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Neutral Citation [2023] EWFC 147

IN THE EAST LONDON FAMILY COURT  
(Sitting at the Royal Courts of Justice)

Case No. ZE21P01589/  
ZE21P01898

The Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 16 February 2023

Before:

RECORDER McKENDRICK KC

(In Private)

B E T W E E N :

F

Applicant

- and -

M

Respondent

**HEARING DATES 15 AND 16 FEBRUARY 2023**

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MR J MOORE (instructed by Pinney Talfourd Solicitors) appeared on behalf of the Applicant

MS J LEE (instructed by Manders Law) appeared on behalf of the Respondent

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**APPROVED JUDGMENT**

This is a transcript of an *ex tempore* judgment delivered on the second day of the hearing after hearing the evidence of three witnesses and counsels' submissions. Some months following the hearing the judge was asked to approve the transcript of the judgment and to approve its publication in an anonymised form.

THE RECORDER:

- 1 I am concerned in these proceedings with the welfare of S, a young girl now aged three, nearly four, who was born in 2019. The parties are as follows: her father ("F"), who I shall refer to throughout this judgment as "the father", he has been represented in these proceedings by Mr Moore of counsel; her mother is the respondent ("M"), and I shall again likewise refer to her throughout this judgment as "the mother", and she has been represented by Miss Lee of counsel. Both parents exercise parental responsibility in respect of S.
- 2 The issues or applications before the court are as follows. The father has issued an application for a child arrangements order dated 6 August 2021. The mother responded, if you like, with a further child arrangements order application dated 29 September 2021. The father also has a prohibited steps order application, and the mother has a specific issue order application dealing with the relocation from Borough A to Borough B.
- 3 I observed that the case has been very well prepared both by solicitors and counsel. There is an appropriately sized bundle with a very useful index, witness statements, and documentation. I am extremely grateful to Mr Moore and Miss Lee for the very professional way in which they have conducted a concise and clear exercise of advocacy by way of their cross-examination and the making of submissions.

4 My decision is as follows: I will make a child arrangements order in S's best interests, which will mean she will live with her father on Monday, Tuesday, Wednesday, and Thursday evenings, and she will live with her mother on Friday, Saturday, and Sunday evenings. I make a specific issue order that she will attend a local school ("the school"). What follows are my reasons for making this principal decision, and I will deal with the ancillary issues that arise.

### (2) The Background

5 The mother and father began a relationship in 2017. They lived together at the father's property in Borough A from around the middle of October 2018. The father is employed as a Metropolitan police officer. The mother is employed as a solicitor. She is from Country A. As a result of the conflict in Country A her parents are currently residing with her in the United Kingdom.

6 In April 2020 S began at a local nursery. In June of 2021 the mother and the father separated. For a short period of time they initially remained in the same household. As I have mentioned, applications were made to the family court. The matter came before District Judge Sawetz on 12 August 2021. The order is in the papers before me. An agreement was reached at that hearing in August that was really in the following terms: in week A, S would spend from 10:00 a.m. Sunday to 6.30 Wednesday with the father, and from 6.30 Wednesday to 6 p.m. Saturday with the respondent mother, and in week B from 6 p.m. Saturday to 6.30 Wednesday with the father, and from 6.30 Wednesday to 10:00 a.m. Sunday with the mother. Handover arrangements were made. That is the interim arrangement which has endured since then.

7 The matter next came before Deputy District Judge Emerson on 20 December 2021. An important issue was canvassed at that hearing, and I note the following recitals were recorded in the Deputy District Judge’s order at viii (a) and (b):

- “a. The mother’s case is that it is appropriate to invite CAFCASS to complete a Section 7 report (in accordance with the recommendation of the safeguarding letter) in respect of the issues of the case which will include assessment as to whether the author considers that the proceedings may be concluded without a fact-finding hearing in respect of the allegations of domestic abuse. The mother is focused on progression in securing S’s arrangements if possible without the need for a fact-finding hearing.
- b. Father’s position is that the court does not need to resolve either his or the mother’s allegations to provide a factual basis for any welfare report or assessment of the factors set out in paragraphs 36–7 of FPD 12J, that the allegations (given their nature and extent) would even if proved be of limited relevance to the issues before the court and that in all the circumstances a fact finding hearing is neither necessary or proportionate.”

8 Cafcass duly reported, and I will turn to that Cafcass report in due course, but the upshot was it was not necessary for there to be any fact finding. I canvassed at the beginning of this hearing with counsel whether I was being asked to make any findings and was clearly told that it was not necessary. Therefore, having my own regard to the case of *Re H-N* [2021] EWCA Civ 448 I agree with what has taken place to date that it is neither necessary nor proportionate within the meaning of Practice Direction 12J for there to be any fact finding, and therefore this hearing has proceeded entirely on a welfare-analysis basis.

9 The matter then came before District Judge Phillips on 23 May 2022 and he ordered that there should be an updating report from Cafcass. That report was specifically tasked to look at the following three issues: (1) whether S should reside and attend nursery and in due course school full time in Borough A, Borough C, or in Borough B, where the mother is living; (2) the effect on S of the proposed change of relocating to Borough B; and (3) the

recommendations in respect of arrangements for the child including stepped arrangements with a view to the final order, if possible.

### (3) The Evidence

10 I heard oral evidence yesterday from the Cafcass officer, from F the father, and from M the mother. They all gave clear, relatively short, and useful oral evidence based on their witness statements and on reports. All three were cross-examined by counsel. I am not going to set out in any detail the evidence because the purpose of this judgment is to explain my reasons, and the evidence is very clearly known both to F and M who are able professionals.

11 The evidence from Cafcass is contained in three reports. The first is the initial safeguarding letter dated 7 September 2021, the second is the section 7 Children Act 1989 report, which is dated 20 April 2022, and the third document is the addendum section 7 report dated 7 November 2022. I will just deal with a few aspects of the Cafcass evidence. The CAFCASS officer in her April 2022 report sets out the enquiries that she made at paragraph 5. She said she carried out the following enquiries: she read the case files held by Cafcass, she requested welfare information from both of S's nurseries, she interviewed M using Teams on 1 April 2022 for 2 hours and 50 minutes, and she interviewed F by Teams on 4 April 2022. The meeting was scheduled for two hours, but it was one and half hours longer than scheduled and she was unable to complete the interview:

- “• F thereafter informed me that he was concerned about aspects of the interview, however agreed to meet with me again. I concluded my interview with F using Microsoft Teams on 11th April 2022, which took a further 1.5 hours.
- I had an introductory video call with S on 1st April 2022 whilst she was at her mother's home. I was also able to meet S in-person at the Cafcass Bloomsbury Office on 8th March 2022. She was brought to this meeting by her father.”

She also notes she read F and M's witness statements. She requested documentation from children's services which had some previous involvement, which I need not go into.

12 At the end of paragraph 12, beginning of 13, she says the following:

“The parents gave a number of examples of perceived or experienced controlling behaviours by the other.

I have however applied the Distinguishing domestic abuse and harmful conflict screening tool to the available information and I am not of the view that these incidents indicate a power imbalance or a pattern of coercive controlling violence. It is my view that the parents’ relationship became strained after S’s birth, and they noticed that they had different parenting styles. F and M reported several arguments around this time, with difficulties communicating, which resulted in further misunderstandings.”

I have already referenced the fact that she took the view that issues of domestic abuse were not at the fore and the view was taken applying Practice Direction 12J that fact finding was not necessary. That essentially formed the basis of that analysis, which the mother, in effect, had invited that view, as was recorded in the recital that I previously read out in the order of Deputy District Judge Emmerson.

13 At paragraph 18 of this report she sets out a conclusion in the following terms:

“In consideration of S’s need for stability, age, and development stage, I do not recommend any significant changes to the current arrangements. S has just settled into a routine whereby she can enjoy a relationship with both her parents. In my view, the priority for these parents is to improve their communication, improve their insight into S’s development needs and build on their co-parenting relationship. S is not yet of school age, and I would encourage the parents to use this time, before she starts school, to work together in mediation to come to an agreement in S’s best interests.”

Her recommendation is set out at paragraph 23. It says:

“I recommend that a Child Arrangements Order is made for S to live with her mother and father, which reflects her current arrangements. It is my view that the parents should attend mediation to make decisions on the areas that they currently disagree. In paragraph 17, I have listed



the points the parents may wish to cover in mediation. In addition to mediation, it could be beneficial for F and M to continue to engage with a Child Psychologist so that they understand S's needs as she gets older and keep her at the forefront of their decision making as coparents. The family has previously worked with Doctor A for this purpose."

- 14 As is clear, there is an addendum report as ordered by District Judge Phillips. I will just read out a few paragraphs because this report is, of course, germane as it deals with the issue which falls for me to decide. Paragraph 5 says as follows:

"M advised that S has grown in confidence since we met in April 2022. Therefore, I organised to meet S again on 3rd October 2022 to ascertain her updated wishes and feelings but on the day of the appointment M advised that S was unwell. Consequently, I was unable to see S prior to filing this report. I have referred to Paragraph 10 in the Section 7 report where I summarised my observations of S in the care of her parents and concluded that, *"She appeared happy and at ease with both of her parents... During my assessment, I did not have any concerns about the care provided to S by either of her parents"*.

She said she had separate calls with M and F on 2 October 2022 and 3 October 2022 respectively to obtain an update as to the progression of S's living and spending time arrangements. At paragraph 7 she says:

"F made a complaint regarding his experiences with Cafcass. The outcome was received today (7th November 2022), which is a complaint without any actions. The letter detailing the outcome of the complaint will be shared with the Court for their consideration. I am aware that F was reluctant to have an updating conversation with me, whilst his concerns had not been determined. It is positive that he was able to engage in this meeting as he is a parent to S and his views, alongside M's, have been invaluable in making recommendations for S."

- 15 The report goes on at paragraph 14 to set out what was then considered to be the two proposals for S. They are set out in table form between paragraphs 14 and 15. However, events took a further turn, as she recounts at paragraph 15:

"During my call with F, he put forward an additional shared care arrangement whereby S would split the week between her parents. S

would live with him from Monday night to Thursday night (four nights in total) and S would live with her mother from Friday night to Sunday night (three nights in total). F is aware that this proposal would result in him not having any weekends with S and he has carefully considered how he can continue to have quality time with S as well as ensure that she continues to engage in activities that they currently undertake on the weekend, such as her swimming lessons.”

She then conducts her analysis, and I quote just a couple of paragraphs:

- “27. The schools proposed by each parent are likely to meet S’s educational needs and are all within reasonable travelling distance for her. It is not a matter for Cafcass to determine the ‘better’ school provision for any particular child, however it is likely that S will thrive to a greater degree at a school where she can rely upon consistent and available ‘wrap-around’ care and support from her parents, including their attendance at school events.
28. There are benefits and drawbacks to any shared care arrangement. As outlined in the Section 7 report, I am of the view that the parties need to fully exercise their parental responsibility, with the support of their solicitors, a family therapist or mediator, if necessary, to come to an agreement on where S lives and goes to school or indeed any other decisions relating to S’s upbringing and welfare. I do not believe that it is in S’s best interests to have the Court or Cafcass act as a third parent by making these momentous decisions for her family.
29. I am also concerned that these proceedings are exacerbating the parental conflict, such as the parents collating ‘evidence’ against the other. With this in mind, I would reiterate my recommendation for F and M to agree S’s child arrangement between themselves. If the parents cannot reach a mutual agreement, the Court will need to make this decision on their behalf.
30. On balance, and from careful reading of each parent’s statement, as well as considering their updates during our calls, I am better persuaded by F’s most recent proposal for S to split the week between her parents.
31. The main benefit of S splitting her week is that she can continue to share her time with both her parents, without leaving a significant gap away from her other parent, which she may find difficult to manage at her young age. This proposal also addresses the majority of the concerns raised by her parents. For example, S will still be able to spend half the week with her mother where she can continue to be immersed in her mother’s languages and culture. It will reduce the time that she spends travelling between her parents’ homes, which would provide greater stability. In addition, F has adapted his work schedule to ensure that he can collect S from school, so she can spend her evenings with a parent rather than in an extended school day provision. This arrangement could also reduce F and M’s interactions

and result in more positive handovers for S if they take place at her school/nursery.”

- 16 She gave oral evidence, as I said, and was cross-examined. I note the following from her evidence. She was asked by Miss Lee that the father was relentless, and that question was asked in the context of the much longer amount of time spent by the Cafcass officer with the father. She said: “My motivation was S and her best interests”. She said, “Both parents were keen to put forward what was in S’s best interests”. Referencing that the complaint was made she said:

“Nothing came of the complaint. I carried out my enquiries and made the best recommendation”.

She said:

“I met with S on 8 March. In November S was unwell. The court had not asked about updated wishes and feelings. I had a video call with S in the care of her mother. She has a good relationship with the parents. That video call was 15 minutes, or so.”

- 17 She says that the father came up with the proposal when they met. She said it was a new proposal. She agreed she did not go back to ascertain the mother's response to the proposal. She took the view that F’s new recommendation addressed most of the concerns. She gave evidence that this is the best arrangement for S. It is the proposal that addresses the concerns. She said:

“I did not go back and discuss it with the mother, but it does not change my recommendation. This is in S’s best interests.”

- 18 I formed the view that this was an experienced Cafcass officer who gave her evidence professionally, sincerely, and appropriately, did her very best to explain her reasoning, and at no stage sought to shrink from the fact that she did spend longer time with the father. She

explained how the father's proposal came about and was open and straightforward. She did not go back to the mother on that issue.

19 The father also gave evidence. He provided three witness statements: one dated 31 January 2022, one dated 30 May 2022, and one dated 25 January 2023. I read paragraphs 1, 2, 11, 12 and 14 of his last witness statement of this year, which sets out his summary position:

- “1. Overall, I agree with the recommendations for S’s plans, for her to attend school in Borough A and continue to enjoy a well-balanced amount of time with both parents. Under the recommendations, S would continue to split the week and spend time with both of her parents without leaving a significant gap away from the other parent. The original proposals from both myself and M involved a midweek stay with the other parent and would have involved double the mid week (sic) travel than S does now. The amount of quality time she would spend with the other parent if a midweek stay were involved would be limited once travel time is taken into account.
2. I was concerned that M’s proposal would severely curtail the amount of time that S would get to spend with me, compared to amount of time that she currently enjoys. M has not set out any comprehensive reasons as to why such a change would be in S’s best interests, nor how S would be cared for around M’s working hours which she has stated are 9.30 to 17.30, when school finishes around 15:15-15:30. Unfortunately and in my opinion I believe that M’s proposal was rooted in her belief that mothers have primary rights to children over and above the rights of fathers. From the outset, I have always promoted S to spend a well balanced amount of time with both her parents. Something which is very much in her best interests.

...

## Plans for Future Child Arrangements

11. I agree with the recommendation in the S.7 Addendum report for S to live with me in the week and attend either School A which is my first choice, or School B, which is my second choice. I have been to both schools open days and have been very impressed with what they offer for S's future schooling. Both schools are walking distance from home and within walking distance from the station. Having seen the admissions statistics from last year and with 2019 being a low birth year, S stands a very good chance of getting her first choice school, if not her second choice.
  
  12. I have submitted a new shift rota at work commencing 4th September 2023 where I will be working part time hours, being 77% of the hours I currently work. I will be working three 5 hour days in the week during term time and two longer days every other weekend. I will not be working on Mondays or Thursdays. My working hours therefore enable me to be available to take S to school and collect her every day and spend quality time with her from late afternoon and in the evenings. During school holidays, I will work longer hours except the half of the school holidays where S is in my care and I will take A/L on these days. The shift pattern does have two weekday sets of night shifts during the year to fit in with my workplace business needs. As these days are working from home, this fits in with childcare. S will be able to continue to split her week as she currently does and spend the working week with me and then Friday after school until Monday morning with M. This shift rota was agreed by my management on 20th January 2023. I attach a letter from my line manager along with my new shift pattern, to verify this, which I exhibit as SRP/6.”  
...
  
  14. M's position statement dated 3rd May 2022 states that the journey between Station A and Station B is 1.5 hours each way. This is incorrect. The journey from Station A to Station B generally takes under 45 minutes. I have recently been taking a new route now the new Elizabeth Line central tunnel is open. When I take this route, travelling time between Station A and Station B is 37 minutes.”
- 20 He was also cross-examined. I formed the view that sometimes it was quite difficult to have him answer a question directly. I formed the view he was a little defensive at times but when asked a very direct question he would try to assist the court. I formed the view that he was an honest and straightforward witness who clearly cares very deeply about his daughter.
- 21 The mother also has provided written and oral evidence. Her first statement is dated 31 January 2022 and her second statement is 26 January 2023. There is also a lengthy position

statement which set out her position, and she was taken to it by her counsel in oral evidence.

That summarised her position then and I have read and taken that into account. I read paragraphs 2, 3, 4, 8 and 30 of her latest statement:

- “2. I was very concerned by the reference at paragraph 7 of the Addendum Report to F having *‘made a complaint regarding his experiences with Cafcass’* prior to the Addendum Report being filed. As such I made a subject access request on 9 November 2022 and received a response, with a case contact log, on 9 December 2022. This has enabled me to see steps taken by the Family Court Advisor (FCA) in preparing both the original Section 7 Report and the Addendum Report, including detail of the timeline and her or Cafcass’s engagement with me and with F.
3. I am concerned about the amount of time that the FCA/Cafcass officers have been obliged to speak to F, and I am concerned about what appears to be a rush in finalising the Addendum Report, without the opportunity for the FCA to speak directly to S in order to ascertain her wishes and feelings, or to seek my views on F’s new proposal which was made after my call with the FCA.
4. At paragraph 5 of the Section 7 Report the FCA states that she spent 2 hours and 15 minutes speaking to me (on 01.04.2022) and 5 hours in total speaking to F (on 04.04.2022 and on 11.04.2022). I am now aware that F also spoke to Cafcass on 07.04.2022, 08.04.2022, and 20.04.2022.  
...  
8. My concerns about this new proposal are:
  - a. That neither F nor I should be weekday and weekend parents.
  - b. Issues with travel arrangements, logistics, and impact on S.
  - c. That the proposal does not equate to S spending half the week with me and half the week with F, contrary to what the Addendum Report states.
  - d. Welfare issues....  
30. I believe that if S’s life is split into weekdays with one parent and weekends with her other parent this will impact on S’s ability to develop friendships with her peers. The FCA states that F has *‘... carefully considered how he can continue to have quality time with S as well as ensure that she continues to engage in activities that they currently undertake on the weekend, such as her swimming lessons.’* If S is either spending quality time with her father or doing extracurricular activities such as swimming she will have limited time to spend with her school friends after school during the week. If she is away from her school area and spending time with me every weekend this will impact on her ability to attend playdates, birthday parties, and other activities with her peers.”

22 M was an easy witness to listen to because she was commendably straightforward in her evidence and when asked a question answered it very directly and clearly. She told me that S has developed a lot since the shared care began and has learned and mastered three languages, she said, to a level that was fluent. She told me about her work arrangements as a solicitor and that she works flexibly. Her working hours are 9.30 to 5.30, but she can work sometimes less, sometimes more. She told me that she does not accept the Cafcass report was focussed on S's welfare. She told me the Cafcass officer did not explain why she came to her conclusions, and otherwise she gave oral evidence about many of the issues.

#### (4) The Law

23 In respect of the child arrangements order, there is no debate that I have to consider section 1(3), the welfare checklist, and S's welfare. There was a very short discussion as to whether or not a move from Borough A to Borough B is an internal relocation, but whether or not it is an internal relocation then I consider the case of *Re C (Internal Relocation)* [2015] EWCA Civ 1305, a decision of Black LJ, Vos LJ and Bodey J, and I am guided by what Vos LJ, as he then was, says at paragraph 82:

“I add a few words in an attempt to summarise the position that has now been reached. As counsel before us agreed, in cases concerning either external or internal relocation the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child. It is no part of this exercise to regard a decision in favour or against any particular available option as exceptional.”

Therefore, on the issue of relocation, how I determine with whom S should reside I am applying the welfare checklist and S's interests are paramount to that analysis.

24 In terms of how I approach the evidence of Cafcass, Mr Moore has handed me up *Re W (Residence)* [1992] 2 FLR 390, a decision of Thorpe LJ and Potter LJ, and Mr Moore relies on the passage at the bottom of 394 which says:

“In relation to the role of the court welfare officer, it cannot be too strongly emphasised that in private law proceedings the court welfare service is the principal support service available to the judge in the determination of these difficult cases. It is of the utmost importance that there should be free co-operation between the skilled investigator, with the primary task of assessing not only factual situations but also attachments, and the judge with the ultimate responsibility of making the decision. Judges are hugely dependent upon the contribution that can be made by the welfare officer, who has the opportunity to visit the home and to see the grown-ups and the children in much less artificial circumstances than the judge can ever do.”

25 Miss Lee reminds me rightly of what the notes to the Family Court Practice say at page 445:

“The final decision as to any question and issue rests with the court, but the welfare report and any recommendations that the children and family reporter makes must be taken into account. If the court decides not to follow the recommendation of the children the (inaudible) issue and give its reasons. [Wording unchecked]”

I am clear it is my decision and I am entitled to depart from the reasoning of the Cafcass officer, but if I do so I must explain clearly why I have done that.



(5) Submissions

- 26 I deal with this only very briefly. Mr Moore's case on behalf of the father is the proposal that S resides with the father on Monday to Thursday nights inclusive and the mother on Friday to Sunday nights inclusive and attends the School A in Borough A. He says there is no reason why I should not follow the Cafcass recommendation. It is coherent and clear. That proposal, and indeed the father's proposal, provides for a consistency: a solid base; it has the least number of handovers; the mother's case in travel is exaggerated and it is around 45 minutes door to door; the father has greater flexibility at work; the mother can, of course, engage in the education; S is familiar with Borough A; and he addressed me briefly on the ancillary issues.
- 27 Miss Lee's position on the mother is to advance a proposal, which is found at D117 of the bundle, which is, I will just briefly describe it, a two-week rolling programme. The first week beginning with the Monday, S would be with the mother on Monday evening, with the father on Tuesday evening, with the mother on Wednesday and Thursday evenings, and with the father on Friday, Saturday, and Sunday. Going into the second week she would overnight with the mother on Monday, Tuesday, Wednesday, with the father on the Thursday, back to the mother on the Friday, then with the mother on the Monday night and the Sunday night, and then that would repeat. That would involve six journeys in the 14-day period.
- 28 Miss Lee's overall submission was that that proposal is a much more balanced one, which more appropriately allocates weekday school time to one parent and weekend time equally between the parents, and then that way it is a better balance for S to spend time with both her parents.

29 Miss Lee was very clear and was polite and professional, but nonetheless took issue with the CAFCASS officer's recommendation and invited me to find that her proposal was wrong for the following six reasons: the first was that her recommendation is for mediation, which was to misread the situation as that was not supported on the evidence and was not possible or realistic; secondly, that there was a serious error in not going back to the mother about the father's proposal, which only emerged on the call which led to the addendum report; thirdly, that the father's proposal does not meet the gaps and was not balanced as she said the mother's proposal was, and that was not adequately addressed at paragraph 31 of the addendum report; fourthly, there was a significant disparity of time that was spent between the mother and the father for the purposes of the second report; fifthly, the father had made a complaint and she queried what impact that had had on the Cafcass officer; sixthly, she said the Cafcass officer did not have the time to meet with the mother with S together other than on a short video call, whereas she had seen the father and S together in person and that was unfair.

30 She took issue with the father's proposal and took the view that there was really in reality not very much difference between the various journeys that would be required between the two proposals. She queried whether the father could meet S's welfare needs during those weekdays given the evidence he had given on video calls and give his "inflexible approach", as she described it, in respect of the various applications that had been considered. She also took the view that he was not able to adequately meet S's dual heritage, her background, and her linguistic needs, and he had shown himself to be difficult with the mother's parents. She then addressed me on the ancillary issues.

#### (6) Analysis

31 Before I consider S's needs I must consider how to approach the Cafcass evidence. Miss Lee has rightly raised a number of issues and I must deal with them. I have considered very carefully what Miss Lee says about the Cafcass evidence. Whether that is a question of what weight I place on her evidence; or alternatively whether I look at the criticisms of the Cafcass's officer approach, such that I disagree with her recommendation - either way these are valid matters to consider. Having then considered them carefully, I do not find there is merit in those criticisms. The fact that she continued to recommend mediation, even though that seemed on the evidence to be unlikely, is not a reason to criticise her. It seems to me it is still a reasonable professional recommendation to make that one always hopes that parents will stand back and understand that they must try to mediate. I do not think that undermines the core conclusion set out at paragraph 31 of her addendum report.

32 In terms of not going back to the mother about the father's proposal, I have considered that carefully. I think in an ideal world she would have gone back and obtained the mother's view, but nonetheless I think it is fair, looking at all the pieces of the jigsaw together, that she would have anticipated the mother's view would be to be opposed to that for similar reasons that she was opposed to the earlier proposal. There was certainly nothing unfair about it, and the reasoning in her report is not impacted by it. In any event, she was then able to read the mother's witness statement, she was cross-examined in court, and she was able to reflect on that further evidence and she maintained her view. In my judgment, the reasons in her addendum report remain coherent and clear notwithstanding that.

33 The third point regarding that the father's proposal I will deal with because that seems to me a rather separate issue which goes to the merits rather than the process by which the Cafcass officer carried out her enquiries. It is certainly clear that the Cafcass officer spent a lot more time with the father. His reasoning there was that a lot of allegations were made by the mother. Given his role as a professional police officer he took time and care to explain what

had happened. I accept that as a reasonable explanation. He may well have had more to say. As I say, listening to both the mother and the father give evidence it was much easier to quickly and clearly elicit the evidence from the mother than the father because she has a much more direct style of communication. I do not think that creates any unfairness or impacts upon the recommendation made.

34 The father may have made a complaint but it was dismissed, and it was clear in evidence that the Cafcass officer was not bothered by that. It may have been better for the Cafcass officer to have seen the mother and S, but as Mr Moore pointed out she did see them on the video call and Cafcass officers have got well used to, during the pandemic, evaluating child relationships by video calls. In any event, it is not an issue in the case that both the mother and the father can meet S's needs. Therefore, taking each of the complaints made, all six of them, either individually or looking at them holistically, I do not consider there is any weight in the attack made. I do not consider that Ms Joseph was anything other than a professional, diligent Cafcass officer who went about her task as best she could and provided an opinion to the court, which is a true and honest one. I recollect that her very clear evidence was both parents put together their proposals and she made a recommendation she believed was based on S's best interests.

35 Turning back to S, she has lived by way of coparenting with her father and her mother in separate homes since August 2021. She has done well. Her mother says in evidence, as I have already said, that she has developed a lot since then and has learned fluency in three languages. It is clear that she thrives in the care of her mother and in the care of her father. She very much thinks that they are both devoted to her and love her very clearly. S, however, also needs for them to stand back and stop the ongoing conflict that takes place between them. It is clear, and it appears to be an ongoing issue, that handovers remain a point of tension, and the evidence seems to suggest that S becomes anxious or unsettled at

these handovers. That may well be because she is anticipating the conflict that takes place between the mother and the father. Her parents need to realise this is harmful to her and it must stop.

36 S is almost four. She will begin school in September. She is clearly an academically able child given her mastery of three languages. She needs a firm and secure educational base. Whilst she has managed at two nurseries this is plainly not a solution going forward, and she will have to have one sound educational base going forward. She needs to have her healthcare needs met, and I have been shown recent medical evidence that whilst unfortunately she has had some hospital admissions there are no current particular concerns. She needs to feel the love and familial ties of her wider family. She is fortunate to have paternal and maternal grandparents. She spends time with both of them, and I have also heard evidence of the involvement of wider family, aunts and uncles and cousins, on both sides. She needs to be able to spend time with this wider family. It will help her understand who she is and make her feel grounded and loved.

37 S also has a rich dual heritage. Her mother and her family are from Country A. This offers a cultural, ethnic, religious, and linguistic kaleidoscope of opportunities. It must be nurtured and cherished, as should her British parental family roots which are equally as important. Her dual identity and heritage are an important part of her developing personality and needs.

38 I must consider the two competing options before the court against S's needs identified and as against the welfare checklist. I consider them side by side, holistically and together, to attempt to evaluate which option is in her best interests. Working through the welfare checklist next makes the evaluation easier. I have already explained what the two options are. They both involve different schools.

- 39 Turning to the welfare checklist then. S's ascertainable wishes and feelings are not at the forefront of the evidence. I have already quoted the wishes and feelings that the Cafcass officer identified, and she clearly enjoys time with both her parents and enjoys being cared for by them both.
- 40 I consider her physical and emotional and educational needs as I have identified above. She has no particular physical needs which impact on the two options. Her educational needs can be met at either school; however, it is important she has a firm emotional base because any instability in her emotional life is likely to impact both on her learning in the classroom and her social skills with her peers and teachers in the playground and beyond. The fact that she has developed well in shared care since August 2021 demonstrates to me her emotional needs can be met by shared care, but there are pros and cons with each option.
- 41 On the one hand, the father's proposal has the disadvantage that she will spend less relaxed time or weekend time doing fun things with him: a result of the imbalance that she does not spend any weekends with him and weekends with her mother. Conversely, her mother sees her much less during the week and she sees much more of her father during the week. That being said though, considering it from S's perspective, his work patterns mean he is not working two days per week from September and therefore he will have more time to spend together relaxing with her because he is not working, and that makes up for his loss of the weekends.
- 42 Miss Lee submits this leads to the imbalance of the father's proposal, but I consider the fact that the father has days off in the weeks evens out that imbalance and is a more S-focused solution. It may be in a household where both parents work full time Monday to Friday I would be more sympathetic to that submission, but looking at S's particular arrangements

her mother works fairly solidly Monday to Friday, although with flexibility, but her father has two days off, so if she spends more downtime with her mother at weekends and more downtime with her father on his days off during the week they are matters of benefit to S.

43 On the other hand, the mother's proposal involves six journeys every fortnight and, in particular, involves journeys on six out of the ten school days. This is more likely to cause emotional upset to S as she will feel she is moving backwards and forwards between homes, particularly when she is attempting to settle into school, access the curriculum, and make and develop new friends. In my judgment, it is a lot to ask a four-year-old to navigate the new world of school whilst at the same time travelling backwards and forwards between two different homes during the week. I particularly note the mother's proposal involves on one occasion in each week just one school night at either the mother or the father's home before changing again. I consider that to be very disruptive.

44 Although the father's proposal involves four journeys each week that has the benefit of the fact that they are at the start and the end. The beginning is returning to school on Monday and leaving from school on the Friday afternoon. I consider that to be less disruptive. Therefore, considered overall I find the father's proposal less disruptive and more likely to provide stability and certainty to S. These are very important attributes for a three rising four-year-old.

45 Neither of the two options involves a fundamental change in circumstances but an evolution of the shared care arrangements already in place. The change for S will mostly be felt in stopping her two nurseries and beginning in school. It is important for her emotional and educational needs. She is supported with stability as much as possible to manage this change. The father's proposal is more convincing in this regard as S will have stability of one home for the school week.

46 I have already underlined the importance of S's dual heritage. Both options in my judgment are capable of advancing this important background. S already speaks three languages. She spends time with her parents and grandparents. She sees her wider family. She has ample opportunity to enjoy religious and cultural aspects of both heritage and can travel during the holidays. I reject Miss Lee's submission that the father's shared care model will, in effect, marginalise the mother's heritage. The shared care of the last 18 months shows how effective it has been in promoting both aspects. Both parents are capable of meeting her broader needs. This has not really been questioned aside from the father's commitment to her dual heritage, which I have dealt with.

47 I will deal in a moment with the ancillary issues with Miss Lee's concern that the father cannot meet S's welfare needs during the week given his issues around video calls and the family app, but these concerns can be met by a clear and firm order, and I accept the father's evidence that he will comply with any order I make. That was his evidence.

48 Therefore, standing back analysing both options in the round and applying the welfare checklist, the father's option is better placed to meet S's needs more widely and is in her best interests because, firstly, it involves less disruption and conversely it creates more stability. In particular, the mother's schedule involves S spending one night at one parent's home and then moving back to the other parent's home on at least one occasion each week. This is the only way she advances her schedule in a way that can make it work, but I consider that more likely to be confusing and upsetting for S. I am concerned there is a risk it will diminish her sense of home and may leave her feeling vulnerable. On a practical level it will make her more tired, potentially less able to learn, and is not consistent with the overall emotional security I would hope for a three/four-year-old.



49 Secondly, the father's proposal reduces the handovers. Those handovers are points of tension even if they are going to take place at a school. Thirdly, less handovers mean less conflict, and S has been already negatively impacted by conflict. Fourthly, I am content on the evidence that the father can accommodate her cultural, ethnic, religious, linguistic, and wider needs, and therefore she will not miss out.

50 Lastly, it maximises her parents' available time for S and so from S's perspective it is the best solution for her. As I have said, her mother works during the week whilst her father has two days off. It is in her best interests to spend as much time as possible with her parents when they are not working given she is a very young child. Therefore, for those reasons I find that the father's proposal is in her best interests, and I find myself in agreement with the evidence of the Cafcass officer. There is no reason to reject her recommendation, and I having carefully considered her reasoning and adopt her reasoning at paragraph 31 of her addendum report and I add it to my own reasoning.

51 I will just deal with a number of other issues Miss Lee raised. She said the mother would be marginalised from S's education, but she need not be. She can attend the school on Monday morning and Friday afternoon. She has told me she works flexible hours. Being present at the school twice a week is perfectly adequate. There is no reason why she cannot attend sports days, plays, and events like any other parent subject to her work. She can email and call teachers. She can have a full role in S's education.

52 Just to reiterate Miss Lee's headline point about the lack of balance in the father's proposal, I have considered that argument carefully but I do not find it convincing. The mother can work on languages, schools and educational activities at the weekends. That will provide ample basis to amplify S's dual heritage. The father can spend time during the week after

school doing fun things with S, like swimming and other activities they enjoy together, so I do not consider there is a lack of balance. I also, as Mr Moore urges on me, do accept the point that it should not be lost on the court that if the mother had not unilaterally moved from Borough A to Borough B some of these issues could have been avoided by the mother living closer to a S's school, but that is not the situation S or the court is presented with and I must make the best of the situation that appears before me on the evidence.

53 Therefore, having carefully followed the evidence, which is the role of the trial judge, I accept the evidence of the Cafcass officer, I broadly accept many of the points made by the father, and I accept much of the mother's evidence, but my welfare analysis concludes me to believe it is in S's best interests for there to be a child arrangements order in the way the father provides, as supported by Cafcass. I have then carefully considered whether this option amounts to a violation of the mother's Article 8 rights to respect for a family life. In my judgment, it does not. It is merely an evolution of the existing shared care arrangements, and it is in any event a necessary and proportionate interference with any right to respect for a family life for the reasons I have endeavoured to set out above. It presents the best opportunity to safeguard S's welfare by protecting her emotional and educational needs and providing her with the best sense of security of the two options available to the court.

54 I therefore turn to deal with the ancillary issues. The first is video calls. I am entirely clear that video calls are in S's best interests, and I accept the evidence of the Cafcass officer that they can be for around 15 minutes. S may leave the scene, she may choose to come back to it, she may not, but there is no reason why the video call cannot be facilitated by each parent when S is not in the presence of the other parent. Both video calls can take place on every second day when S is not in the care of that parent. They will be for around 15 minutes, and a year from hence they will be for around 20 to 25 minutes. I will make an order that each parent must facilitate that.

55 Secondly, I have considered the summer holidays. I have listened very carefully to what the father says about the cost of holidays at the end of July and the beginning of August, but I am persuaded by the mother's proposal which involved S spending over 23 August (M's birthday) with her and her wider family. I consider there is much to be said for S, in having what I would consider to be a joyous family holiday with many extended family members, maybe somewhere hot and fun like Greece or the Balkans, on 23 August every year, which will be a special occasion when she will make many fond childhood memories and where she will spend time not only with her mother but her maternal grandparents, aunts, uncles, and cousins. Therefore, that is overwhelmingly in her best interests and that is how I approach that. There will be time for the father to have holidays before and after, but there will be a two-week block every year which falls around 23 August.

56 The third point is Our Family wizard. I am entirely persuaded on the evidence that is the correct app to use with paternal add-on. There is a reason it is very successful and much used in this court, and no doubt, as F told me, there is a reason why it is very profitable from the evidence because it is, as I understand, highly effective and the communication between the mother and the father to date has not been successful. It is plainly in S's best interests that they can communicate effectively. Our Family Wizard is the appropriate way forward.

57 Fourthly, the interim position until September shall remain as currently is. It shall not change. S has enough to deal with. The only change I make is that the handovers no longer take place at the tube station, but they will take place at whichever nursery she is attending. If that requires the childminder to do so, then the parents must sort that out. Because this is a family with some means and there is an international element, I am persuaded that two out of the three half-term holidays she will spend one week with one parent and the next half-term with the other parent. Only one half-term each year will be split equally and divided

on the Wednesday. That is in her best interests allowing her to travel with her mother and her father.

58 She will spend her birthday this year with her mother; thereafter it will alternate. Her birthday will not be split. It is not for S to have to give up her birthday travelling. That is not in her best interests. As for bank holidays, they are to be split one after the other alternated to be her mother and her father.

59 I end by urging the mother and father to please make this child arrangements order work. It is very clear to me they are highly intelligent, well-motivated, and loving parents with a huge amount to offer themselves and by dint of their background and their families. If they can please set aside their differences and focus on S they continue to have a huge amount to offer.

60 I end this judgment by thanking all solicitors and counsel Mr Moore and Miss Lee for their very considerable assistance. I ask that an order be put together giving effect to the judgment in these terms.

**Clarification requested by Mr Moore re summer holidays:**

61 The holidays are to be divided equally and on the 23rd whatever else happens S will be with her mother. Whether that means she comes back from the holiday on the 24th one year or she leaves for a holiday on the 22nd one year I am not getting into that level of detail, but on the 23rd she will be with her mother. Whether the 14 days run from the 22nd or they end on the 24th I am going to leave you to draft that. Thank you very much.

**CERTIFICATE**

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