

IN THE CENTRAL FAMILY COURT

CASE NO: ZC23P00583

Neutral Citation Number: [2024] EWFC 287 (B)

First Avenue House

42-49 High Holborn

London

Before HER HONOUR JUDGE ROBERTSON

IN THE MATTER OF

SS (applicant)

-v-

JDS (Respondent)

Matthew Persson of Counsel appeared on behalf of the Applicant

Alfred Procter of Counsel appeared on behalf of the Respondent

JUDGMENT

3 OCTOBER 2024

WARNING: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and

members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Parties and applications

1. The child at the centre of this application is JS who is a boy who is now 4 years old. His mother, SS, is the applicant in this case. She has been represented by Matthew Persson of Counsel. The respondent is JDS and he has been represented by Alfred Proctor of Counsel.

Background

2. The mother in this case is German by birth and upbringing, and the father is Swedish. The parties met in 2015 and began a relationship. In 2018 the father suffered a psychotic episode and the mother supported him as he regained his health. In 2019 she became pregnant and in 2020 JS was born. At some point between 2018 and 2021 the father, in consultation with his medical advisers, came off his antipsychotic medication and unfortunately then suffered a second psychotic episode in Sweden in January 2021. He was treated in hospital. His mental health improved and he was discharged on aripiprazole, which is an antipsychotic. He continues taking aripiprazole to this day. The relationship deteriorated and at the end of 2021 the mother moved out of the family home with JS to a flat in the same building.
3. Contact between JS and his father has been taking place regularly. The mother has understandably been worried about the father's mental health and what would happen to JS if the father relapsed while JS was in his care and as a consequence of that, and certain other concerns that she had, she has insisted that all of the father's contact with JS should be supervised. She supervises it herself, either in her own flat or out in the community. This has led to the somewhat unusual situation that the father has been spending regular time in the mother's home, despite the fact that the parties are separated.
4. The mother has found it very stressful to supervise the contact in this way. For various reasons, attempts to move contact to a contact centre failed, leading to a

reduction in the father's contact last summer as the mother found the emotional toll of supervising so much contact to be too much. At one point, a few months earlier, she had reported the father to the police because she felt that he was being intimidating and aggressive. As a result, the local authority became involved and concluded that JS was safe in his mother's care. In April 2023 the mother made her application for an interim child arrangements order for JS to live with her, an interim specific issue order for JS to receive medical treatment in the form of vaccinations, and for permission to remove JS permanently from the jurisdiction to Germany. On 31 May 2023 the father made his cross application to spend unsupervised time with JS, including overnight stays. Other applications have been made along the way including applications to take JS on holiday to Germany. The only issues which remain live at this hearing are the applications for permission to remove JS from the jurisdiction and the application for unsupervised and overnight contact leading to a shared care arrangement.

5. On 3 October 2023 Cafcass provided a section 7 report recommending a shared care order for JS to live with both parents and a gradual progression of spending time arrangements moving towards overnight time and eventually shared care with JS's time split reasonably equally between the parents. The author of the report did not think that it would be in JS's best interests to relocate to Germany although she thought the mother's reasons for wanting to go were genuine.
6. On 3 July 2024 consultant psychiatrist Dr George provided a psychiatric assessment of the father saying that there was evidence from the medical history provided that the father was in a stable mental state, compliant with his medication and that he had insight into his mental illness. She confirmed the diagnosis of brief psychotic disorder with the differential diagnosis of delusional disorder. She found that he was in remission from his psychotic symptoms, that he had good insight into his psychotic symptoms and said his prognosis was good. She said "JDS is in complete remission from his psychotic symptoms and there is no contraindication from a mental health point of view for him to exercise unsupervised contact with his child... However, if he relapses, the psychotic disorder alone may affect the parent-child relationship. For instance, where the father's mind is filled with delusions and his interpretation of

events is dominated by such abnormal beliefs, judgement of intent and meaning of a child's action and the ability to respond effectively may be severely limited.”

7. Following the receipt of that report the court directed Cafcass to provide an updating section 7 report taking the psychiatric assessment into account and also requiring Cafcass to observe a session of contact between the father and JS which had not previously been done. The reporter who had written the original section 7 report carried out the observation of contact and spoke to the parties but was unfortunately unable to complete the report herself and Cafcass very sensibly took the decision that another reporter would complete the task rather than causing delay by starting again. That second reporter completed the addendum report in August 2024 based on the notes that the original Cafcass reporter had made. The conclusion of the addendum report was that the recommendations in the original section 7 report were unchanged and remained the same.

Positions of the parties

8. The positions of the parties have remained the same in the run-up to the hearing and throughout the hearing itself. The mother still wishes to relocate to Germany with JS, and to facilitate contact with the father in Germany on alternate weekends, or more often if the father can manage it. She considers that such contact should still be supervised. The father seeks the implementation of the Cafcass recommendations, with JS and the mother remaining in London, a shared care order being made, and provision for a gradual progress through supervised contact and overnight contact to an eventual split of time between the parents which is equal or roughly equal.

This hearing

9. I have conducted a four-day welfare hearing in relation to the remaining live issues. I have had the benefit of a bundle, all of which I have read. I have also read the other documents that have been handed up to me from time to time during the hearing. I have heard oral evidence from Dr George, from the second Cafcass reporter and from both parties. I have heard oral submissions from both advocates at the close of the evidence. I am now delivering this written judgement on day four of the hearing. There are no issues in this case which have caused me to consider that any party needs protection under practice direction 3AA, and nor is it a case in which a separate fact-

finding hearing is required because the issues which are at large are welfare issues, rather than free-standing issues of fact.

The Law

10. The decisions which I have to make are welfare decisions concerning the upbringing of a child, and therefore section 1 of the Children Act 1989 applies. JS's welfare is my paramount consideration and I must be guided by the welfare checklist set out in section 1 (3) of the Children Act.
11. Applications to remove the child from the jurisdiction can be made under section 13 or section 8 of the Children Act; in this case the application appears to be made under section 8 but nothing turns on that.
12. I have in mind section 1(2A) of the children act which states that:

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

The circumstances mentioned in subsection (4)(a) include circumstances in which the court is considering whether to make a section 8 order and the making of it is opposed by one of the parties to proceedings. Those are indeed the circumstances of this case. A parent within subsection (6)(a) is a parent of the child concerned who can be involved in the child's life in a way that does not put the child at risk of suffering harm. There is no evidence to suggest, and indeed no party argues, that the involvement of either parent in this child's life would place him at harm. Section 1(2A) therefore applies and I presume, unless the contrary is shown, that the involvement of both these parents in the life of the child will further the child's welfare.

13. The approach which the court must take is set out in *Re F (A Child) (International Relocation Case)* 2017 1 FLR 979 which restates the principle of the welfare of the child being paramount. At paragraph 30 of *Re F* Ryder J as he then was said this:

“where there is more than one proposal before the court, a welfare analysis of each proposal will be necessary. That is neither a new approach nor is it an option. A welfare analysis is a requirement in any decision about a child’s upbringing. The sophistication of that analysis will depend on the facts of the case. Each realistic option for the welfare of a child should be validly considered on its own internal merits (i.e. an analysis of the welfare factors relating to each option should be undertaken). That prevents one option (often in a relocation case the proposals from the absent or “left behind” parent) from being side-lined in a linear analysis. Not only is it necessary to consider both parents’ proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side-by-side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse”.

Further guidance was given.

14. In *Re C (Relocation: Appeal)* [2019] EWHC 131 (Fam) para 15 Williams J distilled that guidance into a helpful framework, as follows:

- a. The only authentic principle is the paramount welfare of the child
- b. The implementation of s 1(2A) of the Children Act 1989 makes clear the heightened scrutiny required of proposals which interfere with the relationship between child and parent.
- c. The welfare checklist is relevant whether the case is brought under s 8 or s 13 of the Children Act 1989.
- d. The effect of previous guidance in cases such as *Payne v Payne* may be misleading unless viewed in its proper context which is no more than that it may assist the judge to identify potentially relevant issues.
- e. In assessing paramount welfare in international relocation cases, the court must carry out a holistic and nonlinear comparative evaluation of the plans proposed by each parent. In complex international relocation cases this may need to be of some sophistication and complexity.

- f. In addition to rights under Art 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 – indeed probably as a component of the Art 8 rights and s 1(2A) – one must factor in the rights of the child to maintain personal relations and direct contact with both parents on a regular basis (unless that is contrary to her interests) in accordance with Art 9 of the United Nations Convention on the Rights of the Child 1989.
- g. Furthermore, the court must also take into account the Art 8 rights of the parents. In the usual case the child's Art 8 right will take priority over the parents', but that should not cause the court to overlook the Art 8 rights of others affected and the court should balance the competing Art 8 rights.
- h. The effect of an international relocation is such that the Art 8 rights of a child are likely to be infringed and the court must consider the issue of proportionality of the interference. There remains some degree of uncertainty as to how the proportionality evaluation is to be applied in relocation cases. In *Re F* it was said one should be undertaken, in *Re Y (Children) (Removal from Jurisdiction: Failure to Consider Family Segmentation)* [2014] EWCA Civ 1287, [2015] 1 FLR 1350 it was said in private law cases it does not need to be. The Court of Appeal in *Re C* expressed doubts about how it was to be undertaken. I consider that in most cases in practice the proportionality issue will be subsumed within the overall holistic evaluation, in particular when considering effect of change and risk of harm. In reality, in the judicial consideration of the welfare checklist, it simply is likely to mean the judge will be that much more alert to the importance and thus weight to be afforded to the child's right to maintain contact with the left-behind parent and their rights to a stable and secure family life with their primary carer, if there is one.

The witnesses

15. Before I turn to the analysis of the options, I will deal with my impression of the witnesses. Both professional witnesses were just that: professional, straightforward, knowledgeable and helpful. As to the parties, each has tried to cast aspersions on the evidence of the other, saying it was hesitant or not straightforward or evasive. I did not find any of these things. I saw both witnesses doing their best to help the court to set things out as they saw them. They see things differently, there is no getting away from that, but that does not mean that either of them was dishonest or evasive. I will

return in due course to the father's ability to give a full picture of his own mental illness, but my main impression of the parties was of two parents who love their son beyond words and who desperately want to be near him and care for him and protect him. JS is lucky to have two such parents.

Global Holistic analysis

16. I turn then to the global holistic analysis of the two options. I propose to consider each in turn, setting out the benefits and disadvantages of each, starting with the benefits of going to Germany.

Benefits of going to Germany

17. Support: The mother says she feels isolated in England, many of her friends have moved away and she has no family in the UK. She describes herself as a “single-parent” and of course in that situation she must rely on family and friends where either she or JS is ill. She has on occasion been able to rely on a friend to help take JS to school, but there have been other occasions when she has not been able to find anyone to help, for example when JS had scarlet fever and nobody wanted to risk the infection. In that situation she had to wait for her mother to fly in from Germany. She says that in Hannover, which is where she would like to move to, she will have much more support. In her first statement she mentions two friends in Hannover itself and six other friends within an hour or two's drive, and of course her parents are relatively nearby. There was some debate as to just how close her parents would be. Clearly, it depends on traffic but it would seem that the drive would often be 45 minutes, sometimes up to an hour and a half, with the most extreme estimate being two hours. In any event, I accept that her parents could get to her relatively quickly albeit that they are not next-door.

18. That said, this is not a situation where the mother has a ready-made life waiting for her. With only two exceptions, all people she mentions are some distance away. I am sure that they would wish to offer support from time to time, but given the distances I wonder whether the level of support they would be likely to provide would be quite as high as the mother hopes. I come to the conclusion that she will have more support in Hannover, but not on a daily basis and not perhaps to the extent that she believes. I note also that by going to Hannover she would effectively lose any support that the

father would give her if she stayed in London. The extra support to her would therefore be of moderate benefit to her.

19. Finances: the mother currently earns £5000 net per month. She pays rent of £2300 per month. Until very recently she was paying £1,500 per month in nursery costs although that has now stopped because JS has started school. That in itself has given rise to a need to pay for childcare during the school holidays and she says she has also had legal fees to meet. She says she has not been able to make ends meet, and has borrowed £50,000 from her parents which she says she has to pay back. She says that to continue as she is is untenable. She currently lives in a one-bedroom flat and says she cannot afford to move to a two-bedroom flat in the same area. If she moved out of the area, JS would have to move school and she would incur greater travel costs and additional childcare costs. In Hannover she says that suitable properties may be rented for €1250 per month. She does not currently have a job lined up in Hannover but she is confident of obtaining one. She currently works as an asset manager and she may be able to continue to work for her current employer as a remote employee, or failing that she is confident of her ability to obtain employment in the same sector at a similar level. Three years ago she obtained a job offer for a job in Cologne and more recently she has obtained a letter, which I have read, from a head-hunter in her sector who is optimistic about finding her something suitable. It is clear to me that the mother is highly skilled, employed and employable and as such I have no reason to doubt that she would obtain employment relatively easily if she were to move to Hannover. I accept her estimate that she would earn €4167 net per month. That seems to me not unreasonable, given her current salary. I do therefore accept that it is a significant strength of the mother's proposal that she would be able to afford a two-bedroom flat in Hannover and that that would meet her needs and JS's needs better than the one bedroom flat she says she can afford in London. She would also have more left-over disposable income which could improve their quality of life in various ways. None of that is, in my view, surprising since London is a notoriously expensive place to live, and almost everywhere else is more affordable. This, it seems to me, is no exception.

20. Education and Language: The mother has researched schools in the local area. She has been criticised for not visiting any, and it is right that she does not have a place for JS secured. However I have seen the details of local schools which the mother has

produced and I have no doubt that there are good schools in Hannover, and that the mother would make sure JS was well placed. I am told that schools in Germany sometimes do not start until the child is six or seven and so it may be that the mother has some time to find a place for him. Schooling would presumably be in German. It is the mother's case that German is his first language, although the father says in his evidence that JS's first language is English. Be that as it may, there is no dispute that he speaks German fluently and that is an advantage of the plan. JS would be able to settle into a new school and a new life without having to learn a new language and that would make the process easier for him.

21. Contact with the father: it is said on behalf of the mother that a further advantage of the move to Germany would be that JS's relationship with his father could be maintained and developed. At present JS sees his father twice a week for two hours and in addition for four hours on alternate Saturdays. It is the mother's case that the father has not always taken up all of the contact which was offered but the father says that has only been for very specific reasons such as having to attend a wedding or to look after his mother in Sweden when she was unwell. It seems to be accepted that the father generally does take up the contact that is offered. The mother's proposal is that if she and JS moved to Germany, JS could continue to see his father on alternate weekends but for four hours on a Saturday and another four hours on the Sunday. In addition there could be in direct contact by FaceTime twice a week. She says this would be a starting point and would change as JS got older. She expects the father to do the bulk of the travelling because she thinks it is too much for JS to have to travel to the UK frequently, but when it was put to her that she should perhaps bring JS to the UK sometimes to see his father, she was not against the idea. Indeed she told me she had been making enquiries with a friend to see whether she could stay overnight in such circumstances. She rightly points out that it's would be more expensive for the contact to take place in the UK because two return plane tickets will be required instead of one.

22. It is part of the mother's case that the father is a frequent international traveller. She has provided schedules of his travel in 2022, 2023 and 2024. It is true that he did a lot of travelling in 2022 but that was plainly because his mother, who suffers from dementia, was going through the process of moving into a care home and he had to go

to Sweden on numerous occasions to assist with that process. His only other trip between December 2021 and May 2023 appears to have been a holiday in Thailand. In 2024 there were far fewer trips to Sweden because his mother had settled in. It appears he went on holiday to Cairo and San Francisco. I therefore accept that the father has been through a period of relatively intense international travel, and he is not averse to international travel, but I do not accept characterisation attempted on the mother's behalf that he travels in and out for contact. What he has done historically is to time his holidays to match the mother's holidays so that when she comes back, and contact is available, he is also available. It is plain to me that the father lives in the United Kingdom, he is settled here, and he times his trips abroad, whether they are for pleasure or for family reasons, to avoid disruption of contact wherever possible. That is not the same thing as "flying in and out for contact". If the mother were to move with JS to Germany, no doubt the father could fly out for contact on alternate weekends, and from time to time JS could be brought to the UK for contact to take place here. It would be an additional burden on both of them to have to undertake the travel, but providing it could be afforded there is no reason why it could not be done.

23. What is harder to say is whether there is a genuine wish on the mother's part to promote such contact. The parties are in disagreement about that. The mother says that she has always promoted contact, even when it was difficult and when she was unhappy supervising it herself she still did so because she felt it was important for JS to know his father. She told me in evidence that she did not want JS to say to her one day, "why did you take my father away from me?". She says that JS loves his father and she recognises the importance for JS having his father in his life. I accept all of these points from the mother.

24. However, the other side of the coin is that the mother has only ever permitted the father to have supervised contact. She has a number of grave concerns about his ability to keep JS safe. She is worried that he might have a relapse of his psychotic condition when he is alone with JS. She is worried that his antipsychotic medication makes him very tired, causes him to fall asleep and blunts his awareness of the world around him to the extent that he is liable to walk out into traffic without looking, thereby putting JS's very life in danger. In those circumstances she has quite naturally wanted to protect her precious son whilst still supporting his relationship with his

father, and the only way she could find to do that was to supervise the contact herself. The father for his part finds the supervision unnecessary. He says that the risk of relapse is low, he is mentally well, he holds down a job, he plays tennis and other sports, and that he suffers few if any side-effects from his medication. In those circumstances he views the mother's insistence on supervising the contact as an indication that she does not really support the relationship between himself and JS and that she is standing in the way of its development. In my view, both parents' positions are honestly held and both are understandable.

25. I have viewed certain videos which each party says support their own case. In support of the mother's case I have viewed videos of the father appearing to be either asleep, or so nearly asleep as to make no difference, while JS plays quietly alongside him. In one video JS is so fed up with his father being asleep that he pulls him by his hair into an upright position. The father responds with bleary-eyed kindness for a moment or two before lying back down again to sleep. There are several such videos. They all take place in the mother's living room during contact at her house, with the mother in close proximity. It seems to me that the father might well lie down and sleep knowing that the mother is in the same room or the next-door room and that JS is in a safe environment. I do not find that those videos help me to understand what the father would be like if he were caring for JS on his own without the knowledge that the mother was close at hand and that JS was safe. In support of the father's case I have watched videos of him in the park with JS, attending to him and interacting with him. There is nothing remarkable about those videos. I have also seen a video of him sitting on a park bench some distance away from JS and apparently looking at his phone. Again, there is nothing unusual in that video. At the time when it was taken the mother was clearly with JS and the father may well have been distracted for a moment onto his phone. Again, I cannot see how these videos help me to understand how the father would be if he were with JS on his own.

26. The reason why these alleged safeguarding concerns are relevant is that they shed light on the mother's attitude to contact. If she and JS move to Germany, it will be crucial that she has a positive attitude to contact because promoting the relationship will be harder at such a distance and will require more effort from both parents. I would need to be sure that she would be committed to providing that effort and

fostering the relationship. It is my view that the mother has worked hard to promote contact and I give her credit for that and I accept that she understands the importance of the relationship for JS. However it is also my view that her promotion of the relationship has been limited by her perception of there being safeguarding risks when JS is left alone with his father. Given her perception of those risks she has had no choice but to limit the contact to supervised contact. I shall turn in due course to the issue of whether her perception of the safeguarding risks is realistic, but for the purposes of this part of my judgement I restrict myself to saying that she does have a track record of promoting contact and I am content that she would continue to promote contact in line with what she thought was safe for JS, whether she was in Germany or in England. I say that in full knowledge of the points raised on behalf of the father that the mother has never allowed contact to take place in the father's house, that she hadn't allowed him to take JS to nursery on his own, that she did not invite him to accompany them either to or from school on JS's first day and that she did not invite him to JS's second birthday party. None of these things change my view. Either they were decisions made by the mother in line with what she considered the risks to be, or in the case of the birthday party she made the decision for entirely understandable reasons. She did not want tension or conflict on JS's special day. That does not suggest to me any negativity about contact. I remind myself that on another occasion she made the father birthday muffins for the father and JS to enjoy together. This is not, in my view, a mother who is against contact or JS having a relationship with his father. I come to the conclusion that it is a strength in the mother's plan that she would want to foster and facilitate the relationship, and that the relationship could indeed be maintained and even developed if she moved to Germany although there are question marks about the extent of that development.

27. Emotional wellbeing of the mother: on behalf of the mother it was argued that the mother's emotional health will be much stronger if she is permitted to move to Germany. It is said that if she were required to stay in this country the impact of that on her would be huge. She would be unable to live in suitable accommodation, she would be unable to buy a property of her own. She would be 59 years old when JS reached adulthood and she would have been stuck here, in a country where she does not want to be, and would have nothing to show for it. On her behalf I was told that she would effectively be a prisoner here with nothing to look forward to. She would

continue to feel isolated and her ability to care for her son would be compromised. In contrast if she is permitted to go to Germany she will have better support, better financial arrangements and will be living where she wants to be. She will be happier and better able to care for JS.

28. I can understand that that is how it must feel to the mother at present but I wonder whether the picture if she remains here is quite as bleak as all that. In terms of the financial picture, as JS gets older and as she becomes more senior in her profession she may be able to work longer hours at a higher rate of earning. Her financial pressures are likely to ease for those reasons. She may also be able to earn more if the father's mental health were good enough to enable him to provide more care for JS, and that too would decrease her childcare bills. It is plainly possible to live in London on a salary of £5000 a month net and not be in intolerable hardship. I accept that if the mother were not allowed to live with JS in Germany she would be devastated and disappointed but I am not persuaded that it would be quite the disaster she suggests. There are no recorded vulnerabilities as to her mental health and she does not put herself forward as a vulnerable person in that regard. She prioritises JS and she will always do her best for him. If she were not allowed to go to Hannover seems to me that she would find a way to work within the permitted parameters and make the best of things. I therefore take due account of her emotional distress if she were not allowed to go but that is not the same as saying that emotional harm can be avoided only by relocation. It would of course be a benefit to her emotionally if she were permitted to relocate but all the evidence suggests that she will manage either way and so I am perhaps less persuaded by this strand of her argument. I turn then to the disadvantages of the move to Germany.

Disadvantages of going to Germany

29. The relationship between JS and his father: the most obvious and pressing concern about the proposed move to Germany must be the impact it would have on the relationship between JS and his father. I have already set out what the mother says about that and how the relationship would be maintained and developed, and I have already said that I believe she would encourage that relationship to the best of her

ability given her understanding of the risks. There is however another side to the argument.

30. If JS and the mother remain in England, it is the father's hope that contact will move forward to unsupervised contact, overnight contact and eventually shared care. That, if it could be achieved, would result in JS having the full input of both parents throughout the remainder of his childhood and feeling as if he was brought up by them both. That would be hugely to his advantage, to have the care and attention of two committed and loving parents all the time. That could not be achieved if he is permitted to move to Germany. The relationship he can have with his father by seeing him on alternate weekends and in holidays is simply not the same as the relationship he can have with him if he is part of the time living with his father and his father is engaged with all the minutiae of life: making his breakfast, taking him to school, helping him with his homework, teaching him how to tie a tie, making him brush his teeth, making him eat his vegetables, buying him ice cream on the way home from school on a sunny afternoon. The intimacy and close bond that comes from such relationship would simply not be possible. That intimate and close bond is an important part of any child's future emotional health and mental stability, and it is of course enriching for the child to have two perspectives, two sources of advice, two sets of interests and inspirations on a daily basis. To put it bluntly, if the relocation is permitted, JS will have one full-time parent and one visiting parent. If the relocation is not permitted then, depending on the father's mental health, he may have the opportunity to feel as if he has been brought up by both parents. The loss of that opportunity, which a move to Germany would entail, is a very considerable loss.

31. The Mother's motivation: another concern of the father's is that the mother is putting forward this proposed move in order to put distance between him and JS. The first Cafcass Reporter came to the view that she had no doubt that the mother's application was done with the genuine belief that her and JS's quality of life would improve in Germany. I accept that but I consider the picture might be slightly more nuanced. Having read and listened to the mother's evidence I am sure that she does think it will provide a better life for her and for JS and there is nothing wrong with that. But her life here has been frustrating and difficult. She has found the father frustrating, she has found the supervision of contact stressful, she has found these court proceedings

stressful. She would, I think, have liked to be able to rely on the father more to look after JS but because of her perception of the risks she has not been able to allow him to do that. To have him next door but not helping has I think been frustrating. It would only be human nature if she would view a move to Hannover as something of a relief from all those pressures. In my view there may well be an element of trying to get away from all the difficulties in London, including the presence of the father and to that extent the father may be right that there is some wish on her part to put distance between them. But if so that is only one aspect of her motivation and not in my view the main one. She has cogent financial, cultural and family reasons for wanting to go and I find overall that I am not concerned about her motivation.

32. Upheaval and change in schooling: there would inevitably be an upheaval for JS in having to change country and change schools. In other circumstances I might consider that that was a factor to be weighed in the balance against the move. However in this situation JS would be remaining with his primary carer and that will give him more stability than anything else would. In addition, as I have already said he speaks fluent German and that would make the upheaval less. I also have in mind the mother's point that if they remain in London JS may have to move school in any event for financial reasons relating to them being able to find suitable accommodation. There may be upheaval for JS whichever decision I make and I'm satisfied that his parents, and his mother in particular, will be able to smooth that pass for him and provide him with the stability he needs as he goes through the experience.
33. Difficulty of enforcing or amending orders in Germany: it may well be that whatever orders I make today will require future amendment as JS grows and his relationship with his father progresses. If I make an order for supervised contact, it would be expected that that would perhaps change over time to unsupervised contact. If I were to make an order for unsupervised contact, there would at this stage have been no evaluation of the success of that or whether it could move forward from there. Of course it is always to be hoped that parents in that situation will reach an agreement about how to move things forward without returning to the courts. But if they are not able to do so, the father would have to have recourse to the courts and if the relocation is permitted, those courts would be in Germany. That would place a considerable barrier before him as he does not speak German. I accept that that is a factor weighing

in the balance against the move, although I would hope that it is one which could be avoided by communication and negotiation between parents and I do not give it more than moderate weight.

34. Father's mental health: the evidence is that the father's psychotic illness is in remission and well managed by medication. The triggers for relapse according to Dr George would be non-compliance with medication or stress. I asked her in oral evidence what sort of stress would trigger a relapse and she said that the sorts of things would be if he hadn't got a place to live, became unemployed, was bereaved, had relationship difficulties, or felt that he was misunderstood or an injustice was done to him. She said those were significant stresses which could result in relapse. In my view it is hard to think of anything more stressful than a child being removed to another country against a parent's wish. For a parent to lose the opportunity of daily interactions with their child in that way is traumatic for the parent. It seems to me that any such outcome from these proceedings would fit foursquare into Dr George's list of potential triggers. I must have in mind therefore that one possible result of an order for relocation would be a deterioration in the father's mental health, perhaps even to the point of a further psychotic episode. If that were to happen it would have inevitable consequences for the future of his relationship with JS. Already the mother finds it difficult to trust that he is well enough to look after JS. How much harder would she find it if he suffered a third episode? At this stage the scientific and social work evidence supports the father having unsupervised time with JS. It is possible or even likely that that evidence would reverse if a third episode occurred. The implications for the father's relationship with JS would be serious and lifelong. Of course it is not certain that he would suffer such a relapse and if he continues to take his medication that would be a protective factor. But Dr George was quite clear that stress could bring about a relapse even if the patient remained compliant with medication and so I must have this in my mind is a significant risk if I make the relocation order.

Advantages of remaining in London:

35. I turn then to the advantages to JS of remaining in London. Some of these are the obverse of the disadvantages of relocation, for example the reduction in stress for the

father and therefore the protection of his mental health, and the fact that any future court proceedings would be in a language which both parents speak.

36. Relationship with his father: I have already dealt at some length with the issue of JS's relationship with his father but there is more to be said. I have set out above the possible advantages to JS in having daily interactions with his father and the opportunity to feel as though he is being brought up by both parents. Those observations carry weight only if the father's mental health is good enough to make it realistic that he will be a hands-on parent in the way to which he aspires. I must therefore make an assessment of risk of the father's mental health preventing that outcome.
37. Dr George's evidence was that the father was in complete remission from his psychotic symptoms and that his prognosis was good. It was put to her in cross examination that her opinion was based on the father's self-reporting, and that that was not always reliable. Examples of the father's alleged unreliability were
- a. In a therapy note it was recorded that the father had admitted being verbally aggressive or angry whereas he told Dr George he had never been aggressive
 - b. There is a discrepancy in when he said he stopped taking medication after his first psychotic episode. In a letter written by his treating clinician in February 2021 he said he only took antipsychotic medication for 9 months after his first episode which was in April 2018. That would mean he stopped his medication in January 2019. In a later note dated 11 March 2021 he is reported to have said he stopped "two years ago", which would be March 2019. It was accepted by the mother's counsel that these two dates could have referred to the same time period, in other words that he stopped his medication in early 2019. Yet in her report Dr George refers to a letter from the father's current treating clinician which requires the father as saying he only stopped taking medication six months before his 2021 relapse. That would have been in or around September 2020 which is clearly a different date
 - c. the father told Dr George that he was not involved in the law whereas in fact he has seven civil suits outstanding in which he is involved in Brazil
 - d. that he had not been truthful about his own dysfunctional upbringing

- e. that he had not been truthful about his past drug use
- f. that he had not been truthful about his family's mental health history

38. Dr George's response was to say that if the father had not been truthful that would not affect the diagnosis which had been made by many psychiatrists over many years. It could however affect prognosis. She of course was not in a position to say whether the father had been truthful or not. That is a matter for me.

39. The father was asked about this in oral evidence. He answered very carefully that he had been as honest as he could be. Some of his answers on the individual matters I found entirely satisfactory, for example his answers in relation to the lawsuits in Brazil. Although there are different case numbers, they consolidate down into three separate matters, none of which has had any activity or progress for somewhere around seven years. In those circumstances I could see why he told Dr George that he was not involved in any legal cases. As to whether he had admitted being aggressive it was Dr George's evidence that patients often could not remember what happened during psychotic episodes so I cannot see that the father is in any position to say whether he had been aggressive or not. The father did seem confused about when he had stopped taking his antipsychotic medication but I cannot see that much turns on that. Dr George said that it is very difficult for patients to admit and accept that they have had psychotic episodes and that they do need medication. This father has managed to admit and accept both of those things and the specific date when the medication stopped seems to me to be less important than that overall picture. In relation to his own past drug use Dr George appeared to think that what mattered was that his drug test was negative when he was admitted to hospital with psychosis. He had told her that he had used cocaine and she said that he should have told her about any other previous use, but his diagnosis was not a diagnosis of drug induced psychosis and what was important was that he was not using drugs any more. When the father's historic drug use was put to him in oral evidence, he said it was a long time ago and difficult to remember but it could be broadly correct. I did not get the impression that he was trying to hide his drug use either from me or from Dr George who also had that information available to her at the time she wrote her report. In terms of the father's family's psychiatric history, again Dr George had the information available to her at the time she wrote a report and that information

showed that the father had a sister with anorexia, a grandmother with paranoia and a great uncle who may have had schizophrenia but it had not been diagnosed as he lived a hundred years ago on a farm. It was also said that his sister was depressed and dysphoric, but I am unsure whether that is the same sister who was anorexic. In any event, Dr George felt that the father had denied having a family with an extensive mental health history because he had felt that many of these relatives were too distant to be of any relevance.

40. Overall, my impression of the father and his evidence, taken as a whole and even taking into account mother's counsel's assertion that he displays a pattern of dishonesty, is that he is a man who is struggling to make sense of a confusing and bewildering illness. Not everything will be clear to him. In my view he shows a good level of insight and acceptance and that is a view which is shared by Dr George. He has not got everything right first time in terms of the information he has given to professionals, but from his evidence I detected no attempt to cover up or backtrack, or to be evasive or explain differences away. Indeed at times in his evidence he appeared to be pondering and puzzling and trying to understand things himself. I do not therefore find that there is any need for him to be reassessed by Dr George, as suggested during the hearing, and I do not find that these discrepancies undermine Dr George's report.
41. The result of that is that I have no reason to doubt Dr George's conclusions about the father, including her conclusions as to prognosis. I remind myself that her view was that the father was in complete remission and his prognosis was good provided he remained on antipsychotic medication and avoided stress. I remind myself also that she found nothing in his current mental health which was a contraindication to him having unsupervised contact with his child.
42. The first Cafcass Reporter carried out their own investigations and had a number of very positive things to say about the father's care of JS. Based on her notes of her observation of contact the second Cafcass Reporter came to the view that the father did not pose a safeguarding risk to JS and that spending time arrangements should be progressed to unsupervised contact.

43. The first Cafcass Reporter said she was curious why the reassurances offered by the medical evidence and the father himself had not been sufficient to allow the mother to start gradually to feel more comfortable with the father looking after JS. I am not puzzled by that. I can quite understand the mother's hesitation. She had been told after the first psychotic episodes that the risk of relapse was low and yet the father relapsed. She was now being told by professionals that the risk of relapse was low but she had no confidence in that given what had happened the last time. I asked in oral evidence whether it was not different now, because the father had more information. After the first episode he took his medication until he felt better and then he hoped that it was all over and that he did not need the medication any more. That was all he knew at that point, when he made his decision to stop taking the medication. The father is only too well aware of what happened next which was that he suffered a second episode. Dr George gave evidence that having a psychotic episode and being taken to hospital is traumatic for a patient. The father has emerged from the experience knowing that he has to stay on his medication in order to avoid a further relapse and that in itself means that he is in a different position from the position he was in after his first episode. I asked the mother whether that did not make a difference. She said "a bit" but she maintained her view that despite medication it can happen. It is clear to me that the mother's level of anxiety remains high, and that she is not wholly able to accept the psychiatric evidence in relation to the father. Another example of that came in oral evidence when she talked about a childhood friend who, as an adult, had one Friday first shown some symptoms of being "weird" and on the Sunday he hung himself. That is a very dramatic example of what it is that the mother fears if she allows unsupervised contact to go ahead. But it does fly in the face of Dr George's evidence which was that psychiatric symptoms come on slowly. Although the mother had heard Dr George's evidence the day before, during her own evidence she said that Dr George had said that psychosis can come on quite quickly. That was in fact the opposite of what Dr George had said but it is interesting that the mother had heard it so wrongly. The mother is doing her best, and listening hard, but she was certainly not able to hear what it was that Dr George was saying and I therefore accept the submission made on behalf of the father, the mother is not best placed in this situation to make an accurate analysis of the risks arising from the father's mental illness.

44. I conclude that the father is in remission, that as long as he remains on his medication and avoids stress there are no contraindications to him spending time alone with JS, and that any risk of relapse is mitigated by the fact that symptoms come on slowly, over time, and that he has good insight into those symptoms. Further, that Dr George has said that there are very good ways to monitor his mental state, especially in private hospitals, and that they are very good at preventing relapse. There is a further safeguard which is that Dr George has said that in her view the father is likely to be suitable as a candidate to receive his antipsychotic medication by depot injection and the father has said he is willing to do so, provided his own clinician confirms that it is suitable for him. The question of depot injections arose for the first time during the oral evidence of this hearing and by the next day the father had already made an appointment with his treating clinician to see whether he was suitable for depot injections. If he were to move to a depot regime that would further reduce the risk of relapse because it would be clear that he was taking his medication, and if he was not, his medical team would know about it.

45. The mother of course remains concerned about the side-effects of the medication blunting the father's awareness and creating a risk in terms of his active care of JS. That concern has not been borne out in the observations, analysis and reports of the two Cafcass officers who have been involved in the case and it is not borne out by the fact that the father works, plays tennis, is now in a new relationship, and has been able to engage attentively and without difficulty with these proceedings. It is not the view of Cafcass that this father poses any safeguarding risk to his child.

46. What all of this means is that the father's suggestion that, if JS remains in London, he might move to unsupervised contact, then overnight contact and in due course shared care is not unrealistic. And the result of that is that I must include that possibility as a benefit, and a realistic benefit, to JS if JS were to remain in London

Disadvantages of remaining in London

47. I have already dealt with most of the disadvantages of remaining in London, in particular the mother's emotional wellbeing, her sense of isolation, her feeling of

being caught in a trap, and her financial struggles. I will not repeat my analysis of those issues here, but I do weigh them in the balance under this heading.

48. In addition there are some question marks about the father's financial stability. He earns £39,000 pa of taxable income and his rent is £40,000 pa, although half of his rent is paid through his company. That leaves very little to live on each month and it is not clear how sustainable that position is. He says he has projects in the pipeline and that may be true. He has always managed, but if he has more caring responsibilities towards JS that may come with a need for an increased financial contribution from him and I am not clear how he would meet that. I have seen text messages from him proposing that JS be educated privately and being somewhat unkind to the mother when she resisted. I agree with mother that the father seems financially unrealistic. I cannot see that he had any proposals for how private schooling would be paid for. If private schooling is what the father wants for JS, then private schooling is much cheaper in Germany and staying in the UK would be a disadvantage from that point of view.

Wishes and feelings in the light of his age and understanding

49. I turn then to the welfare considerations in the case, and this also provides me with an opportunity to consider the two proposals side-by-side. The first of the considerations in the welfare checklist is the wishes and feelings of the child considered in the light of his age and understanding. In this case I can say very little about JS's wishes and feelings as it is not my understanding that the possibility of a move has even been discussed with him. That seems to me the child-centred and correct approach when everything is so uncertain and the child is so young. What I can say is that it is not in issue that he has a warm, affectionate and secure relationship with his mother, who is his primary carer, and nor is it in issue that he loves his father, and that he has positive interactions with his father. The first Cafcass report observed that contact was a positive experience for both father and son, that emotional warmth between them was observed throughout the session and that it was clear that JS enjoyed and valued the time he spent with his father. I have no doubt that JS would like both parents to remain in his life and would like to be able to see both of them regularly and in the

absence of any anxiety about conflict. I have no doubt that he wishes to feel safe, to grow up with a good sense of his own heritage and identity and an understanding of where he fits in his family. To a greater or lesser extent all of these things can be accommodated under either of the two options proposed to this court. Whatever option I choose, I must make sure that those wishes and feelings are considered, but I cannot see that they help me to decide between the two options.

His physical, emotional and educational needs

50. JS has no special needs, but he has all the physical, emotional and educational needs of a four year old boy. He is entirely dependent on his carers to provide him with everything. He needs a close and consistent relationship with both parents. On the one hand, his need for a relationship with his father is likely to be met better if he remains in the UK because his father will be on hand and able to engage with him if not every day, then many times a week. If he is in Germany, his need for a relationship with his father will be met by the contact proposals of the mother as they develop through the years. It would be possible to meet JS's need for a relationship with his father in this way, but the need would not be met in anything like the same way or to the same degree as it would be met if JS remained in this country.

51. JS also has a need for his primary carer to be emotionally well, and mentally robust. There is a risk that his mother would be less able to meet this need if she is forced to remain in the UK but I have already found that it is likely she would cope and I have set out my reasons for that. Likewise, JS has a need for his primary carers to have financial stability and enough money to meet his needs. This is perhaps most starkly seen in the area of accommodation. I accept that he will in due course, and arguably already, need his own bedroom and that that need is harder to meet in London than in Hannover. However there are many people in London who earn less than £5000 a month net who manage to rent two-bedroom flats. It is plainly not impossible for the mother to do that particularly if the father is able to provide her with more support by having JS in his care for portions of the day which might allow the mother to work at those times and would certainly reduce her need to rely on expensive childcare. It is my view that JS's need for secure and stable accommodation can be met under either proposal.

The likely effect on him of any change of circumstances

52. Under either option JS may be subject to an element of upheaval, whether that be moving to Germany and starting a new school there or moving to a two-bedroom flat in London and starting a new school in a new area. Either way, I'm satisfied he will withstand that upheaval because of the security and stability given to him by his mother and because he is already bilingual. If he were to move to Germany, he would have more opportunity to develop his relationships with his wider maternal family. He was see more of his German grandparents and other relatives there, and he would learn more of his German heritage and identity. He would however, lose the opportunity of being brought up by both parents in a meaningful way, having his father in his life as a "visiting father" only.

His age, sex, background, and any characteristics of his which the court considers relevant

53. I have already set out his age, sex and background. I have read descriptions of him in the Cafcass report and watched videos of him and he is clearly a charming and enchanting little boy. He has the benefit of being bilingual. His father had hoped to teach him Swedish also but I accept that the father has made no meaningful efforts to speak to him regularly in Swedish and that remains an outstanding ambition. One characteristic which I consider relevant is that since 2021 he has only ever had supervised contact with his father. The Cafcass reporters have drawn attention to the fact that there is a need for that relationship to be developed and progressed before any consideration could be given to a proposal to move to Germany. The argument seems to be that because there has only been supervised contact, the relationship is as yet too precarious to permit removal. In order for the relationship to develop if JS is in Germany, it needs to be more developed now. That is the advice of the Cafcass reporters, and I can see that restricting contact to supervised contact does indeed place limitations on the development of the relationship in the way that the Cafcass reporters describe.

Any harm which he has suffered or is at risk of suffering

54. JS is not at risk of harm either here or in Germany in the care of either of his parents, unless his father has further psychotic episode. It is, I think, the mother's greatest fear that this could happen when her young, vulnerable and precious son was alone with his father and that the consequences could be catastrophic. I do not underestimate

what might happen during a psychotic episode and I would not wish any child to be placed at risk because of one. But I must listen to the evidence, and in particular the evidence of Dr George, who says that the prognosis is good, and almost more importantly than that, the father has good insight, that he does not want another psychotic episode because he knows it could put JS at risk, that he is committed to remaining on his medication this time now that he understands the importance of it, even to the point where he is willing to go onto depot medication, and most importantly that psychotic episodes do not come on all of a sudden. The symptoms come gradually, the father can be monitored by his mental health team, and private hospitals are very good at preventing relapse. These seem to me to be absolutely crucial safeguards. With them all in place, and bearing in mind that the father's most recent episode was over three years ago I consider the risk of harm to JS in his father's care can be adequately managed.

How capable each of his parents is of meeting his needs

55. Both parents are capable of meeting JS's physical and educational needs. The only question mark is whether the mother is fully able to meet his need for an unrestricted and open relationship with his father, given the mother's preoccupation with the risk that she thinks the father poses. That is not to criticise the mother. She is doing the best she can to protect her son, but I do not agree with her assessment of the risks in this case and I suggest that she is perhaps too close to the situation to be able to take an objective view. Her fears about what might happen to JS have stopped her in the past from allowing him to have unsupervised contact and that in itself it seems to me has given rise to all sorts of problems, not least causing her stress and having to provide the supervision. But it seems to me that it may also have given rise to some of her misgivings about the father's ability to look after JS. Any parent will behave very differently if the other parent is there particularly if the other parent is the main carer. The child will naturally turn to the main carer in all kinds of situations. If the main carer is not there the other parent has to engage in a more proactive way. I am not surprised that the mother has the misgivings she has, and I am sure that they are sincerely held. I have not detected any elements of hostility or spite in this case: it is all about protecting JS. But JS now needs an open and unrestricted relationship with his father. The mother has not so far been able to allow that, but I hope that perhaps

having heard all of the evidence in this case, now she will. That permission from her needs to be forthcoming whether JS is in the UK or in Germany.

Decision

56. Neither of the options before the court would be a disaster for JS but I must work out which would meet his needs better. Having considered all of the elements in the round, the two which stand out are the mother's emotional welfare if she is forced to stay, and JS's relationship with his father if I allow him to go. Mr Persson on behalf of the mother argues that the relationship with the father can be developed either in Germany or in England but with great respect, the two situations are not the same. It seems to me that whilst the disappointment to the mother, her financial struggles and her feelings of isolation are real, they can be managed, whereas there is nothing that can compensate JS for the loss of his father as a daily or near-daily figure in his life. I have considered whether the other factors in favour of the move or against remaining in England would displace that balance and I have concluded that they would not. JS will receive a good education, acceptable housing and a reasonable quality of life wherever he is. He would have a closer relationship with his grandparents if he were in Hannover but he will still be able to have a relationship with them if he lives in London, as history shows that she has visited them in Germany and they have visited him in London. Their relationship is important to him but not as important as his relationship with his father. The benefits of the move to the mother in terms of support are perhaps not as significant as she thinks they will be, given the distance that she proposes to live from the majority of the people she hopes to rely on in Hannover, and given also the fact that she has lived in the UK for 19 years, has a British passport and does have a permanent job and links to the community here. Having heard her give oral evidence I can say that her English is flawless and although she feels isolated she is well embedded and settled in this country. These matters, and the other matters I have set out above are all important but even when weighed together they do not in my view make up for the difference to JS of being brought up by one parent instead of two. I know this will be a devastating decision for the mother and it is not a decision I have made lightly. However I am satisfied that it is in JS's best interests to remain in England and for his contact with his father to move immediately to unsupervised and swiftly thereafter to overnight contacts, and in due course, if all goes well, to a pattern of shared care.

57. That said, there is a long road to travel to get from where we are now which is supervised contact to the place where we are heading towards which is shared care. As part of my consideration of the range of powers available to me I have considered whether to make a shared care order today. Given the distance to be travelled before shared care can commence, I do not consider it right to make a shared care order today, unless the parties agree it in the hope of ending proceedings. In the absence of any such agreement, it does not seem to me that it would be right to make a shared care order until I have more information on how the unsupervised contact and overnight contacts have progressed. It is my understanding that there is no Lives With order in force at present but I will be corrected if I am wrong about that. I propose to make no such order today, but instead to make the following orders:

- a. The mother's application to relocate permanently to Germany with JS is refused.
- b. The mother shall make JS available for unsupervised contact with the father at dates and times to be agreed between the parties and notified to the court before the sealing of this order
- c. Within six weeks, JS should start to have overnight contact with his father at dates and times to be agreed between the parties. [There is no science in the choice of six weeks: it is an attempt by me to find a period which is not too long and not too short.]
- d. The matter is listed, if required, for a final hearing, time estimate 2 hours, in four months' time with a view to seeing whether the court can make a shared care order. This hearing to be vacated in the event the parents are able to agree the way forward, in which case they may write to the court to vacate the hearing.

58. I am aware that the orders I have made constitute an interference in the mother's article 8 rights to a private life, but I have balanced those rights against the article 8 rights of the father and of JS and indeed JS's rights under Article 9 of the United Nations Convention on the right of the Child 1989 to maintain personal relations with both parents on a regular basis and have concluded that the rights of the child must prevail. I have considered whether the orders I have made are both necessary and proportionate, and I am satisfied that they are.