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No. ZC19P01540

Neutral Citation Number: [2022] EWFC 148

IN THE CENTRAL FAMILY COURT

First Avenue House
42-49 High Holborn
London, WC1V 6NP

Wednesday, 5 October 2022

Before:

HER HONOUR JUDGE LYNN ROBERTS

(In Private)

B E T W E E N :

AH

Applicant

- and -

(1) AN

(2) HN, A CHILD (via their Children's Guardian)

Respondents

RE H-N: THE WELFARE HEARING

THE APPLICANT appeared In Person.

MR C. HAMES KC and MS C. KUMAR (instructed by Goodman Ray Solicitors LLP) appeared on behalf of the First Respondent.

MR S. ASHWORTH (instructed by Creighton & Partners Solicitors) appeared on behalf of the Guardian.

J U D G M E N T
(via Cloud Video Platform)

(This transcript was prepared from a poor quality recording)

JUDGE ROBERTS:

1 This is the final hearing in the long-running proceedings concerning a little boy called HN, who is now aged six. I gave detailed judgment following a fact-finding hearing last year which gives the background to the proceedings and to the family, and I am not going to repeat it. I have reread it for this week's hearing.

2 HN currently lives with his mother, Ms AN, in London, together with his brother B, who is now, I believe, fourteen. B has a different father. HN's father, Mr AH, has applied for an order that HN lives with him and that he has permission to remove HN permanently from England to live in south-west France, which is where he has his home. Mr AH's other two sons, HN's brothers live with their mother near Mr AH's home and they spend regular weekends and holidays with their father. Ms AN resists the father's application.

3 The children's guardian in these proceedings has changed, which has led to further delay in the welfare part of the case being heard. Unfortunately, the previous children's guardian, Ms R, has suffered from ill health and a new guardian was appointed, I believe in May this year. The final hearing had been due to take place that month but had to be put off. Claire Fox is now HN's children's guardian and she has concluded her investigations and her report. These proceedings have now gone on for a very long part of HN's life and I do recognise that for both parents, as well as for HN and his three brothers, this has been very difficult.

4 Since the fact-finding hearing before me, contact between Mr AH and HN has been reintroduced and has developed so HN has now spent overnights up to a week at the time

with his father since August. This is all taking place in England and has involved Mr AH in considerable expenditure, both in terms of money and time, and, he tells me, stress. There is also weekly video contact between Mr AH and HN. All contact orders have taken place, to Ms AN's credit. I understand that the e-mails to arrange it have all been between the lawyers and sometimes have been labyrinthine.

5 The representation through this hearing is that Ms AH continues to represent himself; Mr Hames KC and Miss Kumar represent Ms AN; and Mr Ashworth represents HN and takes his instructions from Ms Fox. There is a useful bundle which has been prepared for the hearing. The evidence which has been of most relevance has been that of the parents, particularly about how HN's time with his father has been managed and how HN has experienced it, the psychiatric report about both parents by Dr Van Velsen, the psychological report about HN by Dr Willemsen, and the children's guardian's report. I have heard evidence from Dr Willemsen, the psychologist, from each parent and from the children's guardian.

6 The position of the parties in a bit more detail: Mr AH seeks HN's removal to France pursuant to an order that he lives with him there. He would propose that Ms AN has as much contact as can be managed in France and for longer periods in this country. He is amenable to HN receiving support in France to help him with the transition from the equivalent of CAMHS in France and he plans to continue to see Dr L, who has been helping him therapeutically for some years. If HN remains in this country, Mr AH does not think he can come over as often as has been the case to date, but is very keen for contact in France to start as soon as possible. He would agree to a family assistance order to London, as proposed by the guardian, and to HN receiving help from CAMHS. Mr AH very much

wants HN to attend school (at the moment he is home schooled) whichever country he lives in.

7 Ms AN asks for HN to stay living with her, pursuant to a child arrangements order, and for Mr AH's application to be dismissed. She wants contact to stay in England for as long as possible. She agrees to the making of a family assistance order and to HN being helped by CAMHS. She wants to continue to home school HN, but is prepared to consider sending him to mainstream school at some point in the future. She is in agreement to starting individual psychotherapy. If HN moves to live with his father, she wants to have as much contact as possible.

8 The guardian has found this a very difficult case, in part because she was unable to make a real connection with HN and because she could see grave risks for HN's well-being, whichever option the court decides on. The particular issue that is concerned with here is whether, whichever parent HN resides with, can that parent promote a positive image of the other parent to HN and ensure regular and meaningful staying contact takes place?

9 On balance, she recommends that HN remains living in London with his mother and has as much contact as possible with his father, with that taking place in France after some more time in England. She wants Ms AN to start individual psychotherapy and for Mr AH to continue to work with his therapist. She recommends a family assistance order to London, who need to work with both parents as well HN and for there to be a referral to CAMHS. She remains neutral on whether the court should order that HN should start school if he remains in this country, but can see the benefits. If HN goes to France, she wants as much contact as possible for Ms AN and for that to include B, where possible. She wants the equivalent of CAMHS to support HN in the transition.

- 10 I am going to go through the professional evidence in some detail, the parents' evidence in less detail. This is because the professional input has been the most important and helpful both to my decision making but I think to the family going forward if they follow the advice and analysis contained in it. The parents' evidence has generally not told me much I did not already know.
- 11 First to summarise the legal position. I need to apply section 1 of the Children Act and it is HN's welfare which is my paramount concern. I must take account that delay is likely to be harmful to a child. In this case there has been so much delay already and, clearly, it has made things more difficult for HN. I will consider my decision against the backdrop of the welfare checklist which is contained in section 1 of the Children Act. This is a leave to remove application (amongst other things) but the law is the same.
- 12 It is the child's welfare which must determine the application. Mr Hames and Miss Kumar have helpfully pointed me to the recent case of *WS v KL*, which has been of assistance. I have also considered section 16 of the Children Act in relation to making a family assistance order and my powers under section 11(7) of the Children Act in relation to adding a condition to any child arrangements order I make. I have taken into account the case of *Re H* to which Ms AN's counsel have referred me.
- 13 First, the evidence of Dr Val Velsen about each parent. Dr Van Velsen is a well-regarded and very experienced psychiatrist. Her report was made in January this year. The psychiatrist goes through Ms AN's background and the various interactions she has had with health and social work agencies, in particular since becoming a mother. She then details her interview with Ms AN and also sets out parts of what Mr AH had told her about Ms AN

during his interview. Dr Van Velsen gives the opinion that-- and I am going to give a lengthy quote now:

“321 In my opinion, there is evidence for a tendency to somewhat exaggerate and dramatise which was described in findings.

322 When Miss AN becomes upset and feels under stress, she told me she could become emotionally dysregulated.

323 She very much sees her difficulties at present as a linking to Mr AH and, in the past, she felt that her difficulties arose in the context of a difficult relationship between her parents as well as her relationship with them.

.....

326 Overall, in my opinion, from her presentation in the interview with me and what is recorded in her history, there is evidence for borderline straits in her personality, although, at the time that I met her she did not make for the full diagnosis.

327 The essential features of a borderline personality are *a pervasive pattern of instability of interpersonal relationships, self-image, affect and impulsivity.*

328 Ms AN described two relationships with the fathers of her sons, neither of which were marked by stability. She had a relationship with a much older man at a young age and who had significant difficulties of his own. Her anxiety about her pregnancy with B was such that she was engaged with a mental health midwife. She described being terrified of becoming a mother, although fortunately once she had given birth, this changed. Her relationship with Mr AH never seemed to establish a secure base and there were difficulties from the beginning.

329 *Individuals may display affective instability that is due to a marked reactivity of mood (eg intense episodic dysphoria, irritability or anxiety), usually lasting a few hours and only rarely more than a few days. The basic dysphoric mood of those with borderline personality is often disrupted by periods of anger, panic or despair and is rarely relieved by periods of well-being or satisfaction. These episodes may reflect the individual's reactivity to interpersonal stresses.*

330 In my opinion, this has been a significant feature of her presentation as described, for example in her notes, by a previous social worker and in the judgement. It is recorded that she required special measures in the court. In my opinion this trait explains her presentations with low mood and anxiety.

331 Some of the written material, such as certain emails, reflect some dysregulation and heightened emotion.

332 *Individuals are sensitive to environmental circumstances. They can be impulsive.*

333 There is evidence for this in her response to the fact-finding hearing and her relationships with family and others. There was also the episode in 2018 where she flew to the United States, in pursuit of a relationship and apparently returned in quite a fragile way.

334 *They can be prone to sudden and dramatic shifts in their view of others who may alternatively be seen as supportive or punitive.*

335 Ms AN has changed significantly in her view of others, including Mr AH, who described how she can change her view of him during a single conversation.

336 Her Honour also commented on the various versions of the narratives which may reflect how her view of someone can change.”

14 Dr Van Velsen finds no clear evidence of identity disturbance or of substance abuse and she gives a definitive view about recurrent suicidal behaviour. She said:

“343 *Individuals with this disorder frequently express inappropriate, intense anger or have difficulty controlling their anger. They may display sarcasm and general bitterness or verbal outbursts.*

344 This was described by others and in the judgment although Ms AN did not perceive it as a problem.

345 It is important to note that many of Ms AN’s difficulties predate her relationship with Mr AH. This includes both her parenting and her mental health.

346 In my opinion, Ms AN’s tendency to be dramatic and to exaggerate has contributed to what was described in the findings. It appears that when Ms AN’s narrative changes she feels convinced as to its veracity and struggles to acknowledge or remember what she thought/asserted previously.”

15 Dr Van Velsen further reports that:

“348 ...her cognitive capacity to think about herself was/is not always matched by an emotional one. She cannot accept many of the findings and is critical of the judge, which somewhat reflects her attitude to other individuals and professionals.”

16 Dr Van Velsen concludes that her insight into herself and her difficulties is partial.

Dr Van Velsen reports that as individuals with these difficulties mature, greater stability can be achieved and, in Ms AN's case, she sees that. She says:

“353 ...At the moment, she does not fulfil the full criteria for borderline personality disorder, but her underlying vulnerability remains and more significant symptoms emerge when stressed. “

17 Her relationship with Mr AH will have triggered her underlying vulnerabilities and vice versa. The doctor says:

“363 I would have some concerns about Ms AN undertaking all of the schooling of the children at home on her own, if there are times when she is emotionally dysregulated, isolated and overly preoccupied with the a sense of being a victim of others for example Mr AH.

364 If the boys are being home schooled then, in my opinion, it is important that there is evidence for social support.”

18 She also says:

“366 Ms AN externalises blame, describing herself as Mr AH's victim and, by extension, that of the court. I am concerned that she feels that changes need to be made by others and does not reflect what was described in the findings. Further treatment might enable her to work through this in a more useful way. She understands that the aim is to work cooperatively with Mr AH but currently it is difficult for her to consider this because of the way that she sees him.

367 Of note, there have been periods in the past where there have been concerns about Ms AN's tendency to withdraw from services and perhaps not take medical evidence, etc regarding the children.”

19 Dr Van Velsen recommends that Ms AN could benefit from psychotherapy and from group therapy, and medication in conjunction with this might assist. In conclusion, Dr Van Velsen says:

“375 I have described borderline personality traits that can wax and wane in their expression.

376 It is important that Ms AN keeps her boundaries that are expected of her within the proceedings regarding contact, etc.
378 The following would be warning signs:

Establishment of a new relationship
Isolation
Not keeping appointments; or adhering to boundaries.”

20 Dr Van Velsen also assessed Mr AH. The psychiatrist, similarly, went through the background at her interview with Mr AH. She had more limited information about him because his life was based in France. Dr Van Velsen says that there was no evidence that he suffers from a mental disorder and there is no evidence for an antisocial personality or a borderline personality disorder. There was nothing that appeared other than normal in his background. She said that:

“385 In my opinion, Mr AH at times struggles to understand the nature of the major relationships he has had and his part in their lack of stability. It is notable that both relationships (with the mothers of his children) were marked by arguing, conflict and hostility and, on occasion, physical lashing out. He has also made some impulsive decisions that are not helpful, for example, retaining HN in France.

386 It is positively significant if he has now formed a relationship that has a different nature to those described with A and Ms AN.

387 It is positive if the contact with HN has been progressing. I would echo some of the comments of the contact supervisors that it is important does not use contact as a way of gathering ‘evidence’ by photographs of HN’s skin etc. This would signify ongoing conflict.

388 He has had treatment with a way psychologist of which he has found to be of benefit.”

21 She recommends that Mr AH continues to meet with a psychologist to understand further his relationship history and may also benefit from some input into his parenting.”

22 Dr Van Velsen then says, when asked about the parents together:

“393 ...The important task for these parents is to begin to work together more collaboratively without accusation and

counter-accusation. The proceedings have been protracted to due to two sets of finding of fact hearings. It appears that there is now a plan going forward and it is essential that both parties stick to this.”

She says that, in her view, both parents have shown capacity to participate in therapy.

23 Dr Van Velsen’s evidence has not been challenged by anyone and I accept it in its entirety. I find it thought-provoking and helpful in my task. I think she has accurately portrayed the way each of these parents functions and why. I have not yet seen much evidence of these parents moving towards co-parenting and moving away from accusation and cross-accusation, sadly.

24 I also have had a brief report, translated from French, from Dr L, who has been working with Mr AH for several years in the context of the various difficulties Mr AH has had with his relationships. Further questions were asked of Dr L which he has answered, but the translation of those documents is eccentric and not overhelpful.

25 Turning then to the evidence of Dr Willemsen, also a well-known and respected professional. He has reported about HN. He is a clinical psychologist. He specialises in child and family psychology as well as adult psychology. He summarises his report at the start in this way:

“5 HN has suffered considerable anxiety in his young life because of having suffered a number of separations, being exposed to parental conflict and being exposed his mother’s anxiety.

6 I do not think his anxiety is solely related to his father keeping him for nine months. He had responded reactively but there was no current evidence of separation anxiety.

7 The mother continues to see the father as abusive and does not agree with or accept the court’s judgement.

8 I have raised concern that the mother's view of the father, should HN stay with her, may affect HN's contact with the father, due to her perception she has of him."

26 Dr Willemsen reports, as indeed did Dr Van Velsen, that Ms AN rejected the fact-finding judgment that I delivered. He sets out in detail his interview with Ms AN and then his interview with Mr AH. I am not going to summarise them here but I have read them and thought about them. He is talking with each of these parents, but only remotely as far Mr AH and HN were concerned, for reasons I have not explored. He also spent time with HN on his own and looked at the medical notes as well as all the other papers.

27 His conclusions. He noted that HN was able to leave his mother behind to talk to him and concluded that there was some evidence had of a secure attachment. He said:

"104 The anxiety which he expressed when I saw him, and which he managed by speaking continuously, can have developed as a result of several reasons. In his short life he has been separated from his mother as the primary carer but also from his father, who took care of him for considerable periods of time. He has suffered separations from his mother (including a period before Mr AH did not return HN until the French courts told him to), and from his father.

105 These separations from his parents will have contributed to the separation anxiety that was observable and reported."

28 He also says:

"106 HN has also been exposed to the tensions, and ongoing tensions through the proceedings, between his parents. He sees that there is no communication between them and will have been aware of the conflicts when the parents were still together."

29 Dr Willemsen thought that, in the presence of Mr AH, HN will have been less exposed to Ms AN's anxieties and that Mr AH will, to some extent, have been able to protect HN when Mr AH was living with Ms AN. Importantly, he says:

“111 ...[HN’s] behaviour is a function of a myriad of influences and is certainly not only related to having been with his father for a period of nine months and the anxieties that were invoked when he was placed back with his mother. I do think, however, the transitions have been traumatic for HN, not least because during these periods he saw little of the non-residential parent.

112 I think the tumultuous early years and being bilingual affected his ability to master his language and his emotional development. There is tension about his language between his parents.

113 It is important that HN’s feelings, of anger for example, are not just directed towards the father. In HN’s eyes both parents have not managed to provide him with a consistently available couple. As much as HN might have been angry with his father for not allowing him to be with his mother, the mother also left him there previously. The mother also, in HN’s eyes, was unable to intervene (in the end she did through the Hague proceedings).

114 There is a further consideration for HN in relation to the manner in which his father is seen by his mother, which can contribute to HN’s anxiety. This is related to her view of father, which she has not adjusted in the light of the fact-finding judgement and resonates with comments in the supervised contact notes where HN says it might be risky to see his father.

115 HN may be exposed to the mother’s anxiety about the father and the father’s frustration and concern about the mother. The mother may see the father as an authority that cannot be trusted, as is also reflected in the manner in which she sees the court, as ‘dishonest’.

116 This is the mother’s view of the father and is a contributor to the conflict HN is exposed to. It may be that the court agrees with the father that HN is better placed with him, but it could also be that the father’s attempt to have HN with him is an attack on the mother in which he is condescending of her abilities to parent, for example by suggesting she uses drugs. He certainly is precise and can be demanding, which adversely affects the mother’s insecurities and self-esteem.”

30 Dr Willemsen also wonders whether Ms AN’s own anxieties may at times affect her ability to attune to HN, leaving HN to have to manage his own feelings. In Dr Willemsen’s view, HN loves both his parents. He thinks that the contact notes show good contact. Looking ahead, he says:

“122 ...As a matter of principle, and for an optimal emotional development, he needs to have a great deal of face-to-face contact with each of his [parents, irrespective of being in two countries.”

This is crucial and central to my view of this case. Despite the many difficulties these apparent have in working together, it must be recognised by each that HN’s needs and perceptions are different. He needs and wants both of his parents to play a significant part in his life.

31 When considering HN staying with his mother, Dr Willemsen opines:

“123 The contact with his father is important, not least to give him a sense of another parent and somebody who can help HN to also have some distance from his mother, as every child needs, but also to experience his father as different from the mother’s presentation of the father. HN needs to be able to develop his own relationship with his father. In the absence of contact with his father, he will be exposed to the mother’s view of the father which, then is not adequately challenged.”

32 He considered how Ms AN is focused on HN and provides him with a great deal of stimulation and he seems to be securely attached to her. However, he considers it important that Ms AN understood HN’s anxiety and that it was wrong to solely relate it to Mr AH’s actions. He thought HN would have been confused by being kept in France by Mr AH and not seeing his mother and brother for many months. He sees challenges to HN moving to live with his father in France whilst not saying it should not happen. He would expect HN to find it traumatic in the short to medium term. He also points out that HN appeared to have a good relationship with his father.

33 He agrees with Dr Van Velsen’s assessment of the parents. He is concerned about the mother’s views and feelings about the father and about the judgment, and, indeed, the judge:

“135 The mother has taken the view that the judgement does not reflect the reality of her experiences.”

34 The doctor goes on to advise that:

“136 The court, when considering HN’s welfare, will need to consider the mother’s ability to support contact.”

He points out her minimal insight into her own behaviour and into her own role in the complex relationship with the father. He alerts the court to the risk that her perception of the father will stop her actively co-parenting HN and it seems that her reaction to Mr AH being demanding and direct, which he can be, will lead to her considering him to be abusive and to make allegations against him. He considers, in summary, that Mr AH is more able than is Ms AN to be able to manage the future relationship with the other parent and to manage and identify the risks to HN.

35 As for who will allow HN to have a positive relationship with the other parent, he says:

“155 The mother does see that HN can he enjoy his contact with his father, but the mother’s fear that the father will succeed in HN being with him, overrides these positive observations of contact.

156 The father is likely to support contact when HN is with him. He sees contact as important. There is the concern that the father unilaterally decided to keep HN until the court ordered him to return HN. There is, at times, a persistence in the father’s behaviour that is not always helpful. I do think, however, that he would promote contact.”

He thinks both could benefit from therapeutic input which might take the mother years to effect change, whilst the father could achieve this within a year.

36 Turning to his oral evidence, Dr Willemsen expanded on some of these things and also responded to one introduced by me. He described HN as a confused child who finds it hard to make sense of his life until now, and said it was vital that whichever parents HN lives

with promotes a healthy image of the other parent. He was broadly positive about Mr AH's ability to do this and to promote contact with the mother and more worried about Mr AN's ability to do so. He said that: "I do think that Ms AN does create in her mind a reality which does not always resonate with what is happening and who the father actually is. Her view of the father could easily be one which HN needs to be protected from."

37 As for Mr AH, he thought Mr AH could be quite critical but also can be supportive of Ms AN. But he considered that Mr AH's retention of HN in France caused considerable harm to HN. Of that, he thought it was unlikely that Mr AH would do it again. He was asked about Mr AH saying during the assessments that he thought Ms AN's contact should be supervised, a position Mr AH is no longer putting forward. Dr Willemsen thought this resulted more from Mr AH's fear of allegations being made against him rather than anything else. He thought that, for HN, the absence of conflict between his parents was essential and it was fundamental that HN was able to see the other parent and to see the parents able to communicate with each other. The risks to HN going forward were also from a lack of proper and consistent contact with his mother if he lived with his father, and it could affect his attachment organisation being the third break in his attachment in his young life. His attachment to his father would provide some mitigation if he saw clear evidence of that attachment, and thought contact was good. As he put it: "This is a child who wants to see his father."

38 He thought the decisions to be made were very difficult. If HN lives with his mother, there is ongoing risk to HN if his view of his father clashes with his mother's view. He explained that this would put the child at some point in a very complex dilemma which could result in rebellion or more often results in the child aligning with the residential parent for fear of losing that parent. He thought this was a significant risk to HN. But the issue that worried

him even more was whether HN would manage the proposed transition to his father's care. He thought HN walking on his toes was not of great concern and reflected HN's anxieties.

39 Dr Willemsen approved the idea of HN spending part of the holidays in France with his father and ideally seeing him in between as well. Ideally, there should be some more time with Mr AH before the trips to France started, but he thought there was a danger of drift and did not agree with the time scale envisaged by the guardian. He thought it all should be got on with.

40 I asked him about the idea I had asked the parties to consider at the pre-hearing review that if HN stayed with his mother, there should be a condition attached to the child arrangements order that she ensured HN attended mainstream primary school. He thought that this was a really helpful suggestion, not only for the reason that the court put forward, namely to remove HN at times from a mother who had the difficulties set out by Dr Van Velsen, and to assist with his hand-overs possibly, but also for HN's need for socialisation and to involve his father in his school life. He said: "It is about social relationships. I think it is very important. He needs to develop his own world away from his mother. Research shows us how important for social and emotional development and ability to learn that people do things differently and I would very much like for HN to have this. This is not a criticism of Ms AN." Dr Willemsen said he was not saying he has not thriving with home education, but: "It is important for him to have his own space away from his mother."

41 Dr Willemsen agreed with the guardian's suggestion of a family assistance order, but was slightly critical of the current guardian, who appeared to be reviving issues of domestic abuse in her report. He said: "Those have been dealt with and the case is really about the complex relationships between these two people, Ms AN and Mr AH."

42 I agree with everything Dr Willemsen said in his written and his oral evidence and have found his insight into this family and these proceedings of the greatest assistance. In my judgment, Dr Willemsen has understood this family, the strengths and weaknesses of each parent and HN's current situation and needs. It is my sincere hope that the parents will both do more than pay lip service to these two reports (that of Dr Van Velsen and that of Dr Willemsen) and, most importantly, not just what is said about the other parent but about themselves and HN. It is to be hoped that, once the decision is made now about with whom HN will live, both parents can reread the reports and consider what they need to do differently and take the reports to their respective therapists so that change and insight can happen.

43 The evidence of Mr AH. I particularly recognise that for Mr AH to have had to go through, in effect, three trials and a Court of Appeal hearing, to have been without any legal help at least for the litigation in front of me has been very demanding. It is all the more so as it has been in a foreign country and in a foreign language. He told me at the conclusion of giving his evidence that: "Everything I need to prepare take days to write and to read all this. It has got hold of my life. It is debilitating. I feel I am fighting a mountain." His exhaustion has been palpable to the experts who saw him and to the court.

44 In his statement which Mr AH filed after the fact-finding hearing, he set out the plans he has for HN if HN lives with him in France. They look satisfactory in terms of accommodation, schooling and other practicalities. He tells me he is now in a relationship with a lady who has a son about three years older than HN. He tells me about HN's brothers on his father's side, who are now in their mid to late teens, and he also sets out his thoughts if HN stays in London with Ms AN and expresses concern that Ms AN will make false allegations against

him. He would hope to be able to come and collect HN and bring him to spend time with him and the older boys in France as much as possible.

45 In a statement prepared for this hearing. He says his relationship with HN is now secure after having had more time with him over the summer months. He considers HN is behind his peers developmentally and educationally. In particular, he considers that home schooling is affecting his social development and he does not think all his health needs are being met.

46 In terms of how HN would adapt to France, he sets out that SW France schools now offer particular assistance for children for whom French is not their first language. He repeats what he has said in his earlier statement that it is clear from what HN has said in contact that Ms AN refers to him as “the man”. Mr AH attaches to his statement some of the e-mails from Jeffrey Baker, the independent social worker who supervised the contact in 2021. It is important for me to note that Mx Baker, an independent social worker with whom I am familiar and with whom I am impressed, found that some of Ms AN’s complaints about what she said Mr AH had said or done were not true, and that Ms AN also misrepresented things which Mx Baker had said or done as well. Mr AH gives examples of how Ms AN’s behaviour over contact had affected HN.

47 In his oral evidence, Mr AH told me that when his contact with HN was reintroduced, he was relieved to see that the connection was still there. He said video contact can be difficult but generally works for them. Direct contact has been fine, with only one difficult hand-over in August. Hand-overs are always with Ms AN’s neighbour, T. He has seen some of HN’s difficulties, such as walking on his toes and having odd thoughts. He has not challenged HN at all but had discussed things as HN has brought them up.

48 I put Ms AN's various allegations made since the fact-finding hearing to him and he denied them all. In particular, he told me he has no desire to control Ms AN in any way, and his visit to a leisure centre, which he knows from when his older sons used to visit, was to look at whether HN could go swimming or another activity there, not for the sinister purpose which Ms AN puts in her statement. He remains concerned about aspects of Ms AN's physical care of HN and he has reservations about HN's life with her. He finds it hard to comment on Ms AN's assertion that HN was "hugely regressed", but he doubts that is the case and points in particular to HN's rich vocabulary, whereas HN had speech problems when he first cared for him in January 2019.

49 Mr AH is very keen for HN to attend school. He can see that the move to live with him in France could be traumatising, but also thought that the *status quo* was traumatising for him. In his view, he could help HN through any trauma and he would access the equivalent of CAMHS. He was definite that he would not cut HN off from his mother or maternal family; quite the opposite, he said. He explained that he had been thinking about the supervision of the mother's contact in the context of his fear of allegations being made against him by Ms AN, but was not pursuing that. He hoped that, either way, the two parents could share some of the travel and he would assist with Ms AN's costs if HN lived with him. He was struggling to see how the future would look if HN did stay in London as he was not going to be able to come over as frequently. He told me he needed to give time to his work. He had other family commitments and I got the impression he had to give time to his own well-being. He agrees that HN needs to see both parents and thought that the risk to HN experiencing the residential parent showing negativity about the other parent was less if HN lived with him.

50 Mr AH again impressed me in many ways. There were special measures in place, as there were for the fact-finding hearing, and Mr AH complied with good grace to the many requests of him. He has remained unfailingly polite while involved in his hearing and has tried to assist the court to reaching the right decision at every turn. I continue to see him as a truthful witness who has HN's best interests at heart.

51 Ms AN's evidence. Ms AN also filed a statement after the fact-finding hearing. She sets out there how she remains frightened of Mr AH and finds it very difficult to contemplate HN visiting his father in France and cannot understand why Mr AH would think it best for HN to remove HN to live in France. She sets out how contact was progressing from her point of view and how she finds a lack of certainty as to when it is taking place difficult to cope with. She sets out her view of HN and the effect she has noticed on HN from the time he was retained in France by Mr AH. She then sets out at length what she provides for HN and which she considers meets his needs. She sets out her reasons for home educating HN and she thinks it is working well for him and denies that she lives an isolated life.

52 She also prepared a statement for this final hearing. I had given directions as to when it was served and its length. The parents were to file and serve their statements at the same time. Ms AN filed her weeks later and it was considerably longer than I had ordered. I, therefore, limited any examination-in-chief by Mr Hames. Ms AN says that contact has gone quite well and she says that she supports it, but suggests that Mr AH continues to abuse her in the correspondence leading to the making of the arrangements. Having read that, I am surprised, therefore, when I learn that the correspondence had been to and from her solicitor. She sets out many criticisms of Mr AH but says that she is confident that she can ensure that HN is not exposed to her anxiety. She tells me she is always positive to HN about Mr AH and encouraging about indirect and direct contact. She says she is attending online group

therapy and has completed the Freedom programme. The online group therapy was accessed via Solace, which is an organisation concerned with domestic abuse. I, therefore, am doubtful whether Ms AN has received the therapeutic support she needs for all of her difficulties.

53 Ms AN then sets out all the difficulties she says have resulted from the increase in direct contact from May this year, in particular, the ill effects she says there have been on HN. She sets out various behaviours of HN and what he has said to her, as well as various observations she has made of hand-overs (which her neighbour has managed and she was not meant to be observing) and video contact (which was she also not meant to be included in), all of whom are very negative about Mr AH. She sets out that his behaviour after contact has been difficult and, indeed, says that since July she says there has been a noticeable deterioration in HN's behaviour. In her view, interim contact has progressed too swiftly. She says that it was fine when the contact was supervised, but since there has been an extended time with his father, unsupervised, his behaviour has worsened. She believes there should be a reduction of overnights for some time that HN should receive help from CAMHS. She tells me she is prepared to have therapy, as Dr Van Velsen has suggested. She also says that she cannot afford to visit France as she lives on benefits, and she also cannot leave B, her elder son, even for short contact visits to France.

54 She showed her current emotional dysregulation in the hearing, unfortunately, by not being able to enter the courtroom despite the special measures in place at the time that was set for Mr AH to give his evidence. However, later that day, she was able to enter the courtroom and give her evidence. The first part of her evidence was given in a cheerful and positive way. She told me about how she home schools and then answered the questions I put on behalf of Mr AH in the same manner. This continued when Mr Ashworth asked her

questions, the next day, about how things would be if HN remained in her care. She was able to say much that was positive about HN's time with his father and how she saw the benefits of it. However, when the questions from Mr Ashworth turned to consideration of HN moving to live in France, her whole demeanour and responses completely changed and she then portrayed Mr AH in the most negative and unrealistic way. In essence, she said that Mr AH saw her relationship with HN as a threat and she said he was trying to turn HN against her. Before this complete change in her responses, Ms AN spoke about her commitment to contact and told me all she does to promote Mr AH's image to HN. She was unable to accept any responsibility for the difficulties in her parenting HN and thought it was all Mr AH's fault, but told me she wanted things to improve and gave some ideas of what Mr AH could do to achieve that. She said that HN should have a great deal of contact with whichever parent he was not living with and said that practical arrangements, if HN lived with her, would be manageable. She had not taken any steps to get referred to psychotherapy since the receipt of Dr Van Velsen's report, but was willing to do it.

55 Ms AN told me at length about the home schooling and how HN gets to spend time learning with other home-schooled children regularly and about their activities which add to his education. She thought contact had been going well and that HN loved his activities with his father. She was worried about a recent hand-over which Mr AH also said had not gone well. It was of note that Ms AN filmed this one hand-over that did not go well, which certainly suggested to me that she had for some reason known that it was not going to go well. She told me she would promote contact if HN lived with her and would always put a positive image of his father to HN.

56 As I have said, I was alarmed by the change in Ms AN when she was asked about the possibility of HN moving to France. The picture she tried to present of Mr AH in that

scenario was frightening. She said he would dangle HN in front of her but not let her see him. My conclusions were that Ms AN has not made much progress since the fact-finding hearing. It is unfortunate that she spent a large part of her statement talking about the need for Mr AH to have various interventions but very little talking about the interventions that she needs, even though Dr Van Velsen considers that she needs various long-term interventions and Mr AH does not. I note that Dr Van Velsen said, “I am concerned that she feels that changes need to be made by others but does not reflect on what was described in the findings. Further treatment might enable her to work through this in a more use useful way”, and I very much agree.

57 Throughout her statement she makes very negative comments about Mr AH. She makes many of them as if she is talking about established fact when it is not. She also suggests that the court should make negative conclusions about Mr AH on a large number of issues based on her own assumptions or interpretation. There are numerous examples of this. She says that Mr AH blames her for the lack of progress and delay in him spending time with HN. He she says that he thinks she is alienating HN from him and making contact difficult, but that is not how Mr AH has put his case. She says that Mr AH hates her and hates her flat, whereas this is not established; and, in fact, Mr AH comments on how nice her flat in is in his final statement and he told me these are not his views. She implies that he is a stalker because it appears that when Mr AH visited the leisure centre he asked questions about HN’s attendance at swimming, which only suggests that her own anxieties are not properly controlled.

58 I reject the allegation she makes in her statements about Mr AH and his behaviour towards HN and how HN has reacted to contact. This is because I am cautious about her ability to be honest about Mr AH’s behaviour and the effect on HN as a result of my previous findings

and because I consider, again, that Mr AH is truthful. It is also on the basis of what the experts have told me about Ms AN's difficulty in thinking about Mr AH as he is as opposed to how he is in her fantasy world. I have to be cautious in considering her accounts of HN's reactions of spending time with his father also because I have independent evidence that when he is with his father things go well. It is of concern to me that she represents Mr AH and his behaviour wrongly. It is also a concern that she rejects my judgment in the fact-finding hearing. It troubles me in many ways but it is crucial for HN's future that the parents work on established fact as to the past. This is so that he is not fed misinformation, either directly or indirectly. It is also so that both parents can work on the basis of that judgment and this one to promote all of HN's welfare needs going forward.

59 I consider the need for Ms AN to access therapy with a therapist (who has a copy of my two judgments and the reports of Dr Van Velsen and Dr Willemsen) to be urgent and of crucial importance. Dr Van Velsen was hopeful that Ms AN could be assisted in this way and it is vital for HN that Ms AN is assisted in this way. I can see that Ms AN is a loving mother who wishes to put her children first. However, at this point, she needs assistance to do so consistently and in relation to all aspects of HN's needs.

60 There is also a statement from HN's maternal grandmother, G AN. She is a retired teacher. She sets out a bit about Ms AN's early history and gives her account of what she saw when HN's parents were together and since. She makes some allegations about Mr AH. Nobody wanted her to attend and be challenged. I did not spell out to Mr AH that if his grandmother is not challenged it could be said that Mr AH accept what she says. I did not think it would be of assistance to my task this week to have her give evidence about what she wants to say now about what Mr AH did or was like in 2018 and before when she was not called as part of the fact-finding hearing. She also thinks HN had regressed on his return from his father's

home in 2019 and that it took a long time for HN to recover. She tells me she spends time with Ms AN and the two boys, seeing them each week. She describes Ms AN as “strong, resilient and resourceful”. I do not give much weight to the grandmother’s statement as I do not think she is in a position to give me an objective view.

61 The evidence of the guardian. Ms Fox has only been the guardian since May and did not have the opportunity, therefore, of observing the fact-finding hearing or of interviewing HN and his parents in the earlier stages of these proceedings. It has been a disadvantage, but, of course, not of her making. Her report is dated 2 September 2022 and follows her review of the evidence for this hearing, her interviews with the parties and HN. She sets out her understanding of the background and the findings this court made. She says that hand-overs for contact both parents acknowledge have been difficult. She reports that Mr AH considers that his time with HN has developed positively, whilst Ms AN reports that HN is emotional regressing. She considers that HN’s emotional welfare is a cause for worry and believes that these parents are not yet able to co-parent him effectively without the support of an external agency. Ms Fox has observed HN with each of his parents and describes HN being relaxed with each. She has no concerns about either of their homes or about the basic care provided by the parent. She has found HN himself difficult to engage with.

62 When she spoke with Ms AN, she heard that Ms AN does not believe Mr AH has appropriate parenting skills and she sets out Ms AN’s distress at the prospect of HN visiting his father in France. When she spoke with Mr AH, she heard that Mr AH remains concerned about Ms AN’s parenting and her mental health and would envisage Ms AN having supervised contact. The level of mistrust between these parents concerns her because of its inevitable impact on HN. She worries that violence in relationships may not have been explored with Dr L, who has been working with Mr AH, and can see a benefit

from understanding the dynamic of domestic abuse further to move forward in a more proactive co-parenting manner. I agree with Dr Willemsen that these comments summed up by the guardian in her report are unfortunate and misplaced. Fortunately, they do lead on to any specific recommendation and in her oral evidence the guardian was clear that she was not supporting anything like a DAPP for Mr AH, but thought there should be work within his therapy about interpersonal relationships. She goes on to say:

“In my opinion, both parents have a standard of parenting which they do not think the other can meet. They both view themselves as a safe haven for HN, protecting him in the other parent’s poor parenting capacity.”

It is a priority for her that both parents must seek to minimise the impact that their behaviours have on HN and that they must both seek to work more collaboratively together.

63 She notes the brotherly relationship between HN and B. She did not have the opportunity to observe HN’s interaction with his other brothers and thinks that that relationship and the involvement of HN’s grandmother could be protective factors in his life with his mother.

64 She considers Dr Willemsen’s report and she looks at Ms AN’s background and past mental health difficulties and the outcome of the fact-finding hearing in Dr Van Velsen’s report. Similarly, she considers what Dr Van Velsen says about Mr AH and thinks that Mr AH could benefit from some parenting work. She refers to Dr Van Velsen’s doubts about HN being home schooled in the context of her opinion about Ms AN’s functioning.

65 Her concerns about the proposed move to France are that HN would struggle in finding himself in school there, which is not something he has experienced, and where a language is spoken which, currently, he does not speak. She is worried about the supervised contact being proposed by Mr AH, which the guardian considers to be an extreme position. I have already said that is no longer Mr AH’s position. Such a reduction in HN’s relationship with

his mother could have an irreparable emotional impact on him, she says, in court to me. Wherever HN is, the guardian fears that contact arrangements will not be managed well by them and thinks that the local authority, either here or in France, would have to be involved. She considers that Mr AH underestimates the impact on HN of his plans and recommends that if HN is to move to France it should take place in a planned way, with psychological support in place here and in France. If HN stays here, the issues are whether Ms AN can promote HN's relationship with his father and the impact on HN of her, at times, fragile, emotional health. Importantly, having pointed out how both parents continue to make allegations against the other, Ms AN particularly about that Mr AH is abusing her by his application and his conduct of his case, Mr AH by looking for evidence from HN of Ms AN's lack of parenting skills, she says this:

“If his parents do not seek to stop this behaviour immediately, then they will place him at risk of significant emotional harm.”

I completely agree.

66 Ms Fox concludes that her recommendation is finely balanced. She goes on to say that HN should live with his mother and should have regular contact with his father, initially continuing in the UK and then moving to France. She thinks that psychological support should be accessed for the move to contact in France, there should be a family assistance order to London to work with HN and should include ongoing assessment of the parenting capacity of his parents. She recommends a family group conference to help with contact and to monitor and to assist.

67 In her oral evidence, she told me that she found this case difficult in part because she had not managed to get to know HN well, but she could see he was happy with each of his parents. She was asked about the home schooling as opposed to primary school and she remained

neutral, but could see and she agreed with the positives that Dr Willemsen had set out. I am slightly surprised she remained neutral on that point, seeing it was so strongly put by Dr Willemsen. She told me about the evidence of home schooling she had seen, including about activities outside the home, but agreed there was no independent evidence of HN's education otherwise.

68 Her recommendations remained as in her report. She found Dr Willemsen's evidence "compelling", as did I, and was as worried as he was about the possible "trauma" to HN. She said the parents "owed it" to HN to do all they could to make it better for him. She thought it was very important for HN to have a great deal of face-to-face contact with both of his parents, both of whom he loved and was relaxed and comfortable with from her observations. She saw the risks to him which Dr Willemsen had identified, but thought he had stability where he currently lives and that all those around him need to try to make that work rather than move him now, which I thought it was well put. She felt somewhat reassured that Ms AN would allow HN to have the relationship he needed with his father because that is what has been happening. She was more reassured, having heard the evidence, that Mr AH would make contact work for Ms AN than she had been before. She explained that the local authority should have the family assistance order rather than Cafcass because of the local authority's ability to provide and access services for HN which Cafcass could not. She was sure that HN needed ongoing professional support and CAMHS (or its equivalent wherever he lived) needed to be involved. She agreed with there being as much contact to the non-residential parent as possible. She accepted that there is no difference between Mr AH spending a week with HN in France, so there was no real need for contact to go on in England for much the longer.

69 I think that the guardian, through no fault of her own, had been hampered by her lack of previous involvement in the case. She has, to my mind, in her report sought to give equal weight to the difficulties of the parents, possibly to give more weight to the father's difficulties, whereas I have no doubt, as do the other experts, that Ms AN's difficulties are of greater magnitude than Mr AH's. However, overall, I think she has identified the most important factors and given me helpful advice as to the way forward for HN.

70 Turning now to my analysis. I have found this a particularly difficult case. The factors which have made it so include the following:

- (1) the background of the two fact-finding hearings and the appeal combined with the case becoming the lead case on the approach to fact-finding hearings;
- (2) the length of time these proceedings have taken because of the appeal and then ill-health of the guardian;
- (3) the fact that Mr AH, although articulate and able, is a litigant in person conducting proceedings in a foreign jurisdiction and in a foreign language.

71 Because of the geographical distance between the parents, the options the court has do not allow for any middle way. The court would have been attracted to an outcome which allowed HN to live with a shared care arrangement between his parents so that the strengths and weaknesses of each parent could be usefully balanced out to HN's benefit. This is impossible so the options are stark: he either lives with his mother in this country or he lives with his father in France.

72 There are difficulties for each parent if HN lives with the other to make contact work well and effectively. Ms AN is on benefits and travel to and from France would be practically

very difficult. Mr AH is trying to maintain his business and his other relationships in France, so frequent trips to this country are also difficult. Because of the history and psychological make-up of each parent, contact arrangements are going to be extremely difficult to manage for HN.

73 I have no doubt at all that HN needs both of his parents prominently and significantly in his life. The history shows that Ms AN, for various reasons, finds it hard to see HN's need for contact because her own perception is that Mr AH is a negative force. Mr AH thinks that Ms AN has so many difficulties as a person and a parent.

74 I am going to go through the section 1 of the Children Act now, including a detailed examination of the welfare checklist and how I assess it relates to HN. Section 1 of the Children Act tells me that:

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

(a) the upbringing of a child,

....

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

75 I have deliberated on how to put HN's welfare first since the pretrial review (and earlier of course) and throughout this week. I do not think that there is a clear answer, but I think that all I can achieve is the best answer in the circumstances which I have set out.

76 As I have said, if Mr AH lived in this country it is likely that I would order some form of shared care so that HN could live with both of his parents. I think that would best meet his needs. Although this would have presented difficulties, no doubt, because of their different approaches to parenting, I think he would have thrived. It is not possible. I cannot

emphasise enough what comes from all the professional reports that for HN's sake both of his parents must change their approach and must work together.

77 If either parent continues in the current vein, I am sure that HN will suffer significant emotional harm, which neither parent wants and this certainty is based on, in particular, the reports of Dr Willemsen and the guardian. Ms AN must work, probably with therapeutic support, on not seeing Mr AH as a danger and learn to accept that he has much to offer HN, who is also his son and whom he loves as much as she loves HN.

78 Mr AH must work to accept that Ms AN may have emotional difficulties and at times mental health difficulties and be unconventional, but that she provides a loving home for HN where he thrives in many ways and that she loves HN as much as he does. It is vital that each can promote the other to HN.

79 Both parents, to my mind, struggle to understand whatever they say, that the other parent is very important to HN, but their ability to do so I think will be crucial to HN's welfare for the rest of his childhood.

80 Subsection (2) refers to delay and I have already said that I have no doubt that delay has not helped HN. It has made things worse for him. I think everyone wants this to be the final hearing, and I agree with that, though I may not be able to make final orders today though I will set out what those orders should be. It has been tempting to make further interim orders, but the guidance from the President is clear that...

[Pause due to technical problems]

The guidance from the President is clear that parents must be allowed to exercise their parental responsibilities once the court has resolved the issues which it has been asked to

resolve. Although I have doubts as to the future, it must be for the parents (each of them) to work with the decision of the court, to work with the professional help available to them in HN's best interests. It is essential that, as the guardian said in evidence, all aspects of the order I must be complied with.

81 Turning now to the welfare checklist, first, HN's wishes and feelings. It is an unusual feature of this case that skilled professionals, both Dr Willemsen and the guardian, have been unable to discuss HN's wishes and feelings with him, though I think Dr Willemsen from his evidence got more a sense of HN than did the guardian. What I do feel confident in saying is that I am sure that HN wants to be able to enjoy full relationships with each of his parents and all three of his brothers. I am sure he would not want to be the cause of parental anxiety and conflict because it makes him unhappy and anxious. That is clear from the evidence.

82 I have no doubt that he is experiencing confusion and anxiety at the moment and that he is well aware of the conflict around him. What nobody has mentioned is that HN lives with B, who Ms AN described as "too frightened" to see Mr AH when Mr AH returned HN after contact and too frightened to visit France. I have no idea as to the reality of this, but it is impossible to imagine that HN is unaware of his brother's feelings and this must add to his confusion. This is something else which Ms AN must protect HN from.

83 The guardian, when recommending that HN remains living with his mother says it may be that in the future HN is able to say what he wants and that he might be saying that he wants to live with his father. I am able to conclude from the evidence that HN is happy with both of his parents. It appears that he may not be able to conceive of leaving his mother's home and her care and he has no understanding of his father living a long way away. I think it is

likely that, at this stage, if he did understand such issues, he would prefer to stay with his mother and B because that is what is familiar and that is where he is happy.

84 I am also sure he would not want to be separated from either parent for more than a couple of weeks at the time, if that is possible, and that he would want to spend good-quality, long periods time in his father's care and with his other brothers if he remains with his mother, and similarly if he moves to his father.

85 His physical, emotional and educational needs. I consider that both of his parents can meet his physical needs. There are allegations on both sides, but the professional evidence is that both parents can meet his basic needs and I do not think it helpful if I look further at what each parent says about the other in this regard. This is exactly the sort of area where the parents need to trust each other, recognise that parents parent differently and it may be an easier area where this can be achieved than others.

86 HN's emotional needs have been looked at in detail by the experts. I have said that I do not accept the many allegations made by Ms AN which could come under this heading, for the reasons given. I have also stressed HN's overwhelming need for the parents to manage to co-parent and to accept that the other parent also wants the best for HN. Conflict is likely to cause HN emotional harm. It is vital that those both parents are wholly positive about the other parent and ensure that others around HN are similarly positive.

87 It is vital for HN that the residential parent ensures that HN sees a great deal of the other parent. I might be repeating myself, but I find it necessary to do so.

88 Dr Willemsen reported that HN suffers from anxiety and that it was wrong to attribute all that, as Ms AN does, to the period when he was separated from her in 2019. Dr Willemsen

raises more concerns about Ms AN's ability to meet HN's needs than Mr AH's ability because of her mental health difficulties and anxieties in particular. However, he also considers that to move HN, a child who has been separated from each of his parents for lengthy periods of time, to France would be likely to cause him further short and medium-term trauma. He is more worried about this than about the other risks to HN. I will return to this when considering the impact on HN of changing his circumstances.

89 What I will say now is that it is the case that Ms AN has ensured staying contact has happened as per my order and she has assured me that she will ensure that contact continues, according to what I order. I do think that Ms AN can see the benefits to HN of maintaining contact with Mr AH, but she urgently needs assistance to understand that it is not to be on her terms and not to look persistently for difficulties.

90 As for Mr AH, he has moved on from his previous position on contact and I do think he recognises the need for HN to have quality contact with Ms AN. Mr AH lives in fear of future allegations, however, for understandable reasons, but I do not think this fear would stop him providing the contact HN needs.

91 Educational needs for me are more straightforward. If HN lived with his father in France, he would attend a state school there and would, in time, benefit from all that school has to offer. The professional evidence raises doubts about the existing arrangement whereby Ms AN home-schools HN. Dr Van Velsen, in particular, thinks that might not be best for HN in the light of her difficulties. I am quite sure that HN should attend school. There are many reasons for this. One of his parents wants him to do so and Mr AH has never agreed to his son not attending school. Ms AN does have various difficulties and anxieties and the evidence, for example, from Jeffrey Baker is that she does not always protect her children from seeing the effects of these.

92 It is clear to me that if HN was to attend a normal state school each day, he would not only be protected from being exposed to his mother's anxieties as often but would have the opportunity of experiencing life as the vast majority of children live it. I do not want to be overly critical of Ms AN in this regard because I accept that she puts a great deal of effort into home schooling and is proud of what has been achieved. I suspect she has exaggerated all that she does; some of what she said was internally contradictory in terms of days and I also know she wanted to impress me.

93 In making this conclusion, I take into account the reports of the experts, but also the over-dramatic style in which she gave this evidence. But the guardian told me that it was clear to her that lot of home-schooling took place. However, Ms AN has no degree or even 'A' levels and it must be difficult to educate two children of vastly different ages in the full curriculum, and I have no evidence that this is working well for HN. The only document from London since HN became eligible for full-time education is a record of a telephone conversation with Ms AN.

94 My experience of the local authority checking of home education is that it is very superficial and tends to be more about looking at evidence produced by the parent rather than assessing what the child has learned against what the average child in school would have learned. In HN's case, I have nothing independent at all. It did seem to me that HN was not getting anything like the thirty hours a week education which he would get if he was at school. There seems to be a consensus that HN is behind where others of his age are, so it may be that he would do better at education if he was at school.

95 The most important factors here, though, are not the academic. Socially, I am sure that HN would benefit from mixing with other children of his own age, children whom he had

decided he wants to make friends with rather than arrangements made by his mother.

Ms AN told me that HN regularly goes to other homes to meet families, but it was all rather vague and I note that HN mentioned nobody in his life other than his brother to Dr Willemsen.

96 I also think that if HN was to stay with his mother, HN attending school can be of great assistance in terms of contact, as at some point soon it can be arranged that HN can be collected from and returned to school for time with his father. The most compelling reason though was what Dr Willemsen said in his evidence about the importance of HN having time away from his mother which ties in with what Dr Van Velsen said which I have quoted from.

97 I cannot see any strong reason for HN not to attend school. It is correct that he will be treated differently from his brother, but each child's need must be assessed individually and they are at markedly different stages of their education. From what Ms AN said, it appeared to me that B maybe self-teaches, so that he may benefit if HN is at school and Ms AN can work with him.

98 HN's mother's reasons for home schooling HN were not convincing in the face of all the contrary evidence, though she may possibly have had a reason to delay his starting school; I do not know. It seems to me that the decision to home educate HN was more about that that is how her family functions. Mr Hames suggested that the court should be cautious about compelling a parent in this way, but the evidence for HN to go to school, to my mind, is overwhelming.

- 99 Turning now to the likely effect on HN of any change in his circumstances. This, in Dr Willemsen's opinion, was the most troubling of the various risks to which HN was subject. Although in some ways it seems to me that Mr AH is more likely to meet HN's emotional needs than is his mother, and I also take into account here the report of Dr Van Velsen which raises many concerns about Ms AN's functioning; I am very worried about uprooting HN again.
- 100 If Mr AH lived in a different part of London, I think this could be managed. However, for HN moving now to his father would involve a change of home, a change of carer, a change in country, a change in method of education and a change of language. It would involve the loss of his mother whom he is used to having in his life on a daily basis and of B similarly. For HN, the child I have read about in Dr Willemsen's report, I think this may cause significant harm. Dr Willemsen told me that his attachments could be so disrupted that he could have long-term effects.
- 101 I have set out that I am concerned that HN would find it very difficult if he went to live in France, not because I do not think that Mr AH would not parent him well but because I doubt HN is resilient enough to cope with such a change. If such a change could be achieved without HN suffering unduly, he would still have to cope with the difficulties of rarely seeing his mother and brother.
- 102 It is a fact, however unattractive, that Ms AN will find it more difficult to take up contact with HN in France than Mr AH does with HN in England. Mr AH works and earns a living which Ms AN does not. Mr AH is a confident traveller and is fluent in English. Ms AN's anxieties are likely to make it difficult for her to take up contact in France. On the other hand, if HN stays here and Ms AN continues to criticise everything Mr AH does in relation

to contact, it is likely that she will make allegations based on her own anxieties, perceptions and/or mistrust of Mr AH and cause the contact arrangements to break down.

103 I am worried that once the proceedings are over this is exactly what will happen and I think HN will be emotionally damaged if his father was again removed from his life or reduced to a face on a screen or an occasional presence in a contact centre. It seems to me that if I order HN to remain living with his mother and she behaves in the way described, the arrangements would have to be reconsidered and, at that point, it would be likely to be that HN should live with his father.

104 His age, sex, background and any characteristics which the court thinks is relevant. He is only six. The background to this hearing has been set out and is contained in my previous judgment. The most important background matter is his need for both parents to be fully in his life and for each parent to move on from the view of the other parent which has been put forward by each of them in this hearing, in the trial.

105 There is no doubt in my mind from reading the professional assessments that HN has already suffered from the being in the midst of this long-running battle and from being separated from, first, his mother for many months and then his father for many months. I do not accept that the mother always succeeds in protecting HN from exposure to anxieties. The evidence is against that. I do not think she is always supportive of HN spending time with his father, as she claims. If she was, she would not have referred to him as “the man”, which Mx Baker says happened, and I do not accept HN was referring to Mx Baker. She would not have hovered around during contact and contact hand-overs and would not have spent so many paragraphs being overwhelmingly negative about the father and his time with HN. I think she has made some progress and can, as I have said earlier, see the importance of HN spending time with his father. She told me that HN loves him and enjoys his time

with his father. She assured me that she can allow HN to enjoy his time with his father, including going to France regularly, without letting her anxieties take over and ruin this for HN.

106 I think it is unhelpful to HN's well-being that Mr AH inspects him for physical problems to raise in the proceedings in his time with HN, but I know that the guardian thought he was careful not to discuss these matters in HN's earshot. It is equally unhelpful for either parent to take a film of HN at hand-over and I shall prohibit both parents from behaving in such a way. I do note that Mr AH is able to say positive things about Ms AN, for example, about her home, though he remains critical of most other aspects of her parenting.

107 Any harm which HN has suffered or is at risk of suffering. The risk to HN's emotional well-being has been a theme throughout this judgment and through the reports of the experts. Whether he has already suffered such harm is a topic I do not think it would be helpful for me to explore in any depth. Clearly, I have touched on this in the fact-finding hearing judgment. From the report, it certainly seems that he is struggling to be in the middle of this conflict. To encapsulate my findings under this heading, I agree with the views of Dr Willemsen and the guardian that HN is likely to suffer emotional harm if the conflict continues, if they are unable to find a way to endorse the trust and if they are unable to co-parent HN going forward. I think, on balance, the gravest risk to HN is if the proposed move to France was experienced as a trauma to him, as Dr Willemsen predicts, and that long-term effects on his psychological well-being ensue. I think he is at risk of harm resulting from being exposed to his mother's, at times, fragile mental health, or, if HN remains in her care, she makes it difficult or impossible for him to have a normal relationship or a relationship purely on her terms with his father. He is at risk of harm if he lives in France if he is able to see very little of his mother and brother. Being put into a

school in France, having been home schooled in England, when he speaks no French, is likely to cause him short-term harm. I find that the harm he is likely to suffer in the care of his mother is likely to be increased by her hostility towards the father and the harm he is likely to suffer in the care of his father is likely to be increased by his negative view of the mother.

108 I do not think in this case, and this is a very depressing part of my considerations, that the court can safeguard HN from suffering emotional harm going forward unless both of his parents are prepared to accept both of my judgments. I accept the views of the professionals, not just about what is said about the other parent but about themselves, can achieve real change for HN's sake. At this stage, Mr AH has developed more insight than has Ms AN, who, as the mother, has a more difficult journey to travel in any event. However, the situation which Ms AN can offer, which is stability and the continuation of much that HN is used to, is, on balance, a better situation for HN than that offered by Mr AH, in my judgment.

109 How capable each of his parents is of meeting his needs. Both parents love him very much. Neither would cause him any harm intentionally. As I said at the commencement of this judgment, if the parents lived in the same city, or even in the same country, I would have been most likely to make an order for shared care. It is not possible. Both can meet his basic needs. Both have attributes which can meet some of his other needs. I do not think, however, that either parent can meet all of his needs. For example, my impression now, over several days of hearing, is that HN's time with his father will be a relaxed and enjoyable time in which there will be time spent on outdoor as well as indoor activities. I doubt, however, that HN will be able to share with his father if he is missing his mother. That is in part because Mr AH says that HN never asked for his mother when he had him in

his dare in 2019, and it seems to me that Mr AH did not pick up cues which HN probably was giving to show that he was missing his mother. His mother, I can see, is loving and good at stimulating HN and time is spent well on art and cultural activities. However, I am equally sure that HN would not be able to discuss with his father that he wanted to see more of his father, for example. Although Ms AN no doubt disagrees, an objective analysis of her evidence shows that such strongly held perceptions of Mr AH is a danger to HN and there is evidence that she has not always been able to keep her anxieties to herself. I conclude, therefore, that HN would keep such views to himself. The evidence of the guardian and Dr Willemsen suggests that HN has learned to keep his wishes and feelings bottled up. This is not just about parents' capabilities and the risks each present. It is about the situation HN is in and would be in. I have found, on balance, that the risk to HN disrupting the stability he currently has by a move to France carries too great a risk of harm to him.

110 The powers I have. At the pre-hearing review, I raised the issue of a condition being attached to a child arrangements order in favour of Ms AN so that HN would live with his mother but attend a mainstream state primary school. This power is contained in section 11(7)(b) of the Children Act 1989 and such condition must be complied with by the person named in the order as the person with whom the child is to live. Mr Hames has argued against the addition of a condition to any child arrangements order made in the mother's favour as an infringement on her parental responsibility, but the father has always argued that HN should be attending school and would support such a condition.

111 In her final analysis, the guardian recommends a family assistance order pursuant to section 16 of the Children Act. This section allows the court to make an order requiring the local authority to make an officer available to advise, assist and, where appropriate, befriend. Those named in the order must consent, and they do in this case. The court can,

in particular, ask the local authority to give advice and assistance as regards establishing, improving and maintaining contact to another person named in the order. My concerns about the mother's emotional and mental health difficulties and the effects on HN are serious. The reported documents in the guardian's report shows a little boy who has anxieties and who displays some unusual behaviours. It is not all down to Mr AH retaining HN. The mother's anxieties and behaviours are also significant factors.

112 I have found there is more of a risk that Ms AN will seek to disrupt HN's relationship than Mr AH will with her. I have also found that Ms AN has made some movement as she can accept the love between HN and his father, that Mr AH would not intentionally harm HN and that it is in HN's interests to spend time with his father. I do not think that moving HN to France at this stage in his life would be the best thing for his emotional and psychological health either. I base this conclusion on the reports of the doctors and the guardian. I share the worries that the most obvious and potentially serious risk to HN is to move him again and that the resulting trauma, however hard Mr AH tries to alleviate it, may be too much for this vulnerable little boy.

113 I have, therefore, come to the view that HN should remain living with his mother under a child arrangements order and that Mr AH's applications for HN to live with him and permission to remove him to France must be dismissed.

114 It should be abundantly clear to all who hear or read this judgment that it is a very finely balanced decision. It is a final decision. I do not anticipate any further hearings other than one to make the order as I set out below. It is essential that all aspects of my decision and order are complied with and if for, example HN is denied the sort of relationship I have in mind with his father, the court may need to look again. If Ms AN can accept and carry out

my decisions about the times HN spends with Mr AH and other matters and control her anxieties, I think that HN's needs could be met by this arrangement.

115 There will be a condition of that child arrangements order that Ms AN must ensure that HN is on the roll of a local mainstream state school and must attend there full-time, after a transition period, and must remain there thereafter in full-time state school education. I make this order for all the reasons already given. It is most likely to afford HN the most healthy, emotional daily life, where he will be able to develop his own sense of identity, his own views, his own friendships, as well receive the best of education. I wholly reject the suggestion that such a condition takes effect in a year's time. There is no benefit to HN of all that and would only allow Ms AN, if she wished or was unable to help herself, to transfer any anxieties she has in this regard to HN and to have such anxieties entrenched. She has already identified the local primary schools. Ms AN and Mr AH should choose which one HN can attend, but it may be that the choice will depend on which school has a place available.

116 From after the October half-term 2022, HN should be gradually introduced to school, according to the professional advice of the school, and should be attending full-time by the start of the January 2023 term. The school must provide both parents with reports and invitations to events, although Mr AH is unlikely to be able to attend often. Similarly, the school must inform both parents if full-time attendance is not achieved as directed, and the school must be made aware that Mr AH is one of the people who may collect HN at the end of the school day.

117 Contact or time with Mr AH. This is very difficult, as I have set out. In the remainder of 2022, I very much hope that Mr AH will be able to visit HN and spend a few days with him

in England. He should then have HN to stay with him in France, beginning in December or at the start of the December holidays, for a week. As HN will be starting school in January, on this occasion I am not ordering half of the Christmas holidays because it will be important that HN is settled back with his mother for that event. Thereafter, Ms AN must make HN available to spend half of each of the three major holidays with his father. So, from Easter 2023, that applies and I am well aware that that may mean that HN spends some three weeks with his father next summer. In addition, if Mr AH can manage it, Ms AN must make HN available to spend alternate half-terms with his father, so that if HN spends summer half-term with his mother, he spends October half-term with his father. I think this is preferable to splitting the half-terms as it will enable Mr AH to take HN to his home in SW France if he wishes. In addition, if Mr AH can manage it, Ms AN must make HN available for an additional weekend in each half-term, but I anticipate those weekends being spent in England, though I do not stipulate it.

- 118 Mr AH has permission to remove HN from the jurisdiction when he is spending time with HN. If he is not going to be based in SW France, it is appropriate that Mr AH tells Ms AN in advance (four weeks' notice) of where they will be travelling to and provide her with the details of where HN will be staying.
- 119 The one-hour video contact a week must continue, or its equivalent, and, clearly, will be at a different time when HN starts school. When HN is on holiday with his father, Mr AH must make HN available for one video contact a week with his mother, or equivalent. If HN spends Christmas with his mother this year, he will spend Christmas with his father in 2023, and so on, so that one parent has Christmas and the other parent has New Year, as happens in most separated families who live a distance from each other. I think it possible that Mr AH will not manage more than three main holidays, but hope that he will also manage some

alternate half-terms, each of a week, in this country or in France, and additional weekends, if it can be managed.

- 120 I am not ordering more contact to take place in this country before the trips to France for various reasons, though If Mr AH can manage any further contact, it should take place, and Ms AN has assured me she will make HN available as long as she gets proper notice.
- 121 Throughout this judgment I am making decisions on the best that can be achieved. In this case, I do not think that Mr AH can cope with many more trips to the UK to spend time with HN, maybe none at this immediate time. I think it is very important to move swiftly to contact in France. The trepidation about trips to France, in my judgment, stems more from Ms AN's anxieties about it than from much to do with HN. HN is safe in his father's care and should now be able to spend time with his father in his father's home.
- 122 The order should set out that there should be such further or other contact the parties may agree in writing. It would be helpful if the parties, whilst the mother and HN were still represented, could decide now who has the first part of the school holidays, and so on, to minimise the potential for dispute in correspondence.
- 123 I declare that HN is habitually resident in England and Wales. I do not now think there is any real risk that Mr AH will again retain HN in France as he knows that the court in France will order HN's return to this country, and that his relationship with HN is likely to be severely curtailed thereafter.

124 The hand-overs for any contact which is to take place out of England should ideally be at the London airport at which the father is arriving, though it would be very helpful if, on occasion, the mother could take HN to France. If flight times mean that Mr AH is not planning to fly straight out again and will need to spend a night in the UK, or if Mr AH is spending time with HN in this country, then Mr AH should, from January, collect HN from school, if at all possible, but return him to his mother at the airport, or, if that is not appropriate, to her home rather than to school to allay Ms AN's anxieties about him not being returned. It is incumbent Ms AN to ensure that hand-overs happen whether or not she attends herself.

125 Ms AN shall hold HN's English passport; Mr AH shall hold HN's French passport.

126 Obviously, my order must be obeyed. But, for the avoidance of doubt, I order that Ms AN is prohibited from suspending or ending HN's time with his father unless the court so orders. The court means me, if I am available, and, thereafter, my successor as DFJ. For the avoidance of doubt, this means that she may not suspend staying contact with Mr AH, if advised to do by, for example, a social worker or a police officer, on the basis of allegations emanating from her or from HN until or unless the court so orders. This is because I have found that Mr AH will not intentionally do anything to harm HN and the risk here is that Ms AN will make or engineer allegations to interfere with contact. A professional ignorant of the background and of my order may consider that the contact arrangements should be changed and I want to prevent that from happening.

127 I prohibit both parents from taking photographs of or filming HN for the purpose of gathering evidence in future proceedings.

128 I make a family assistance order for twelve months to London and ask them to advise and assist Ms AN, Mr AH and HN and also to befriend HN, with a particular emphasis on ensuring that HN has the regular unsupervised staying contact with his father in the UK and in France, as per the order I am making.

129 I have been very disappointed at the inadequate e-mail received from London on 29 September in response to the e-mails and the documents sent to London by the child's solicitor. I accept that London have not had a great deal of time to deal with this. However, the response suggests that none of the documents sent to them have even been read. I do not feel I can make final orders today as I consider it necessary to direct the Director of the Children's Services at London to attend before me, or someone whom the director delegates to attend who is in a position to make decisions, so that I can be assured that what is written in the e-mail is not the position of London. If the court makes a family assistance order, it expects it to be carried out, which is the opposite of what the e-mail says. Moreover, this is an exceptional case and this vulnerable child needs the assistance of a local authority, as the children's guardian has so carefully set out.

130 I considered and dismiss the idea of making a family assistance order to Cafcass as the guardian tells me that Cafcass cannot do the various functions she has recommended. I will make the order that the social worker appointed under the family assistance order shall, in particular, give advice and assistance in maintaining contact time and ordering and report to the court in six months' time...

(Pause due to break in link)

131 I have now just found my place. I then said that the reasons why it has got to be London not Cafcass. Then I said the social worker appointed shall, in particular, give advice and

assistance in maintaining the contact I am ordering and to report to the court in six months' time as to the progress of such contact. I shall ask London to assist Ms AN in getting HN into regular and full-time attendance in school, as set out.

132 There should be a mirror order in France which the parents should seek, but probably Ms AN's lawyer should take the lead on as this is a legal issue. However, for avoidance of doubt, this does not need to be in place before HN visits France with his father as I have said retention not a real risk in this case any more.

133 There must be a transcript for of this judgment prepared and the public funding certificates of Ms AN and HN must pay for this. It is vital going forward that the parties and any professionals working with his family know what the court has said and why. I hope that Mr McGovern or Mr Ashworth can prepare executive summaries of the two judgments but I do not direct this if it will lead it undue work. If Mr Ashworth or Mr McGovern can do it, I do not consider it necessary for them to be agreed by the other parties and they can be headed that they are prepared by the child's solicitor or barrister as something to assist the professionals, but I am not wedded to that idea.

134 Dr Willemsen and Dr Van Velsen must be sent copies of the judgment, obviously London must be and CAMHS and any other professionals working with HN must receive them. So, London, CAMHS and any professionals working with HN must receive the two judgments and the reports of Dr Van Velsen, Dr Willemsen and the guardian and this order, and anything else you tell me you want to go. Both parents can clearly disclose the reports about them to their own practitioners. I have some experience of CAMHS refusing to read any documents, but I very much hope in this case that is not the case.

135 _____

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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