons for keeping the child at what is a rather small (274 pupils) establishment where she is settled and improvements being put in place. With great respect to M, her concerns reflect her enhanced level of questioning. From F's presentation, he would be the first person to act if the child's schooling was defective in any way.

(e) Capability of Parents

They have, as Dr Briggs and the FPA both observe, different styles of parenting. This also accords with the impression gained from their oral evidence. Their

skills and strengths complement each other, which is a good thing, and a comforting feature of the protracted and demanding set of proceedings.

(f) Contact with parents, siblings and others
The FPA correctly, in my judgment, refers to the "extremely important" need for the child "to spend quality time with both sides of her family", as well as to be able to trust the adults in her life to work together in her best interest "and not make decisions or react in ways that she feels is what the parent whose company she is in, wants her to react, etc". On the facts, this is an important element to take account of.

(g) Likely effect of change in Circumstances
F is anxious for the child to complete the 8 years' residence in Guernsey required to qualify her with a right of residence. That is a relevant consideration, as, in practical terms it would be rather more difficult to make up the years as a teenager, having left the Bailiwick. M is inclined not to value this as highly owing to her own unhappiness in Guernsey. It is worth noting that in the long-established case of D v M (minor: custody appeal) [1983] Fam 33 Ormrod LJ said at 41 that "disruption of established bonds are to be avoided whenever it is possible to do", an observation which applies generally here.

(h) Effect of Article 8 of the ECHR
The jurisprudence of the European Court of Human Rights and the decisions of municipal courts in England (and Guernsey) are not in conflict. For example, in Scott v United Kingdom [2000] 1 FLR 958, the Strasbourg Court said: "Undoubtedly consideration of what is in the best interests of the child is always of crucial importance". The interests of the child must be "paramount" (Yousef v Netherlands [2003] 1 FLR 210; and this is the view of the English Court of Appeal e.g. in Payne v Payne (supra) and other decisions. The firm conclusion therefore must be that in resolving cases such as the one under consideration, the child's welfare is paramount. The underlying welfare principles are set out in Section 3 of the law and "welfare" is a word that has to be taken in its widest sense, with the ties of affection not to be disregarded. This goes back to the case of Re McGrath (infants) [1893] 1 Ch 143 at 148 CA; from as eminent an authority as Lindley LJ. Also relevant is the formulation by Ormrod LJ in S (BD) v S (DJ) (Infants: care and control) [1977] 1 All ER 656 at 660 – the question for the judge to consider is not what the essential justice of the case requires, but what the best interests of the child require. This long-standing case appears fully in harmony with the Strasbourg jurisprudence and its application in the other English cases referred to.

Observations on the Facts

38. The evidence of Dr Briggs and Sadie Gill, the FPA, was in harmony. The psychologist was at pains to emphasize that he was not a child psychologist, but reported essentially on M and F. Extracts from his report and parts of his oral evidence have already been mentioned. It is worthy of note that neither party has mental health difficulties or similar problems. His views at F39 of his report as set out in paragraph 18 above should be kept in mind as well as his conclusions at F43, which are worth quoting:

> "One anxiety I have in this case is that we seem now trapped in a process where matters are playing out before the Court. As indicated above we are now at the stage where the mother has submitted a 10th Position Statement. She is an intelligent mother, one who has the capacity to relish intellectual argument, one who is perhaps anxious for her future financial security and purpose, and it is perhaps important for

both parties now to step back a little and to focus on their daughter's needs in the period ahead.

39. In his addendum at F72, Dr Briggs wrote:

> "I have a simple focus in this case and that is of the wellbeing of this little girl who I observed to have a very tender and loving relationship with her father. Whilst he is a father who can be petulant and who has made mistakes in the past, I do not write him off as having the capacity to have very meaningful and healthy involvement in the life of his daughter."

Having reviewed the evidence in this case, I agree with these observations. Dr Briggs as stated was, very properly, at pains to deal with the task assigned to him, and it is the FPA's report and evidence that deals specifically with the relocation issue, which is the nub of this case. Having carefully considered the evidence and written reports of Dr Briggs and his response to a wide-ranging cross-examination on behalf of M, I have no hesitation in accepting what he has put forward. He did not depart from objectivity and was careful to be fair to both parents. His efforts are of considerable help in resolving this difficult matter. It is emphasized that this conclusion is based upon the individual circumstances which present themselves, and is not a simple (as mentioned) "rubber-stamping" of an expert's views. It is solely the responsibility of the Court to adjudicate on this case. As Dr Briggs concluded:

> "Again, I invite the Court to make sense of my evidence, that of the parents, as well as the Family Court Adviser in this case."

Before leaving this evidence, it is apposite to quote one of Dr Briggs's sensible replies in the detailed cross-examination he was subject to on 21st May, 2018:

> "At this point in time, it seems to me that the child enjoys contact with her father, and essentially wanted more and we are getting into the sort of months now. I have a worry that if relocation were to occur and [the child was] to … the contact would be in the same form and of the same direction, that she will then leave the Island with a sort of very … what is the word … a sort of distracted or unfortunate memory of her father in that regard."

40. The FPA's report has also been referred to (see paragraph 24 above). Her observations quoted from paragraph 109, at E165 seem to be particularly relevant and chime in with the facts of this case. The report carefully sets out various considerations relating to the child's half-siblings, but correctly adds, at paragraph 10.27, E170:

> "However, whilst I have touched on the half-siblings various scenarios, [the child] is the main focus and what is best for her ongoing developing needs and emotional welfare."

The FPA agrees that the regrettable past incidents concerning F "may have been due to frustrations within a dysfunctional relationship and that whilst inappropriate, may not feature in the future, if the relationship is severed …. Both parties have been under an enormous amount of stress due to court proceedings and the nature of the applications made. I have also noted that neither of [F's] older children have disclosed to me any inappropriate behaviour by their father during their childhood".

41. In her oral evidence, already touched upon in paragraph 25 above, the FPA told Advocate Wallis that if the child went to the UK, the loss of frequent contact would be more detrimental than the extra input of her maternal family. She was concerned about contact with the paternal side, which provides a strong network. There are two good family networks. She

does have concerns about M reducing contact, although there is no evidence of this. M has been reluctant to agree to things and her terminology and thinking are not the most productive for the child. The FPA has been involved for half the child's life and M needs to trust the professionals now (see paragraph 10.2 of her report at E163). The FPA added, a little further on that M is very good at organizing and says she will promote contact unless there are any issues. But M sets the bar much higher, there is more time spent and paperwork here than in a serious abuse case. M will obey the letter of the Law, but not the spirit of it – F will be asked for lots of details. The FPA considered that concerns should be passed on, not micro-managed. F feels completely scrutinized in what he is allowed to do, and the FPA is sure that the child is picking-up on all of this. In cross-examination on behalf of M by Advocate Fooks, the FPA agreed, as noted in paragraph 25 above, that the case is "quite finely-balanced", although she does not recommend relocation. She agreed with F's Advocate that her decision had been finely-balanced from the start, but she has had the child's best interests at heart. Children need to relax and be children and the risks of relocation are the reason for her recommendation. There has been a considerable period of turbulence for the child and she needs to see her father on a weekly basis. As stated, the FPA recommends refusal of the relocation application. She does recommend a Shared Residence Order, as the child feels she has "two homes" and strong attachment to both parents (paragraph 11.1 at E171). As indicated, like what emerged from Dr Briggs, the detailed and thoughtful recommendations and reasoning from the FPA are accepted. In my judgment, having seen and assessed M and F and in particular their responses to skilled and detailed cross-examination, her conclusions are supported by the evidence and concurred in, as are Ms Gill's reasoning in support of them.

42. It is difficult not to sympathize with M's position and the sentiments she expressed with clarity in her oral evidence. Not everyone is suited to Island life, it can be confining and isolated. Some people understandably prefer to be in the UK, where choices can be wider and there is more room to live one's life in. People are not all the same and are entitled to their opinions. I am sure that M would benefit herself from going back to Hampshire with enhanced job opportunities (Portsmouth and Southampton are both nearby) and the support of her family there. So I feel sorry for her in her predicament. Also, it is hoped that the evaluation of her as an able person and loving, careful parent is noted. She was also a witness of unusual poise and fluency. But (emphasis added) <u>it is not the parents' interests that are paramount in this application, but the child's</u>. As in many family law cases, the judge may wish to have a magic wand to banish problems and do the best for all concerned, but judicial powers are limited and sometimes a rather blunt instrument. Despite Advocate Fooks making an impressive and detailed closing submission and fighting M's corner ably, whenever the facts of this case are turned over, the views of Dr Briggs and the FPA come on top, for the reasons set out above.

Conclusions

43. M's application fails and is dismissed. Although a move would almost certainly benefit her in her present situation, it would not be in the interests of the child. Contact with F is extremely good and also necessary in terms of the child's welfare. I am satisfied on the balance of probabilities that contact with F would not only be financially difficult, perhaps even prohibitive, but likely to be problematic considering the history of the contact enjoyed prior to this hearing. On the facts, the views of the psychologist and FPA are rational and convincing and therefore accepted. This decision is no reflection on the admirable qualities displayed by M. It is a difficult decision and has required a good deal of thought, but the evidence presented opposing M's application is persuasive. An ideal solution was not possible given the surrounding circumstances of this matter and the fact that hurt and disappointment are likely to follow is regretted.

44. This decision is long enough and would attain an unacceptable length if every piece of evidence or past event was referred to and commented on. However, all relevant matters have been considered even if not specifically mentioned. The documents were voluminous and required careful reading. It is hoped that this decision (subject to what is stated in paragraph 45 below) will bring to an end the lengthy and emotionally exhausting court cases concerning the child. It is appreciated that a financial hearing is set-down later this year.

45. Counsel are understood to be meeting once this decision is out. If so, then the question of how shared residence is to be enjoyed should be settled. If this proves impossible, then the default position may well be the FPA's recommendation at paragraph 11.7 (E173) of her report. Any rational and fair agreement between the parties will be approved, hopefully in the form of a Consent Order. Counsel were very helpful and responsible throughout and are thanked.

46. No order for costs.

J R Finch, O.B.E.
Judge of the Royal Court