

Neutral Citation Number: [2023] EWFC 145 (B)

Case No: ZW22P01429

IN THE FAMILY COURT AT WEST LONDON

Gloucester House,
4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 24 July 2023

Before :

HIS HONOUR JUDGE WILLANS

Between :

A Mother

Applicant

- and -

A Father

Respondent

Jo Ecob (instructed by **IFLG**) for the **Applicant**
Kit Firbank (instructed by **RWK Goodman Solicitors**) for the **Respondent**

Hearing dates: 18-20 and 26 July 2023

JUDGMENT

His Honour Judge Willans:

1. To preserve the privacy of the parties I intend to refer to the applicant and respondent by reference to their roles as mother and father to the children respectively. I will refer to the children as R and M. The European country referred to within this judgment is anonymised as X. I intend no discourtesy by such usage.

Introductory Points

2. This judgment follows three days in court at the end of which I had the benefit of having considered the papers contained within the hearing bundle, the live evidence of the parents and the court reporter, Mr Dooley and the written and oral submissions made on behalf of each party by their respective counsel. I bear all of this in mind notwithstanding I will only focus on the most salient points within this judgment. The hearing proceeded on an attended basis save that Mr Dooley gave his evidence remotely. Participation directions applied in the use of a screen throughout the hearing. The hearing was listed as a 'rolled up' fact finding and welfare hearing however following discussions between the parties and upon my approval the fact finding was compromised on an agreed basis and the case proceeded on the question of welfare disposal only.

The issues

3. I have been asked to resolve the following questions:
 - i) Should the mother be granted permission to permanently relocate the children to country X? This is the central application raised by the mother and is opposed by the father. For the avoidance of doubt the mother made clear that were she refused permission to relocate with the children then she would not relocate.
 - ii) If the answer to (i) is yes then when should this take place? The mother seeks to leave this jurisdiction on Thursday 27 July 2023. The father argues that should permission be given then there should be a delay in her leaving to allow him to spend time with the children during the now summer vacation. He proposed a delay of at least two weeks for this purpose.
 - iii) If the answer to (i) is yes then what contact should there be following relocation? In essence the mother argued for a gradual development of extended holiday staying contact over at least a year with contact being both in this jurisdiction and in X. She further proposed the father have weekends in X every 4-5 weeks in between periods of holiday contact. It was agreed the holiday contact would be restricted to the vacation periods in X being Easter, Summer and Christmas only (with Summer being longer than the equivalent holiday in this country). Father contended for an immediate commencement of equal sharing of holidays with an addition of a further week in the summer period. This should take place in this jurisdiction. More regular contact would take place in X on a three-weekly basis over a weekend. Both parties agreed there would be weekly video contact.

- iv) If the answer to (i) is no then what should be the child arrangements in this jurisdiction? The mother argued the children should live with her and the current contact arrangements continue under which the father has alternate weekends and a Wednesday after school. Holiday contact should develop towards sharing on a stepped basis. The father contended for shared care with equal time with the children (whether a week-on week-off basis or some other form of division of the fortnight).

Background

4. The parties are aged 55 (mother) and 47 (father) respectively. The father is British and the mother is a national of X. They share a similar career history in government service for their respective countries. It is through this service that they first met in 2006. In 2009 they married in X and afterwards moved to live in this jurisdiction. As a result of this the mother gave up her career and took her pension whilst the father continued to work. Save for a limited amount of casual employment thereafter the mother has not worked.
5. There were two developments in 2015. First, the children were born in country X. Second, the father's work took him and the family to the US. They remained there until 2018. It is agreed the mother and children spent sustained periods of around three months each summer in X during this period. In 2018 the father's role in the US came to an end and he and the family returned to this jurisdiction moving into the area in which they continue to live. In about 2021/22 the father obtained a post in Italy for a period of at least two years. However, this was not taken up due to the parties separation shortly afterwards,
6. Whilst there is a lack of detail it is apparent the mother became aware the father had stored and posted online intimate images of her. She accessed this information and stored evidence of it on her own phone. This seems to have arisen in early 2022 but the exact timing is not clear. On 5 February 2022 there was an incident between the parents at home and in the presence of the children. The mother complains of an assault and the father of being bitten by the mother. In the course of the incident the mother's phone was taken from her by the father whilst she was filming him. She claims her actions were in part caused by fear that the evidence on her phone would come to be lost. The police were called and the mother reported the intimate imagery allegation. The father has been charged with assault by beating in relation to the incident and also in relation to threatening to / disclosing intimate images of the mother¹. These allegations are listed for trial in September 2023. Following this incident, the parties separated and have not resumed cohabitation. The father remains in the family home and the mother and children have been housed by friends. Following separation issues arose as to contact between the father and the children. The most that could be agreed was as to supervised contact.
7. In September 2022 the mother issued her application which is now before me. The mother has also applied for a non-molestation order which has come to be consolidated with the children act proceedings. The father countered by applying for

¹ Section 33 Criminal Justice and Courts Act 2015

interim contact arrangements. The hearing was allocated to District Judge level but has throughout been heard by me. I have conducted substantive hearings on 11 October 2022; 19 December 2022; 4 April 2023 and 2 May 2023. I do not intend to fully detail the procedural history of these applications that can be found in section B of the bundle. I will therefore highlight the key steps within the proceedings as follows:

- At the first hearing I accepted an undertaking from the father re drinking during contact. I ordered interim weekend and midweek visiting contact. I directed hair strand testing and statements from the parties setting out their allegations. I gave directions as to the management of intimate material having regard to the guidance of Knowles J in **M (A Child: Private Law Children Proceedings: Case management: Intimate Images) [2022] EWHC 986 (Fam)**. I made a non-molestation order relating to posting images and communication on a no admissions basis until the end of the proceedings
 - At the December hearing informed by the interim HST results I extended the weekend contact overnight and provided for Christmas contact. I considered there was a need for fact finding to an extent but considered this could be undertaken within a 'rolled up' final hearing. I directed a section 7 report. I directed relocation evidence, attendance at a SPIP and fixed a DRA. On 4 April 2023 I heard an urgent hearing re Easter contact and resolved the same.
 - At the DRA in May 2023, I listed the final hearing and gave appropriate participation directions. Issues relating to police disclosure were raised and I gave appropriate directions. Subsequently the police applied to vary these directions and the parties consented to the direction being discharged.
8. Prior to the final hearing the father issued an application to vacate the welfare hearing and treat the hearing as fact finding only. I indicated some concerns with this suggestion but indicated it could be considered as a preliminary matter at this hearing. On the morning of the first day of the hearing the parties also raised issues with perceived gaps in the report of the CAFCASS Officer. The parties were though able to narrow the fact-finding issues and Mr Dooley was kind enough to provide an urgent addendum report dealing with the gaps. This meant the first day of the hearing was lost but the case proceeded thereafter as directed.

Law

9. In considering the principles relating to relocation applications I am particularly assisted by **Re F (A Child) (International Relocation Cases) [2015] EWCA Civ 882** §§15-35. I summarise as follows:
- The issues as to relocation and the appropriate child arrangements in this case are all answered by the application of the children's welfare as paramount. This should be my guiding principle throughout. The welfare checklist highlights factors that will always assist the decision making of the Court. The extent to which an individual factor weighs will turn on the

circumstances of the case and in most cases certain aspects of the checklist will take greater weight. However, each of the factors (and all the circumstances of the case) should always be brought into the assessment.

- Specific case law such as Payne v Payne [2001] EWCA Civ 166 identified additional factors that might be borne in mind in relocation cases. However, these factors cannot diminish the centrality of the child's welfare. The welfare of the child cannot give way to the well thought out plans of a parent and the wish of a primary carer to relocate however genuine those wishes are unless the same is itself consistent with the welfare interests of the child. It will always be sensible for the court to reflect on these factors but the court should not elevate them beyond welfare. There certainly are no presumptions that the Court can fall back on other than a child is presumed to benefit from a relationship with each of its parents so long as the same is safe.
- The assessment I undertake should be holistic and should have regard to the positives and negatives of each proposal. The impact of the decision making I am asked to undertake may have profound implications for the maintenance of family life and so likely engages article 8 rights. As such proportionality comes into focus. However, in doing this it has to be recognised that this evaluation "may amount to no more than an acknowledgement that one option is better than the other and that the preferred option represents a proportionate interference in the article 8 ECHR rights of those involved". Equally the use of the word holistic should not lead to confusion. As has been made clear this 'is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant welfare checklist'

Evidence

10. Within their statement evidence the parents set out the allegations that they each made against the other. Save as I record below these no longer inform my welfare decision given the agreed concessions. I will though give a brief overview as it seems to me it might assist for the following reasons. First, when I come to evaluate the continued suggestion of obstruction of contact by the mother as alleged by the father it will be at least necessary to understand what she was alleging as her concerns at the appropriate time. Second, within the allegations one finds explanation as to the parties' respective roles during the relationship. I do though make it clear that in referencing these points I am not opening up consideration of the truth of the same.
11. In the case of the father his written evidence appears to make it clear the relationship between himself and the mother started to fail in the period after the birth of the children. He is highly critical of her conduct towards him in the period 2015-18 during which he claims he was not permitted to have a role in caring for the children and aside from limited points left the mother to provide primary care. He contends her conduct was controlling of him and points to certain events in their

relationship. He criticises her for an inability to maintain her self-control and frustration and is critical as to how she managed the children during such periods. This continued on return to this jurisdiction. On any reading of his statement, one has the sense of a relationship which is struggling along in a state of crisis. He references keeping recordings of events that happened. This is perhaps the clearest indication that all was not well. This culminated in the February incident which led him to conclude the relationship was over. The strong sense is that there was little emotional connection between the parents after the birth of the children.

12. For her part the mother describes a relationship in which the father was uninvolved in the care of the children and drinking too much. She details various concerns around his drinking and how this led to family disagreements and unhappy scenes. She claims this impacted on family events and left her concerned to leave him to care for the children alone. She raised this with the father's parents but whilst they acknowledged the issue, they took no steps to assist and on occasion in gifting alcohol exacerbated the situation. This left her having limited confidence in their ability to intercede if required. She claimed the father favoured R over M and as a consequence M's relationship with the father was less secure.
13. I should make clear that each of the parents deny the allegations made by the other in the above regard. They each have accepted these points should no longer form part of a fact-finding process. I approved this concession. The allegation of historic alcohol abuse would need to be assessed in the light of hair strand testing within the proceedings which did not evidence a clear problem. Further the allegation of favouritism seemed to me to be a matter of welfare only and had to be seen in the context of the mother agreeing to ongoing unsupervised contact with both children on an equal basis. Likewise, I considered the father's allegations to be of questionable relevance given the child arrangement proposals made on his behalf. In my assessment it was only the ongoing dispute as to those matters which are now found within the concession statement which prolonged the need for any fact finding. Now those matters are agreed fact finding was no longer required.
14. I turn to the concession statement. The parties have agreed the following statement which I approve and on which I proceed.

A. Images of mother on motherless.com

The Father is awaiting a criminal trial on this matter. The Father accepts that he is the owner of an identified account on motherless.com. The Father accepts uploading only original, unaltered images of mother. The father denies he is the author of altered images. Once father submitted the original images to the website, they were altered by other members of the website, and it is those members who added sexual, violent and other components. The Father denies disclosing any altered images. The Father closed his account

B. Assault witnessed by the children

On 6 February 2022, an incident occurred at the family home in relation to mother's phone where both parents allege, they were assaulted. During the incident the children witnessed this physical aggression between the parents. Following this incident, the father has been charged with

assault, he denies assault and awaits trial in September. The children witnessed the physical incident and suffered emotional harm as a result

15. I will provide a brief overview of each of the above:
- i) The images referred to of the mother are a combination of (a) otherwise innocuous images of the mother, i.e., non-intimate in character and but for the layering of other information they would be unproblematic in form and (b) images which are personal and intimate in quality. The latter include images of the mother in a state of varying undress and there is at least one image of the mother engaged in sexual intercourse. The former images have been layered with further information which transforms the image into one with a sexual or abusive overtone. This is typically by the insertion of third-party genitalia or sexual fluids. Some of the images depict men being sexually aroused whilst viewing images of the mother on the website. The impact is to demean the mother. Other images have been layered with violent imagery thus portraying the mother as the victim of serious physical assault, e.g., being stabbed. As noted above the father accepts posting all the images but denies any of the layering referred to above.
 - ii) The assault relates to an otherwise unremarkable event. On the day in question the father disciplined M and the parents argued. He left the home. Later the child was found to have a mark which was felt to be an insect bite and the mother was concerned to receive medical treatment. The father returned home and said he should not drive the child to the hospital as he had consumed alcohol whilst out. The parents argued over this and the mother took the child to hospital. Later when they returned the father was inspecting the child re the bite and the mother filmed him doing so on her phone camera. The father took the phone from her and she bit his chest in the course of the incident. The only issue between the parents was as to whether the father in taking the phone grabbed hold of the mothers' arms causing bruises.
16. Within her evidence the mother details various medical ailments which the children have suffered from and to an extent continue to suffer with. She explains how they have throughout their lives been under the care of a consultant in X and have travelled there for regular consultations and treatment in such regard. This appears to be a matter of fact albeit the father explains the mother has not shared with him the full detail of the concerns. He claims the mother is obstructive in such regard. Nevertheless, in the course of these proceedings I have now on at least two occasions permitted the mother to travel to X with the children in part to allow medical consultation.
17. In terms of the wider evidence, I will set out the key points merged from the written and live evidence.
18. The mother's central point was as to the unsustainability of her living arrangements in this jurisdiction and the benefit of the children being able to relocate with her to

- X. Since separation she has been dependent on the support of friends and cannot afford to rehouse in private accommodation. Notwithstanding what he says the father has remained within the family home leaving her and the children to share a bedroom in unsuitable circumstances. She is 55 years of age and has no real support network in this country and gave up her career on marriage. She is unlikely to be able to obtain employment that would fund accommodation in proximity to the children's school or the father and any refusal would likely cause her to have to relocate outside of the current area. She would find it intolerable to be placed in this situation. She makes clear she would not leave the children behind but would find a refusal and the consequential implications very difficult. She does not accept the father's suggestion of making resources available to her and appears to have doubts whether that will really change if the court refuses her permission.
19. She acknowledged the children have a good school but does not think this will be materially different if they move to X. In any event there are benefits in X as to free third level education when this becomes relevant. She may not be able to maintain the schooling in this country in any event if she has to move as she will have to do given her temporary supported accommodation has to be given up this month. She considers the practical arrangements for X are made out. She would live with her mother and the children in a property she shared with her parents and two siblings when she was growing up. It is a suitable home and the children have stayed there before. The children are bi-lingual and whilst they might require some initial additional assistance this would likely not be for long. The children are familiar with X and have spent significant time there. She claims the family were in any event planning to relocate there by about 2024 but for the separation. The plan was for the father to retire after the Italian post and for them to live as a family in X.
 20. She disputes obstructing contact and makes proposals for unsupervised staying contact. Her position is that as the father has not cared for the children for periods beyond a few nights this must be gradually built up to ensure it works best for the children. She does not accept that the children's welfare is consistent with a shared care plan were she to be refused permission. In such circumstances she would propose a continuing contact arrangement with holiday contact being gradually increased.
 21. She was optimistic as to her employment prospects in X when compared to this jurisdiction given her nationality, her career experience there and the wealth of network connections she has deriving from her employment and education in that country. She agreed she had potential in this jurisdiction to utilise her language skills but told me her actual formal qualifications in such regard only cover one language and in any event the terms of such employment may be difficult to work around the children. She had now spent her pension lump sum on legal fees and living costs and disputed the claimed access to joint funds. She denied having property in X on which she could draw and told me the land in question was owned by her mother.
 22. The father noted that removal would be just as devastating for him, in losing the children, as it would be for the mother if she were refused permission to relocate. He argued the mother's concession that she would not leave if refused permission

gave the lie to the suggestion that it was intolerable for her to remain. He felt she had effectively painted herself into this position to better suit her arguments. He argued she had options in this jurisdiction and had chosen not to seek his help to make her case stronger. He argued if permission were refused then he would ensure she was not left in unsuitable housing with the children. He disputed the mother had been the primary carer for the children notwithstanding he was the only one working. He argued for a full sharing of time with the children if permission were refused and as much time as possible if it were not. This was refined in submissions. He doubted the practicalities of the planning surrounding X. The accommodation relied upon was unsuitable for the mother and children as it was too small and fronted onto a busy street with little green space. It could not offer a guaranteed level of schooling akin to the one in which the children are currently placed. There was no firm evidence of employment options for the mother or obvious real support for her on a day-to-day basis. He argued the maternal grandmother had exhibited ill health for some time and would be unable to assist.

23. He agreed to the extension of the non-molestation order although noted it would have to be modified to permit necessary communication. He pointed to the positives he could offer. His work permitted him to share care as proposed and he was entitled to wrap around child care support. There was the potential for a property owned by him in Manchester to be sold to provide some support to assist the mother with housing and there might be options re subsidised housing provided by his employer. He has made offers of support which the mother had refused to accept. He believed the mother did have assets in X.
24. He denied telling Mr Dooley he agreed to the children relocating. Rather he had set out what he wanted if this happened and this had been misunderstood. Throughout the proceedings he had been consistent in his opposition to relocation and it was not credible that he would have changed his mind when speaking to Mr Dooley. He agreed there had been family discussion and agreement as to moving to X in due course but this was not in 2024. In this regard in his statement evidence the father suggested the agreement was as to being in 2030 when 'he retired'. However, he modified this in evidence saying that there was some flexibility as to this being earlier. He told me he would not have given up employment in 2024 as his pension would have been insufficient to support the family.
25. He told me he feared if the mother went with the children to X, then he would not see them again. In his statement evidence he had related a variety of matters that concerned him. In his live evidence he told me of the mother breaching a recent order by taking a trip on one of her weekends with the children without telling him in advance. He set out his proposals as to child arrangements on either outcome and argued this should be immediate. He noted the children's wishes and feelings but felt they may have been manipulated by the mother. He felt both the children and the mother were sufficiently resilient that they would cope if relocation was refused. He didn't agree refusal would have such impact on the mother as to negatively impact the children in her care. I was told the father's advice re the criminal proceedings was that he would likely face a non-custodial sentence if convicted. His

concessions before me mirrored the position in a defence statement before the criminal court. These concessions being insufficient to found a conviction

26. Mr Dooley ultimately supported the relocation application. He had considered whether there was a need for clarity out of the criminal proceedings before finalising matters but moved away from this and agreed there was a benefit in reaching final decisions. He gave advice as to resources that might be available to deal with the conduct agreed by the father but ultimately did not suggest the child arrangements should only follow after work had been done. He was inconsistent as to whether he favoured the mother's suggestion of gradually developing holiday contact or the father's suggestion of immediate sharing. He supported each when questioned by the advocate for the same. He reported the children had expressed views with M saying she wanted to live in X and R saying he wanted to live in each country. He made clear his assessment recognised these expressed wishes but did not base his conclusions on the same. He noted M was more aligned with the mother but did not see this as being a result of anything done by the mother but was likely a natural consequence of a child picking sides where there was conflict and M being closer to the mother and thus picking her side. When pressed as to the most significant factor that had caused him to come down in favour of the relocation, he told me this was about the children's overall needs and the capacity of the mother to meet these needs. It was clear to me he saw the mother as being the parent who would maintain the central role in caring for the children and that the ability of the mother to provide for the essential needs of the children would be negatively impacted if permission was refused when compared to it being given. He recognised the importance to the children of maintaining a relationship with their father but considered this could be maintained at a sufficient level were permission given. He noted that real shared care might be challenging on a practical level if the mother could not remain in the locality in any event.

My Analysis

Risk of harm

27. I have reflected on the perceived risk factors in this case but do not consider they are of such a nature as to materially impact on the ultimate child arrangements which should prevail in respect of each parent. In making this observation I do not intend to diminish the serious nature of the conduct contained within the concession as to intimate images. There is no doubt this conduct was highly reprehensible and is behaviour for which the father ought to be ashamed. Whatever he perceived to be the justification for his behaviour it plainly did not permit him to act in the manner he chose. His conduct robbed the mother of her autonomy as to her privacy and was demeaning of her personal and private rights. I consider the placing of the intimate images into the public arena is such that it matters little to me whether he was in fact responsible for the layering of further information on the images. He chose to share images that he must have known the mother would not have agreed to be shared. I struggle to understand why he chose to also post onto the same site the innocuous images but he must have been aware there was the potential for others to act in the manner he claims they chose to do. One of the implications of this is

that it has undoubtedly hardened the mother's attitude to the father. This was a gross infringement of trust and will have likely fundamentally impacted on the mother's future approach to him.

28. I take a similar approach to the incident involving the assault. The criminal court will ultimately determine the rights and wrongs of this event but I do not consider it impacts on the arrangements I should make. Viewed objectively and with hindsight and armed with all the information I judge it was unwise of the mother to commence filming the father when he was inspecting the child. This was a somewhat provocative action and likely caused the response from the father. However, I accept the mother became concerned that the phone might be lost with the evidence of images. But the father was not aware of this and I suspect the physicality of the incident reflected their different understandings. In any event the full detail will be resolved elsewhere. But on any basis, this was an isolated incident and there is no basis for considering it will likely be repeated or that the mother or children will be at risk in such a way if contact is to happen.
29. The conclusion in relation to this factor is perhaps inevitable given the current state of contact and the proposals of the parents which both provide for unsupervised contact whatever outcome I reach. I should also make clear that I can see no basis for expecting or directing work to be undertaken by either party as a necessary precursor to contact developing. It may be that if the father is convicted then some process of work will be required under a sentence of the criminal court. But that would be pursuant to findings in relation to the layered images which is not the case before me. I do not see any purpose or benefit to such work in the context of uploaded images in circumstances where before me the father accepts this was wholly wrong. Equally I do not consider the incident involving the parents justifies a requirement to attend a DV programme. My sense of that incident is that it sadly reflected the final crisis in the relationship but has no enduring relevance to this case.

Wishes and feelings

30. I have regard to the evidence of Mr Dooley as to the children's expressed feelings. M expressed a wish to live in X whilst R wanted to live 12 months in X and 12 months in this jurisdiction. But these are not views that in my assessment can possibly carry great weight in the overall assessment. The children are 8 years of age and whilst they have an appreciation of what being in this jurisdiction is about and what visiting X feels like they lack the age and understanding to offer a mature view on their future living arrangements. At face value R's views are conflicted and impractical. For my part I do not accept the children can be taken to express these views with an appropriate understanding of what any changes will mean for them in real terms. This does not answer the question before me but it is important that I make clear my reservation in placing real weight on this aspect of the checklist.

Are the mother's plans genuine and realistic?

31. I am in no doubt the plans are entirely genuine. This is a case in which the mother seeks the opportunity to return to her home country to rebuild her life following a period away. This is an emotion which whether supported by this court or not is one with which the court can empathise. Moreover, since marrying in 2009 the mother and family have been through a series of relocations. This has not been a family who have enjoyed stability in one location. Aged 55 the mother is seeking an opportunity to move with her young children to construct a base from which they can go on to enter adult life. These plans are plainly genuine in character. I discount any suggestion that this plan is motivated by animus to the father or an intent to separate him from the children. I will return to whether it may have this impact but I do not consider this to be her motivation. This judgment is supported by the very fact the family were planning to relocate to X in any event prior to separation. Having heard the evidence in this regard I preferred the evidence of the mother as to the family planning around relocating to X after 2024 rather than in 2030. I found the father's written evidence to be inconsistent with the evidence I then heard. The father's suggestion that 2030 was agreed did not fit with his live evidence that the mother wanted an earlier date and he did not agree. As the father told me he can retire now without loss of pension and I judge the family were planning to relocate after the 2024 posting and at a point where the parents would both have had final pensions and the lump sums associated with the same on which to build. Further one if not both of them would have been able to supplement the pensions with additional income. When I have regard to the lower cost of living associated with country X I have little doubt the planning was around a move at that time. As I raised with the father: what was the logic of moving in 2030 when the children would be 15 and just about to start their examination process? In response the father conceded this was not a fixed date and they might have moved earlier. In my assessment this underpins the logic of an earlier move to enable the children to embed into education and society prior to commencing the more significant parts of their education.
32. It may now be that this wish has been reinforced by the circumstances in which the marriage failed but this does not change the underlying motivation for the plan. I appreciate the father relates points and makes arguments in support of the contention that the mother will restrict contact and that if permission is given, he will not see the children again. I do not agree the evidence supports this contention. Whilst the mother has opposed development of contact, she has not opposed contact in principle. I have to bear in mind the views of the parties have been shaped by their experiences and the allegations on which they stand. I do not think the suggested breach of previous order assists me in any regard. I am bound to observe that continuing difficulties are as likely to continue as much on refusal as on permission. On refusal the mother might well harbour an increased animus to the father and it does not seem likely to me the parental relationship will be improved by the same. Of course, things might deteriorate were the mother to relocate but equally it might give her the confidence and distance to be more relaxed as to contact. In any event these points do not recalibrate my assessment as to the mother's motivations.

33. In my assessment the plans are realistic when one has regard to the key practical requirements. The children have strong associations with X and are bilingual. They have visited the country on many occasions and know it well. They were born there and receive regular medical care within that jurisdiction. The mother is a national of the country and has strong associations there having been embedded in national service throughout her career. Her connections and network of support there vastly outweighs anything she has in this jurisdiction. The children will have access to education at a good level although I cannot draw a direct comparison between an X school and their current school. Finally, the proposed accommodation in the home of the maternal grandmother would meet the needs of the family. In this regard I disagree with the criticisms raised by the father. I bear in mind this was the very home in which the mother and her siblings were raised and whilst it might be viewed as a compact apartment it is one which is suitable if I approve relocation. I accept the unchallenged evidence of the mother that this accommodation is available to the family long term and that there is room if required to reconfigure the main bedroom as the children's needs change. I place little weight on the father's criticism as to the surrounding streets and lack of green space. I sense this is simply a function of the style of neighbourhood found in that European capital and has no real relevance to the welfare needs of the children.

Is the father's opposition genuine?

34. I consider the father's opposition to be entirely genuine. He loves his children and finds it very difficult to conceive of being separated from them by such a distance with all the implications for child arrangements. This is not an attempt on his behalf to maliciously restrict the mother's wish to return home. Sadly, both of these parents cannot achieve the goal which is so important to them. This does not mean they are not both acting from a position of upmost genuineness. My view is not adjusted by my finding that the family previously planned to relocate in 2024. That was planned as a joint family relocation. That is no longer the case and there is therefore no rationale for holding the father to this plan. This does not mean that I accept all of his grounds for opposition are genuine. As I note above, I disagree with some of his criticisms as to the mother's practical planning. It is likely he has adjusted his view with respect to aspects of the planning to suit his own case. As a consequence, that which might have been acceptable for the family together is no longer acceptable to the father in the context of this plan.

The impact of refusal on the mother?

35. The mother will remain in this jurisdiction if she is not granted permission to relocate with the children. This plainly means that refusal is not at such an intolerable level as to cause her to separate from her children. However, I disagree with the father that this gives lie to the suggestion that refusal would have significant impact on the mother. In making this argument the father misses the point that the mother is comparing two situations of differing tolerability but that fact that one (leaving her children) is more intolerable than the other (staying in this country) does not make the latter outcome tolerable, it is just comparatively more tolerable. Having listened to the evidence and assessed both parents I found the mother's emotions in this

regard to be honest and genuinely expressed. It was plain to me she will find it very difficult to continue to live in this country and I do not consider she has either overstated her feelings or chosen to avoid readily available options in reaching this position. The reality is that she is a 55-year woman with two young children, no history of employment in this jurisdiction, a limited income and very little by way of a social support network. The parties married life has been transient in nature and this has led to a lack of time to embed into a community. Whilst I am in no doubt she is an intelligent and resourceful individual the challenges for her are high given the factors above and the comparatively high costs associated with living and raising children in London.

36. I find her emotional distress at not being able to freely return to her home country is exacerbated by facing the reality of what her lived experience may therefore look like as a result of the same. The sense I have is of her feeling trapped in a situation in which she feels she cannot properly provide for her or the children. Her distress at the notion of being dependent on state support was genuine. I listened with care to the suggestions that the mother has failed to utilise the support made available to her by the father since separation but did not find the criticism well aimed. The mother said she was left without a car when the father took back the car she had left with. The father responded that he had offered it to her. However, it was clear this was for only a limited period when the people with whom she had been living had travelled overseas. The father could not explain why he had not simply proactively provided the car to the mother in any event or why he took it back from her in the first place given it appears they have or had three cars at the time. The father suggested the joint accounts funds were left available to her to use. However, in his own statement he explains how he emptied these accounts when she withdrew £700 after separation. In his statement he indicated he would have made funds accessible if she had asked for support however this is not the same thing. Further at final hearing he sought to explain how the mother and children might return to live in the former matrimonial home. However, he could not explain why, if this was his case, this had not been suggested to the mother's solicitors over the last 18 months when she and the children have had to share accommodation in unsuitable circumstances. Ultimately the father's position appears to have been entirely passive with no active steps taken to provide the support he now claims would have been available. In such circumstances I struggle to understand how he can be critical of the mother. Further it raises doubt as to how much confidence can be placed into stated intentions with regards to his future conduct. I am left with the conclusion that the mother is currently struggling to maintain a home for the children. She is due to lose the shared accommodation this month having been given notice and has a real sense of hopelessness as to what the future holds. From her perspective the father has offered no solutions and can be expected to offer no real solutions. As such her plight is real and significant. She considers there is a real chance she will be forced out of the area. I judge this is a realistic prospect if permission is refused. The father suggests the mother can avail herself of housing options made available by his employer. Yet there is no good evidence to establish the same will be made available to her and this prospect has not been pursued or evidenced in advance of this hearing. I consider it is speculative and I should not resolve this case on such

speculation. Judged in this manner I consider there will be a significant impact on the mother of refusal. I consider there is a real risk this will be such as to impact on the care she provides to the children so far as their needs are concerned.

Impact of permission on the father?

37. There will in my assessment be a balancing impact on the father of the permission being granted. He will feel deeply hurt to see his children leave and he will retain some anxiety as to whether the mother will act to obstruct his relationship with his children. However, in contrast to the alternative prospective the impact on the children will be limited to the extent that child arrangements can be maintained and will further be limited by the fact that the children would not in such circumstances be living with the father and thus directly experiencing the emotional impact of the permission. It would be wrong to ignore this factor but it does not have an obvious and immediate impact on the welfare of the children.

The children's personal characteristics

38. I have regard to the children's ages elsewhere within this assessment. I have heard about the extent to which M aligns with her mother. In my assessment it would be harmful to her were relocation to create an unbridgeable chasm between her and the father. It is very important that each of the children have an opportunity to retain a strong connection to both parents. The children share their parents' mixed heritage and as such it will be in their interests to have the opportunity to experience life in both countries whether I favour the proposals of the mother or father. Linked to this is the importance to the children of wider family connections and the chance to maintain the same on both sides. I read about the children's medical needs. Although the mother has utilised medical care in X I do not see this feature as being one which assists with the determination I have to make. Plainly the children can expect to have their medical needs well met in either jurisdiction. Were they to stay here then they might continue to travel to X for occasional consultation on a private basis? If they live there then that will be the norm. Nothing much turns on this point.

Change in circumstance

39. The central feature is the impact on the children of a change under which they leave this country and relocate to X. This will come with positives and negatives for the children. I have little doubt they have the resilience to cope with an international move. They have led international lives for a good part of their short lives so far. The parents were planning to extend this to Italy but for the separation. Such a change will be made easier by reason of the fact it is to an environment with which they are very familiar and where there are wider family. But such a move will may lead to a very significant change in the time they spend with their father. This is a negative that cannot be overlooked. The extent of the impact would of course be a function of the opportunity the children have to see their father post relocation. It seems agreed they would see their father every three or perhaps four/five weeks in X. For my part as I will set out below, I struggle to understand why contact should be

reduced for the father on a regular basis whilst in X unless this is for reasons of practical impossibility. If the father would see the children every fortnight in this country and could afford to fund the same continuing in X then what would be the logic of restricting this? In reality it is nearly always the practicality of the same which limits what is possible. For these reasons I would favour the father's proposals as to three weekly contact were relocation permitted. In fact, this would likely be for two nights rather than one (as currently). However, I would expect a similar development in this jurisdiction in any event. Added to this would be holiday contact which on either party's case would approximate equality within about a year. Viewed from this perspective one can see there would be staying contact at least every month of the year for a full weekend with weekly video contact in between. Further in three of the months of the year this contact would be extended for up to about a week in Christmas and Easter and certainly within the foreseeable future for at least five weeks in summer. This would limit to an extent the impact of any change.

Capability of the parents

40. It seems clear to me that the parental roles taken on separation largely followed the roles they carried out prior to separation. In the father's own evidence, he details being allowed only limited involvement with the children whilst overseas. The sense he gives is of being controlled and somewhat excluded from their daily routines and decision making. Whether or not this is an accurate account it does suggest the mother was the central carer for the children. It is therefore unsurprising that these roles continued post-separation. Such a division of labour fitted with the fact the mother did not work whereas the father worked full time. I do not see the fallout from the marriage as materially shifting the responsibility each took for the children. I consider the mother continued to provide the vast majority of care because this is what held over from the marriage. The father has sought extra contact but the reality of his previous role was somewhat secondary in caring for the children.
41. This is not to say the father is an incapable father or one who does not want to be involved. But it does indicate the respective caring experiences of each of them. In my assessment the mother has shown a track record of caring for the children and has largely been responsible for meeting their needs and organising their lives. The father has allowed her to do this and to an extent she may have sought to do much of this alone as the relationship has faltered. The father is a competent individual and has shown an ability to meet the needs of the children whilst in his care during these proceedings.
42. There is nothing in the findings or evidence before me to restrict the father's time with the children based on welfare concerns. However, my assessment is that were I to refuse permission then I would be structuring child arrangements around the mother caring for the children and thus largely mirroring the current arrangements with the father having generous time with the children at weekends and during the holidays. This point would be further reinforced were the mother required to move some distance away for more affordable accommodation.

The needs of the children

43. The children have physical needs. I have explained why I consider these would be met in X. In this jurisdiction the father would be able to meet the children's physical needs during time with them. I consider the mother would also meet their needs albeit I accept the financial restrictions she may face would have some impact as to the quality of housing and other resources that might otherwise be made available to them if in X. I do not consider the mother would fail to meet their needs but I do consider what she could provide would fall below that which both parents would otherwise have expected to be provided for their children.
44. As to education I consider it is impossible and fruitless to try to draw direct comparisons between the children's current schooling and the future schooling they might experience whether in X or in this jurisdiction if permission is refused. I consider it is likely the children will continue to receive appropriate schooling. I am confident each of the parents are sufficiently interested in this topic to ensure the children will obtain the best available schooling wherever they live.
45. As in most cases it is the children's emotional needs which are at the forefront of this part of the assessment. These children have an emotional need for stable, consistent and predictable care. Such care typically requires an emotionally stable and available care giver. I am concerned that the impact of refusal on the mother may materially impact upon her such as to negatively impact the care she can reliably give to the children. I do not consider the mother has talked up this aspect of the case. I consider she would try hard not to allow her feelings to influence her emotional availability but I doubt she will be able to successfully do this at all times. It is likely the distress of refusal will not be a short-term knockback for the mother but will likely endure and fester as she comes to understand the lifelong implications for her if she is to remain close to her children, who will, of course become increasingly embedded in this jurisdiction.
46. A separate aspect of their emotional needs relates to an enduring relationship with their father. I am worried as to the potential for refusal to make the adult relationship harder rather than easier. But I recognise that within this jurisdiction the issues of contact will likely be more manageable in nature and thus will permit the children the emotional advantages of such a relationship. At all times their father will seem emotionally available whether he is living with them or not. This may feel difference if they have a sense of him being a geographically distant individual.
47. I have explained why I do not intend to place any real weight on the children's expressed wishes. In some cases, I would have to consider the emotional impact of me disregarding their views. I do not consider that is relevant here.
48. I do consider the children have an emotional need for a relationship with their wider families albeit at a different level entirely to their needs for a relationship with each parent. In my judgment this can be maintained by travel whichever country they live in. By necessity if they relocate, they will be closer to their maternal grandmother but further from their other grandparents and vice versa. However, these distances

have been overcome historically and there is no reason to believe this cannot be continued.

Range of powers

49. I have a full range of options before me and have the power to make orders permitting or refusing relocation. I can determine with whom the children live and the time they spend with the other parent. I can choose to place the children into the shared care of the parents whether on an equal basis or on some other shared basis. I should only make orders if they are required. In this case it appears clear there is a need for clarity as to the living arrangements of the children wherever they end up living.

Holistic overview

50. Were I to refuse permission to the mother then the children would continue to live with the mother and would likely maintain a developing relationship with their father based around weekends and holidays. I consider the midweek contact would be very vulnerable were the children to have to relocate to a cheaper location. This result would cause a change in schooling but as with the X option I am not willing to assume this would in itself cause harm to the children. This outcome would preserve the relationship with the father at a higher level than that available were the children in X. It would assuage some of the father's fears around losing contact with the children but I bear in mind I do not on balance accept the mother would obstruct contact as feared. However, there would be a danger that the refusal would further polarise the mother's views against the father now that he has robbed her of her future hopes, Furthermore I consider the mother's circumstances would likely be strained and this would place an unacceptable level of stress and strain on the mother and her household. I consider this would have a direct impact on the care given to the children.
51. If the children relocate then their day-to-day care will be properly met and their main care giver will undoubtedly be better placed to meet their needs. I have no issues as to their accommodation or educational needs being met. I consider there are no real grounds of concern as to their ability to adapt to this change given their historic experiences. Having heard the full evidence I am satisfied contact arrangements would continue and whilst these would not be quite at the level that would be expected in this jurisdiction, they would in fact fall not very far short of the current arrangements on a repeating basis. Taken with the holiday arrangements the children would have extensive time with their father. I have reflected on the practicalities of such contact and I am persuaded it would be workable. The father has a good income and highly subsidised accommodation. His net income provides the real opportunity to regularly travel to spend time with the children.

My conclusions

Should the mother be given permission to relocate?

52. I have reached the conclusion the mother should be given permission to relocate to X. These decisions are nearly always finely balanced and this case is no different. There is simply no way of softening the edges of a relocation plan to make it acceptable to both parties. Here I agree with Mr Dooley that meeting the needs of the children will suffer if permission is refused and the mother compelled to continue to raise the children in this country. The reality is that this family have lived an international life and they always planned a future in X. I have no doubt this has been centrally important to the mother for a long time and a refusal now which would be final in nature will have a profound and lasting impact upon her. I consider it will likely negatively impact on the children and on the separated parental relationship. In contrast I find it much easier to visualise the welfare needs of the children being met in a consistent and predictable manner whilst in X whilst at the same time enjoying extensive and valuable time with their father. In my assessment relocation is better for the children and is the preferred outcome for them. The interference it involves is proportionate in all the circumstances of the case.

When should this happen?

53. My starting view is that I agree with the submissions of the father as to their being a delay to enable some extended contact with him in this jurisdiction as part of the summer holiday contact this year. In my view a sensible route would be to delay travel for three weeks giving the father the first and third week of this period (w/c 24 July and 7 August). This would amount to the mother relocating around 11 August 2023. Against this the mother has booked flights for this week in part to permit a medical consultation prior to August break. I recognise such consultations have been part of these proceedings and I do not take the view the mother has acted wrongly in making these plans. However, were the children to leave this week as planned then I would expect the mother to return the children to this jurisdiction for at least two weeks with the father (whether in one block or two blocks of a week). Either way there will be additional travel costs. My conclusion is the mother may elect which approach she takes and must notify the father in advance of the handing down with the terms being included in the order. To avoid any doubt under the options:

- She would not leave now and the father would have the two weeks as above, or
- She would leave now and these weeks would be replaced with an equivalent period within the August period.

In my assessment whichever approach is taken would meet the holiday arrangements for summer 2023 with regular contact starting from September 2023.

Post relocation contact

54. I would have ordered weekend contact and shared holiday contact were I to have refused permission. I see no reason to materially depart from this solution save for

practical reasons. In reaching this conclusion I largely favour the proposals put forward by the father. There is no welfare justification for otherwise limiting contact:

- There will be weekly video contact on an agreed evening
- There will be regular three weekly term time visiting (staying) contact in X between school and the latest time on Sunday (up to 6pm) which would allow the father to catch his return flight. If this cycle leads to contact within a week of a holiday contact, then the father may elect to cancel that weekend and should give the mother at least one month's notice of his intention to do so. The first contact should be in the first three weeks of September. The contact will be in accommodation sourced by the father. The father will be responsible for the costs of the travel associated with facilitating this contact.
- The father will have 5 weeks in summer 2024 and every year thereafter being half the holiday. Unless otherwise agreed this will be in two blocks of 2 and 3 weeks respectively. This contact can take place in this jurisdiction if the father wishes.
- The father will have at least 4 days overnight contact each Easter. This should take place in X.
- The father will have one weeks contact each Christmas. This will either be the first week of Christmas to include Christmas Day or the second week of the holiday excluding Christmas Day. He will have the first week in 2023. This can be in this jurisdiction at his election. The second week will always commence on 27 December or 7 days after the first day of the holiday whichever is the later.
- As to periods in X the father will be responsible for the costs of travel. As to costs of periods in this jurisdiction (that is 2-3 times per year) this will be shared between the parents in equal shares (whether by sharing the costs or the responsibility for travelling with the children). The children will be expected to travel unaccompanied (subject to the airlines own policy) by the time they are 11 or earlier if agreed. The sharing of costs will include the costs of any adult accompanying the children. Flights should be booked in a co-operative fashion as early as possible to reduce costs. The mother will continue to hold the children's passports save when they are required by the father to permit him to travel with the children during holiday periods.

55. I am not required to provide for arrangements consequent on refusal but have indicated what my thinking would have included. I am entirely satisfied the above arrangements are both affordable and practicable and more importantly are consistent with the welfare needs of the children for an enduring relationship with both parents. I know not what will happen in the criminal trial. If the father receives a sentence which prevents him seeing the children, then the contact will be suspended during this period. I give permission for the final order and this judgment

to be shared with any sentencing judge although I of course leave to that Judge the responsibility for appropriate sentencing.

56. I extend the non-molestation as discussed at the hearing for a further period of two years from the date of the handing down. The communication paragraph will need to be modified to enable reasonable communications necessary for contact and in the event of further litigation for court related communications.
57. This judgment will be handed down as promised on Wednesday 26 July 2023 at 9.30 at a remote hearing and with a time estimate of 30 minutes. In advance of that hearing can I have: (a) Any corrections and/or requests for clarification by 10am on 25 July 2023, (b) A draft order by close of business on 25 July 2023. As I am not operating from my normal court next week, I would ask counsel to forward these documents to me directly.
58. I have given permission for counsel to be excused at the handing down so long as their client is represented. Can I have a list of contacts for the hearing attached to the order when sent to me. I am happy for this draft to be shared with both lay and professional clients.

His Honour Judge Willans