

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
21/02/2008

Before:
THE HONOURABLE MR JUSTICE CHARLES

Between:
M (Applicant)
- and -
H (Respondent)

M in person
Alun Jenkins (instructed by The Michael Hill Partnership) for the H
Miss Espley (instructed by Fraser Dawbarns) for the child through her Guardian
Hearing dates: 30 & 31 January and 1 February 2008

HTML VERSION OF JUDGMENT

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Charles J :

Introduction

1. This case concerns S who is now 5 ½. It now has a fairly long history. In terms of judgments in the High Court I gave a judgment on jurisdiction in the summer of 2005, a judgment on welfare in January 2006 and Hogg J gave a judgment in the summer of 2007 on some welfare issues.

2. As appears from my 2006 judgment, in 2003 a joint residence order was made in respect of S and her mother went to live in Dresden. That joint residence order (with some amendments) governed the time that S spent with each of her parents. Her father remained living in England. S was conceived before the marriage of her parents and there are now divorce proceedings.

3. In 2006 I continued a shared residence order and set a new regime for the time that S was to spend with each parent. I also set a timetable for review which resulted in the hearing before Hogg J in 2007 and this hearing, which was set in large measure so that a decision could be made as to where S should go to school on a full-time basis. It was clearly understood by all in 2006, and was inevitable, that the regime of time spent with each parent in the two countries would have to change when S started full-time school. This was because she would have to go to school in one of the two countries and therefore she would be living with the parent in that country during the school terms. The position remains that the mother is living in Dresden and wishes to remain living there and the father is living in England and wishes to remain living here. The question therefore arises whether S should go to school in England or in Germany. If in England she will continue at her present school. If in Germany she will remain at her present kindergarten until the beginning of the school year in September 2008 when she will move to full-time school. There is a dispute between the parents as to whether she should attend a local public school or an international school.

4. I shall not set out the history in greater detail in this judgment. More can be seen from my earlier judgments (and I am sure from the judgment of Hogg J - but no transcript of that is available) and from the three reports of the CAFCASS officer (who was appointed as S's Guardian by Hogg J), the statements of the parties and a chronology that was prepared by counsel for the Guardian. At the earlier hearings before me the parents have appeared in person. At this hearing the mother was represented and through that representation put in a further statement during the course of the hearing. This statement did not contain anything that might have taken the father by surprise and he was able to deal with it. The father against represented himself.

5. The main issues now before the court are governed by the paramountcy principle and therefore the court has to have regard to the matters and checklist set out in s. 1 Children Act 1989. In her reports the Guardian has helpfully specifically addressed the checklist set out in that section. I shall not do so in this judgment. As is often the case issues in respect of items in that list overlap. I have naturally had that list very much in mind.

6. I pause to point out that given the jurisdictional disputes that have occurred during the history of these proceedings my short discussions with the judge in Germany have made it clear that effectively the same approach to the issues would be taken in Germany. The welfare of S is the paramount issue and in this context a starting point in each jurisdiction is that so far as is possible S should maintain an attachment to, and a relationship with, both her parents.

7. As with many other cases of this type the court applying the paramountcy principle in whatever country is faced with difficult problems and the solution ordered can cause considerable emotional upset and distress to one of the parents. The solution will also often involve changes in the relationships between the child and its parents which can cause upset to the child. Both the parents and the child are put in difficult situations having regard to the available choices flowing from the inability of the parents to reach agreement and the wishes

of the parents to live in different countries. The child has conflicting loyalties and feelings which can create considerable burdens on the child.

8. Here the underlying problems and the difficult choices they give rise to flow from, amongst other things, the following points:

- i) both parents are capable of providing more than good enough physical care for their daughter S,
- ii) both parents love S and she loves both of them,
- iii) S has a good attachment to both her parents and her welfare would be promoted by them both participating as fully as possible in her life,
- iv) both parents assert and believe that they are seeking to do what is best for S in the circumstances that now prevail,
- v) looked at solely from the viewpoints of each of the parents what they each assert can be said to be reasonable, for example they both have reasonable reasons for wishing to live respectively in Germany and England. But this point has to be qualified by reference to the effects that the combination of their stances and actions has had, and is having, on their daughter,
- vi) the conflict between the parents is longstanding and deep-rooted. In large measure it flows from their respective characters and histories,
- vii) this conflict has led to them both having a deep mistrust of, and a strong antagonism towards, each other in particular in respect of their care of S and their motives and decisions relating to her. The mistrust and antagonism also goes wider than that,
- viii) in my 2006 judgment I made a number of criticisms of, and findings relating to, the parents and, save that the disputes and reporting to relevant public authorities relating to S's physical health has happily abated, there has effectively been no constructive movement or effective amelioration of the conflict and problems between the parents,
- ix) both parents have from time to time expressed a wish to be constructive but this has not resulted in significant constructive steps and changes being taken and made,
- x) both parents have for some time been aware that a significant change will occur when S starts full-time school and depending on the place chosen it will accord with the wishes of one and deeply disappoint the other. Both have had this in mind and rightly regard the decision as to where S will go to school as one that will dictate who cares for her for the majority of the time,
- xi) S is a bright five-year-old and she is acutely aware of the deep conflict between her parents and the high level of antagonism that exists between them,
- xii) the parents either have little, or have demonstrated little, understanding of the potential for their parenting to cause significant and lifelong emotional harm to S. On occasion each of them has indicated that they recognise this albeit that they largely place

the blame on the other for not changing his or her position and, as I have said, they have been unable to change the general themes of their respective stances and conduct so as to make constructive changes to the impact of their parenting on S,

xiii) unless both the parents manage to bring about significant changes in their attitudes and conduct towards each other, and thus in their parenting, in my view there is a high likelihood that a product of their parenting will be significant and lifelong emotional harm to S, and

xiv) that harm would be likely to include depression and an anxiety disorder but could extend beyond that to a personality disorder.

9. The stakes so far as S is concerned are therefore high.

10. I base these conclusions, including those as to the risks that S is being subjected to by her parenting, on the history of this case, my previous findings, the additional findings in this judgement and the helpful reports of both the Guardian and a psychologist, Dr Bisbey, who was appointed to report at the request of the Guardian. Dr Bisbey and the Guardian also both gave oral evidence which was clear, compelling and helpful.

11. I heard oral evidence from both the mother and the father.

12. Dr Bisbey's findings based on interview and testing confirm and expand on conclusions I reached in my 2006 judgement relating to the characteristics of the parents. Her report merits reading in full. It contains the following passages:

Testing results: Father: The International Personality disorder Examination (IPDE) is a semi-structured clinical interview designed to help standardise diagnosis of personality disorders. There are two versions – the Diagnostic and Statistical Manual of Mental Disorders – IV and the International Classification of Diseases – 10. It is advised that practitioners consider both forms of diagnosis as they are not exactly equivalent. There is a screening test that is a self-report questionnaire allowing the practitioner to fairly quickly decide whether it is necessary to administer the full semi-structured interview. The time criteria used for this examination is over the past 5 years – which is considered a conservative measurement for personality disorder (e.g. symptoms have been noted in the past 5 years). The scoring is structured and there is a place for symptoms to be recorded that are reported by 'informant' (e.g. by another person and/or from the records) as well as those reported by the client. Given the controversy around personality disorder diagnoses, it seems prudent to add an additional structured clinical measure to aid in assessment. The father does not meet the criteria for a diagnosis of personality disorder. He does show a number of maladaptive personality traits that are commonly associated with Anankastic Personality Disorder and Histrionic Personality Disorder.

Anankastic Personality Disorder is characterised by doubts, perfectionism, conscientiousness, checking and preoccupation with details, stubbornness, caution and rigidity. Individuals with these traits often engage in pedantry. They are likely to insist that others do things exactly the way they do them. They tend to be behaviourally rigid, distant, intellectualised, and detailed. They are often controlling of themselves, others, and situations indirect in their expression of anger although an apparent undercurrent of hostility is often present. They are likely to be inflexible and stubborn in relationships. The Histrionic Personality Disorder is characterised

by shallow and labile affect, self-dramatization, exaggerated expression of emotions, suggestibility, egocentricity, self-indulgence, and lack of consideration for others. People with these traits are easily hurt and seek continual excitement, attention and appreciation. Individuals with histrionic personality traits view themselves as gregarious, sociable, friendly and agreeable. They consider themselves to be charming, stimulating, and well-liked. For individuals with Histrionic Personality Disorder, indications of internal distress, weakness, depression, or hostility are denied or suppressed and are not included in their sense of themselves. Individuals with histrionic personality traits tend to have stormy relationships that start out as ideal and end up as disasters. -----

The test is valid. However, the father worked very hard to present himself in a positive light. The father's profile is of someone who is affable and sociable on the surface but who likely has some chronic feelings of social discomfort and awkward social relationships. His profile is of someone who tends to appear charming to acquaintances but in longer term and more intimate relationships is likely to be perceived as demanding and somewhat emotionally shallow. It is of someone who does not tolerate boredom well and tends to become impulsive in situations in which he is bored. Of interest is that he reports few symptoms of anxiety though he is clearly anxious and has been so during the life of this Court case. -----

Testing results: Mother: For a description of the IPDE, please refer to paragraph 6. The mother does not qualify for a diagnosis of personality disorder. She has some personality traits that have caused her long standing difficulties in managing stress and her relationships with others. Like The father, she has some of the traits associated with Histrionic Personality Disorder, including a tendency towards moodiness, shallow emotions, egocentricity and self-dramatisation. This is combined with some traits associated with paranoid personality disorder including a deep distrust of others, a rigid belief system and a pervasive fear that others mean to do her harm. It is likely that these traits have become more pronounced since the demise of her relationship with the father.

The Hare Psychotherapy Checklist is designed to measure psychopathy in a forensic population. The test is scored by the clinician based on a semi-structured interview data and collateral (file and written reports) information. A score of over 30 on this measure is indicative of a diagnosis of psychopathy. The test is made up of two factors. Factor one measures the personality traits associated with a diagnosis of psychopathy. Factor two measures behavioural traits associated with the diagnosis and also closely associated with a diagnosis of Anti-Social Personality Disorder. Research has demonstrated that whilst the majority of a prison population will qualify for a diagnosis of Anti-Social Personality Disorder, only a minority will qualify for a diagnosis of Psychopathy. Research has also demonstrated that high levels of psychopathy are associated with (and in some populations predictive of) violent crimes and behaviour, poor response to treatment and high levels of recidivism in prison populations. The body of research has been conducted in Canada, the United States and in the United Kingdom. There was no evidence of psychopathy or antisocial personality disorder.

For a description of the HCR-20, please refer to paragraph 6.4. For the purposes of this test, I rate the risk to S of experiencing violence at the hands of the mother as low to moderate.

For a description of the Milton Clinical Multiaxial Inventory – III, please refer to paragraph 6.5. The test was valid. The mother' profile is of someone who seeks excessive attention and praise in order to gain the nurturance and reassurance she needs from others. When this is not

present, she feels inadequate and worried about her ability to cope. The testing reflects the profile of someone who has extreme paranoid symptoms at present – believing that others are actively plotting to cause her harm and/or make her life difficult. She is experiencing symptoms of anxiety though she does not wish to admit to these readily.

13. This is a character mix that in my view has made a large contribution to the history of conflict between the parents and thus to the aspects of their parenting alone, and together, that is likely, in the absence of significant and lasting changes in the approach of the parents to one another, to cause significant harm to S.

14. I agree with the Guardian when she said that unless the parents make significant changes it is likely that they will lose S. In saying that she meant as I understood her lose S emotionally, and perhaps both emotionally and physically by her being taken into care.

Section 37 Children Act

15. It will be apparent from what I have said that the jurisdictional trigger to a request for a report under this section is established. Indeed I would go further and record that in my view the threshold criteria in s. 31 is established on the basis of the likelihood that S will suffer significant emotional harm.

16. I therefore raised the question whether I should seek a report under s. 37 and make an interim supervision order. In my view, given my view as to the existence of the threshold, the issue for the local authority would be whether in its view the welfare of S warranted the bringing of public law proceedings so that the risk of her suffering significant emotional harm could be addressed and managed under a public law order.

17. None of the parties supported an order for a s. 37 report (with or without an interim supervision order) being made at this stage. I was urged by the Guardian not to take this course but to provide for a review which would keep her in place. She was of the view that that course would enable her to do as much, if not more, than the local authority in promoting S's welfare by encouraging the parents to undergo cognitive behavioural therapy (CBT) and discussing the home situation with the parents in the light of my decision. This was on the basis that in accordance with her recommendation S went to school in England.

18. If she goes to full time school in Germany issues would arise as to whether this court should retain jurisdiction and as to the involvement of the local authority.

19. By a fine balance I have decided not to order a s. 37 report and make an interim supervision order and thus to set in motion the possible involvement, through or outside public law proceedings, of the local authority. In reaching that view I have placed considerable reliance of the view of the Guardian which is in part based on her knowledge of the approach and resources of the relevant local authority. The effect of the local authority becoming involved would in large measure depend on the individuals assigned to the case. I agree with the Guardian and Dr Bisbey that the likelihood of significant change in the attitudes of the parents being achieved through CBT, or for other reasons, are poor but not hopeless. If they were achieved this is likely to best promote the welfare of S against a background in which the local authority has not become involved and in an attempt to achieve this result I agree that it would be premature to involve the local authority at this

stage.

20. As was apparent during the hearing both parents now know that there is a real prospect that absent significant changes there is a real prospect that local authority involvement (here and/or in Germany) will be necessary and appropriate to promote S's short, medium and long term welfare.

A decision now

21. In her written report Dr Bisbey stated in respect of the question whether S's welfare and wishes would be better met by her having her primary home in England or Germany that she would prefer to defer a full answer until she had seen S on her own, but that if the court felt that was not appropriate she would respond by a short addendum. In fact she gave a recommendation in her oral evidence.

22. I asked her what value added she might have gained from seeing S on her own in respect of the issues now before me and she accepted that this was uncertain and unlikely to be great. She also acknowledged the risk that a delay to enable Dr Bisbey to see S on her own this might give S the idea that she was a decision maker and place an inappropriate burden in her.

23. In my view the balance of those factors means that a decision on schooling (and its knock on effects) should not be delayed to enable Dr Bisbey to see S on her own and no-one argued that it should.

The religious difference between the parents

24. When S was born both parents were Catholics and S was baptised a Catholic.

25. In 2006 the mother acknowledged that she had become a Jehovah's Witness. It appears that she started on the path to this change of her religion before she left for Germany. She is now baptised as a Jehovah's Witness. The father has raised a number of points about this change of religion and its effect. He makes the point that the mother kept it secret from him and the court and that it only came to light at the 2006 hearing.

26. The father made it clear during the hearing, as he had done before, that the issues he raises arising from the fact that the mother is a Jehovah's Witness are not his main points and should not deflect me from those points.

27. In this context I was referred by counsel for the mother to two unreported cases (*Re T* 10/12/79 Court of Appeal and *Harrison v Harrison* 17/6/80 Divisional Court unreported) as support for the proposition, which I accept, that the fact that the mother is a Jehovah's Witness is of itself not a relevant point. The father accepted this and in my view has never been making this point.

28. The point that the father is a Catholic and his beliefs as such is also of itself not a relevant point.

29. So the fact that one parent is a Catholic and the other a Jehovah's Witness is not of itself relevant and a decision should not be based on a preference of one of these religious beliefs

and lifestyle based thereon to the other. For example as Scarman LJ says at page 19 of the transcript in *Re T*:

"--- it does not follow that, because one parent's way of life is more acceptable to most of us, it is contrary to the welfare of the children that they should adopt the way of life of the other parent that is acceptable only to a minority, and a tiny minority at that. It seems to me that when one has, as in this case such a conflict, all that the court can do is to look at the detail of the whole of the circumstances of the parents and determine where lies the true interest of the children."

And as Sheldon J says in *Harrison* at page 16 of the transcript:

"There have been many occasions upon which the courts have had to consider the problems that can arise in the family environment when one parent, but not the other, has become a Jehovah's Witness - problems which may be particularly difficult to resolve when they relate to the upbringing of children. Some aspects of that particular faith, indeed, may well be thought by many to create an environment which is not the best and happiest for a child's upbringing, particularly if it leads to his or her isolation from other children and from his or her wider family. Clearly, moreover, these may be matters of great importance when considering the welfare of any particular child and the orders to be made for custody and access. But there are many other matters which also have to be taken into account and it would be quite wrong for anyone to assume, in a dispute between two parents of whom one is and the other is not a Jehovah's Witness, that the custody and care and control of their child will necessarily, or even more often than not, be given to the latter. Each case must depend on its own particular circumstances; I endorse my Lord's hope that the decision of the Court of Appeal in *Re T*, given on 10 Dec 1975, will be reported for its very valuable summary of how these competing factors should be considered and weighed."

30. It follows that it cannot be said that the beliefs and practices of a parent who is a Jehovah's Witness creates a situation that is so inimical to good family life that ordinary considerations have to give way to it in determining what will best promote the welfare of the relevant child. The position is that the two opposing ways of life that are relevant in this case are both socially acceptable and certainly consistent with a decent and respectable life and one in which the welfare of children can be promoted (see pages 8 and 12 of the transcript of the judgment of Scarman LJ in *Re T*).

31. Rather the relevance of the religious difference relates to the impact in all the circumstances of the case on S's welfare of the respective beliefs of the parents and thus of their respective lifestyles and attitudes based thereon. This is an exercise that can only be carried out in all the circumstances of a given the case and it naturally has many comparative elements. For example, at page 12 of the transcript in *Re T* having referred to practices of Jehovah's Witnesses relating to the celebration of birthdays and Christmas Scarman LJ says:

"These are factors that must be considered, but I think it is essential in a case of this sort to appreciate that the mother's teaching, once it is accepted as reasonable, is teaching that has got to be considered against the whole background of the case and not as in itself so full of danger from the children that it alone could justify making an order which otherwise the court would not make."

32. When he visited Germany the father made some inquiries of the doctor who had cared for S on the question of blood transfusions. What he was told reassured him that there would be no problem concerning this in Germany. It is to my mind of note that he found this out of his own initiative and it was not something volunteered by the mother. During the hearing before me the mother volunteered that S could carry a card signed by the father giving his permission to her being given blood transfusions. The issue of blood transfusions was not one that the father raised in statements or in argument, as I understood it, because of what he had found out in Germany and his presence in England should S require medical treatment here which necessitated a blood transfusion.

33. Thus, to my mind, the only relevant point relating to blood transfusions is the failure of the mother to address it with the father when she became a Jehovah's Witness. It must at all times have been apparent to her that the father would take a different view to her on S having a blood transfusion and that responsible parenting required that the issue be addressed. Her failure to do this was not investigated in evidence and I acknowledge that it may be that the mother was aware of the position in Germany and had the same view as the father, namely that he would be in effective control of the position in England, and therefore she decided not to raise the issue and thus avoid argument and conflict relating to her faith. I have therefore placed no weight on this failure over and above it being an example of a lack of relevant communication.

34. In 2007 Hogg J made the following order, which is clearly a "holding order":

"The mother is prohibited from changing S's religion (sic) beliefs and should use her best endeavours to respect S's Roman Catholic faith until further order; the matter to be further considered at the hearing on 30 January 2008"

35. In the overall welfare assessment, issues were raised as to the mother's compliance with that order and to the effects or possible effects that the mother's beliefs and practices would have on S's education (and in particular on her attending University). Also the impact on S's welfare of the mother's views on the celebration of Christmas and birthdays, and more generally her way of life as an active Jehovah's Witness and her ability to act in the ways she indicated she would on such matters, were live issues. Such issues fall to be considered with, and compared to, the impact of the father's, beliefs, attitudes, practices and way of life. I return to them.

Some factual issues and findings

36. The father's approach. There is no doubt that the father is, and has for a long time been, very angry with the mother and that he has regularly shown that anger. He has done this on some of the handovers (when they have met) and in some emails. He has also been criticised by me, and I think Hogg J, for his conduct at handovers both as to "evidence gathering" and inappropriate behaviour. Very late in the day the mother produced some emails exchanged on 27 December 2007 (and one on the 29 December 2007) including passages showing the father's anger and criticism of her in strong and angry terms. These emails are few among a great many. The clip started with a reasonable and sensible one from the father followed by a reply from the mother in reasonable terms but which effectively asserted the mother's case and prompted a very quick reply in strong, accusatory and angry terms. The father has however written many emails that are not critical and some that apologise for criticism.

37. The father has been accused of seeking to create evidence by emails (and other means) it is clear from their terms that the initial exchange of emails on 27 December 2007 were in part written with an eye to this hearing. This cannot be said of the father's angry response. I accept his evidence that he "fired this reply off".

38. In my view this exchange of emails shows the deeply embedded attitude of both parents to seek an order that S be educated from their respective homes and the reality in December 2007 (as it has been for a long time) was that neither of them (as they both knew) was going to shift from that at that stage.

39. This does not excuse the father's hostile and very critical reaction or more generally his hostility in a number of aspects of his approach. But in this context I accept that on occasions his reactions have been prompted by failure of the mother to provide information that he was reasonably seeking and by the mother not being truthful or blandly making assertions that she knows he hotly disputes (e.g. the assertion in the email exchange on 27 December 2007 that she had never tried to cut the father out of S's life). This is an important point and I return to it later. As appears later I do not accept that it is true or that it has been matched by the mother's actions since the 2006 hearing. So in my judgment the father's anger in this respect has some justification.

40. However such provocation is far from being the only source of the father's anger and hostility. The first CAFCASS reporter was in my judgment correct of the view that the father regards himself as a victim. This is for example confirmed by his assertion that all the problems flow from an unlawful abduction by the mother. This is simply wrong. The mother returned from Ireland with S and the basis of her move to Germany was the shared residence order made in 2003. The father also went back to issues in which he criticised the mother's behaviour when she was pregnant with S, which is an indication of the length of his anger towards and criticism of the mother, and his failure to move on.

41. The father is pedantic and pushes for every moment of time he can achieve with S and he is very mistrusting of the mother and her motives which he believes are to keep him out of her and S's lives.

42. He wears his heart on his sleeve.

43. The mother's approach. She is equally determined but approaches the conflict between the parents in a different way.

44. The exchanges of emails produced by the mother late in the day is in my view selective but does provide an insight into their respective attitudes because it is an example of the father pressing and at times being openly angry, and of the mother being steadfast and at times disingenuous and untruthful.

45. The late and selective production of emails by the mother is an example of her taking an unhelpful approach in particular because the father has been demanding that she produce emails relating to a dispute between them over exchanges relating to the father wanting to see S on trips to Dresden. The mother asserted when the matter was before Hogg J that there were relevant emails and was challenged by the father to produce them. She has not done so but at this hearing produced the December 2007 emails and some earlier ones in 2007 and some more going back to 2004. This demonstrated an ability to retrieve old emails. But she

did not produce the emails she asserted supported her case about the father's visits to Dresden after the 2006 judgment, or a credible explanation as to why she could not do so. I accept the father's assertion that there were no such emails and in my judgment her assertion that there were, is another example of her seeking to mislead on a par with findings I made against her in my 2006 judgment (see paragraph 33).

46. Since that judgment the mother has had a good opportunity to match her words and assertions that she does not want to cut the father out of S's life and thus (a) to provide strong support for the conclusion that S should go to school in Germany, and (b) to demonstrate that the risk referred to in paragraph 45(iv) of my 2006 judgment that she would seek to marginalise the father either does not exist or is a small one. I return to this. But first I shall deal with the disputes concerning: (a) S being influenced by her parents criticising the other, (b) the father's parents, and (c) the allegation that the mother has hit S.

47. Influence. The nature of the disputes on this topic can be seen from extracts from the report of Dr Bisbey recording what she was told by the parents. She records:

The father told me that what he sees as the "greatest risk" to his daughter is the "psychological manipulations" that the mother has been "subjecting her to". He reports that S has repeatedly told him that she wants to live in England that he would like S to live with him during the school year. He told me that that S was saying worrying things to him particularly in the past six months but sometimes as long as two years ago. He told me that the things he was most concerned about that S said to him were:

"When she was three, she said that when she is a little bit older she would be going to paradise"

"That she and Mummy can go to paradise. Daddy is not allowed"

"When she was four and still asked for assistance with toileting, she began to tell me that her mother said I could not touch are on her bum, and front bottom, and her chest"

"S told me I said my parents were dead and that I used to hit my mother. She told me that the mother left me because she was scared of me that I had it her"

"S told me that we can all live together if I want to come back to the mother"

"S told me I could easily move to Germany and that there is a job for me at the mother's company"

48. In respect of the mother Dr Bisbey recorded that:

She told me that "the father is putting emotional pressure on S, telling her think she shouldn't and this could damage my relationship with S. I'm fed up with being threatened all the time". She told me she wanted to provide a stable home for S.

49. The father repeated his allegations in his recent statement. The mother did not add to her allegation in her recent statements but it was put on her behalf to the father that he had told S that she was crazy.

50. The first point to make is that S is very aware of the deep antagonism between her parents. Whatever they have expressly told her neither parent has effectively shielded her from this.

51. The father could not remember where S was at the time he wrote his angry email on 27 December 2007 but asserted that he would not have demonstrated upset to S. If she was with him when he wrote this email (however quickly) I do not accept that. She has also witnessed his anger at handovers and at one point during the hearing he described something the mother said as crazy. In my judgment he has criticised and denigrated the mother to, and in, S's presence. However I accept that he tries not to. The problem is that from time to time he fails and in any event his deep antagonism towards the mother is picked up by and is well known to S.

52. The mother denied that she had said any of the listed things to S apart from saying that the father has said that his parents were dead. I do not accept this evidence of the mother.

53. I accept that S has said what the father alleges, and indeed this was not challenged. Although I accept that some of the listed items could have come from what S has picked up from things the father (and others) have said, and her attendance at meetings of the Jehovah's Witnesses and when she has accompanied her mother when witnessing, in my judgment some of the things come directly from the mother. In particular in my view the following come from what the mother has said to S, namely the assertions about the father hitting the mother, about the father touching S and about there being a job for the father at the mother's company. I found the mother's denial of this unconvincing assessed alone and with my other findings against her. Further I do not accept the submission that these comments can be explained as the wishful thinking and imagination of this bright child. As with the father I accept that the mother tries not to denigrate the father. The problem is that from time to time she fails and in any event her deep antagonism towards the father is picked up by and is well known to S.

54. The source of the mother's antagonism is not based solely on her feeling threatened by the father or a reaction to him pressing for more time with S, although this is a part of it. The mother's antagonism relates to the whole of her complex relationship with the father its breakdown and their respective characters.

55. The father's parents. The father has for many years been estranged from his parents, as I understand has his brother. This is dealt with in my last judgment and it was the mother who had brought the father's parents into the picture by contacting them. I made directions that information was to be obtained from the Social Services in Scotland. This was done. Later in accordance with my directions I permitted the father not to disclose those records but only a letter from the social services based on the records. That letter supports the father's account of the history and thus not that of his parents given to the mother. Before me through her Counsel the mother accepted the accuracy of the letter from social services but it is clear that the mother did not give that impression to Dr Bisbey who said:

The mother was suspicious of the motives of all who have been involved in this case. She told me that the father had lied repeatedly throughout their relationship. She did not believe the letter from social services in Glasgow and believed what she had been told by the father's parents. She did not see them as a danger and it was clear that she had disobeyed the court order as a result. She wanted further proof but it was unclear what proof.

56. I accept that this is what the mother said to Dr Bisbey. It is also clear that she has continued to allow some involvement of the father's parents in the lives of herself and S, although I accept that much, if not all, of the recent involvement has come from the paternal grandparents using contact numbers and addresses provided to them by the mother before I made my order in January 2006 that the mother be restrained from allowing S direct or indirect contact with the father's parents or discussing S with them.

57. For example, the Christmas presents sent to S by the father's parents, who on the father's evidence did not send presents to his brother's children, may have been unsolicited by the mother. The mother's oral evidence was that they contacted her irregularly and the extent of this contact was not explored in any detail in the oral evidence. I am not in a position to make a finding as to whether or not the mother has acted in breach of my order (as Dr Bisbey thought was the case).

58. However the mother's earlier refusal in her discussions with Dr Bisbey to accept the accuracy of the letter from the Scottish Social Services (and thus that the father's account of the history was so supported) is an example of her antagonism towards the father and her desire and willingness to introduce and not to let go of points against him.

59. The circumstances in which she asserted she had told S that the father had said that his parents were dead were odd, in that as I understood her it was after S had received Christmas presents from them and in the context of a telephone call from the father's brother (which I accept may not have been a sensible call for him to have made in all the circumstances although in normal circumstances it would have been a normal call for an uncle to make). It was thus said to S after the mother had introduced them into the issues in this case and S's life and at a time when she knew her paternal grandparents were alive and had had contact with them, her uncle and cousins. An explanation or assertion (even if the father had at one time said to the mother that his parents were dead) to explain the earlier absence of any part by her paternal grandparents in S's life, or for any other reason, is therefore difficult to follow unless it was intended to paint a bad picture of the father in S's mind. For example, the mother could have said that the father (and his brother) and his (their) parents did not get on and did not see each other.

60. To go on to say that the father hit his mother and had hit the mother, which I find the mother did tell S, provides support for the conclusion I have reached that the mother's purpose in telling S these things was to denigrate the father.

61. The mother hitting S. S volunteered this to the Guardian when she saw her at school. She said that her mother hit her on her hands and legs. S answered "just a little" to these questions posed in one of Dr Bisbey's tests: "sometimes I get hit by my mom or dad" and "I get very afraid of being punished by my mom or dad".

62. The mother has admitted hitting her on one occasion. This issue was not explored in any depth and I am not in a position to make findings about it.

63. However I record that the observations of the Guardian of the nature of the relationship between S and her mother is a reasonably strong indicator that her mother has not chastised, slapped or physically punished her inappropriately.

64. I have therefore taken no account of the allegations that the mother has hit or slapped S and have proceeded on the basis that, save on the occasion the mother described when they were out and S was misbehaving, the mother has not done so. In my view the mother's description of the occasion when she slapped S to discipline her is not something that merits criticism of the mother.

65. Dr Bisbey's test question refers to "mom or dad" and I record that no point was made that her answer indicated that she was hit by her father.

The promotion of contact.

66. I agree with the Guardian that this is a very important factor in this case.

67. As mentioned in my 2006 judgment the mother deserves credit for keeping to the regime in the shared residence order. Since then she has again observed the set regime and deserves credit for this.

68. It is only the father who has not observed the times set in the shared residence orders and he has apologised for this. I accept that he was very concerned at the time but as pointed out in 2006 this did not justify his actions. Since 2006 he has complied with all the handover times.

69. The father. It was argued that his anger and antagonism towards the mother would be likely to lead to him denigrating the mother, or at least to him positively influencing S against seeing the mother, if she was to go to school in England.

70. I accept that this is a risk. I also accept that if S was to go to school in England to a large extent the roles of the parents would change in that it would be the father who saw most of her and he would no longer be fighting for a role in her life and pressing for contact. So he might change and seek to keep the mother out of S's life.

71. However that is not my view of the likely approach of the father. In my judgment his pedantry is likely to result in him sticking to handovers and contact periods and his past experience and great desire to care for S and play a full part in her life is likely to lead to him making applications to court if he thinks the periods should be varied. The criticism of him for failing to do this when he did not return S in accordance with the times set by the first shared residence order, together with his knowledge and justified fear that a further failure could lead to a change in S's school and where she lives during term times, are factors supporting the view that he will stick to handover times.

72. The risk of him imparting his anger and antagonism towards the mother and thereby discouraging and turning S against staying with her mother is more difficult to predict. As I have said without significant change in the attitude of the parents to each other S is likely to suffer significant emotional harm. However in my view it is likely that the father will try to get help through CBT and to take advice from others and there is a real prospect that he will find this easier if he is not pressing for more contact to establish his role in S's life.

73. The mother. Her case has always been, and is, that she is not trying to exclude the father from S's life.

74. As with the points made against the father there are two aspects to this namely compliance with periods of visits and handovers and the promotion of the image of, and the relationship with, the other parent. There is also the point, as with the father, that if the mother gets what she wants and S goes to school in Germany this will make it easier for her to promote contact between S and her father and their relationship.

75. As with the father unless there is a significant change in the mother's attitude S is likely to suffer significant emotional harm. The points that (a) she is far less forthcoming than the father, (b) she has been found to be misleading on a number of occasions, (c) she has rigid beliefs about a number of matters (including her religion) and is very suspicious of others in respect of the issues in this case and (d) as appears below, her conduct since 2006, causes me to conclude that the risk that she will not engage in help through CBT or seek and act on help from others in changing her attitude with a view to reducing the parental conflict and thus the damage it is likely to cause S is higher than the equivalent risk relating to the father.

76. In reaching this view I have not forgotten that in response to a question from her counsel the mother was able to identify good aspects of the father's relationship with S and the father did not volunteer a recognition of good aspects of the mother's relationship with S. But taking his evidence as a whole and acknowledging his caution based on lack of information about S's life in Germany I am of the view that he did and does acknowledge that there are good aspects of that relationship.

77. I agree with the view of the Guardian that both the mother and the father are angry with each other but they show it in different ways. The mother's approach is shown by her conduct since the 2006 Order.

The mother's conduct since 2006

78. As I have mentioned in my view the mother's conduct since 2006 is relevant. In large part this is because since 2006 she has had a number of opportunities (a) to demonstrate that if S goes to school in Germany she will not seek to exclude the father from S's life and will promote contact and the relationship between S and her father, and thus (b) to demonstrate that her intention is not to exclude the father from S's life. In my view she has failed to do this and rather than take steps that dispel or reduce the risk expressed in my 2006 judgment that if there was to be a sole residence order in her favour (or by inference she was to have S living with her for the majority of the year) she would marginalise the father; she has confirmed the existence of that risk.

79. She has since 2006 not kept to the wording and spirit of orders, relating to video contact, S's religion, the decision on jurisdiction and contact more generally.

80. Video. As to that she did not dispute my recollection that at the last hearing she accepted that video contact would probably be helpful, useful and manageable having regard to her expressed opposition to it. However since that hearing she has effectively blocked such contact and reverted to the unconvincing reasons she advanced before as to why it should not take place relating to it being intrusive. She also said that she did not understand that it was something she had to do under the order and therefore she did not promote it. The order provided that the parties were to "take all reasonably practical steps to enable that contact [i.e. telephone contact] to be by way of video link". The mother has not taken any such practical steps and it is difficult to see why she thought that this was not contrary to the order. But, and

whether or not she did think this, it is a clear indication of her not promoting contact between the father and S albeit that by taking this stance she also deprived herself of such contact with S when she was with her father. It is also an example of her only doing what she says she thought she was bound by court order to do, rather than taking a sensible and practical approach whilst S was in Germany to promoting S's contact with her father and thus her welfare.

81. Hogg J's order. Notwithstanding this the mother has continued to take S witnessing, and it is difficult to see why she thought that this accorded with the order or the spirit underlying it. It is an indication that if S goes to school in Germany the mother will actively involve her in all aspects of the mother's beliefs, and not promote a platform from which S can reach her own conclusions when she gets older, which is what I understood to be the mother's case.

82. Residence/ custody application in the German divorce proceedings. In the divorce proceedings the mother brought in Germany the mother sought custody of S. This flew in the face of my 2006 Order and my judgment on jurisdiction that preceded it. The papers relating to the German proceedings (and as on an earlier occasion the mother was reluctant to translate those that had not been translated, but on this occasion I did not have the benefit of a barrister who spoke fluent German as I did at the jurisdiction hearing) and my email exchanges with the judge in Germany (which I provided to the parties) make it clear that the mother made an effort to get round my 2006 Order by seeking custody in Germany. The judge in Germany has said that the application in Germany asserted that the mother did not know that I was still dealing with the affairs of the child. I accept that this is what the judge in Germany was so told and it is clearly untrue. It is apparent that for some time the mother continued to seek sole custody in the divorce proceedings in Germany and it seems that she sought to challenge the decision of the judge there to leave such matters to the English court. In her evidence the mother sought to say that this was motivated and driven by her German lawyer without her full participation. I simply do not accept that evidence.

83. Contact. I prefer the father's evidence as to the problems relating to telephone contact. So in my judgment the mother has made some of the telephone contact difficult by not being at home at the relevant times and therefore making the father ring repeatedly to get through and arranging that S would be eating when a call was made and listening in on their conversation. I accept that from time to time there have been some problems relating to telephone contact when S is in England but in my judgment they have been less than those that have occurred when she is in Germany.

84. The mother also failed to take a helpful and constructive approach to allowing contact between the father and S in Germany when he attempted to have such contact. She did this by prevaricating and raising unnecessary questions as to details. The father notified her he was coming, and if she had in truth any real intention to promote contact with the father in Germany she would in my view have made a suggestion as to date, time, place and duration of contact. She did not do so. She has also made no attempt to have contact with S in England. As to this the 2006 Order provided that there should be such further direct contact as may be agreed in writing at least 14 days before it is to take place on the basis that it is the parent who is having contact who has to travel rather than S.

85. The mother also refused to let S speak to the father's brother when he called to speak to her on the telephone. As the mother must have known S had met him and his children and she gave no good reason for not letting S talk to him on the telephone, although in all the

circumstances of the case I accept that it would have been better if the brother had not telephoned because of the risk that, as happened, he would not be allowed to speak to S and therefore that she might be upset. This is a small point but is an indication of the mother's attitude.

86. In my judgment the above examples of the mother's attitude provide compelling reasons for concluding that, notwithstanding her compliance with handovers ordered, her underlying wish and intention is not to promote contact between the father and S, and their relationship, whenever she gets the opportunity and the steps she takes are not contrary to her understanding of the express terms of an order, or what she thinks can assert that understanding to have been.

The lack of information from the mother

87. Life in Germany. In considering this case I have reminded myself that it is easier for this court to gain a full picture of S's life in England than of her life in Germany, although the Guardian has visited her there. But in this respect and others the mother has demonstrated a marked unwillingness to provide information which she must have known was relevant.

88. She seeks to blame the visit of the father to S's kindergarten for her inability to obtain a full report from that school. I do not accept that is either a valid reason, or one of the real reasons, for the lack of such a report. Further, even if that visit created some problems between the mother and teachers, she must have appreciated that information as to how S had settled in her school in Germany and had made friends and progressed well with the language were all relevant. In my view she could easily have described these matters herself and, if it exists, obtained third party confirmation of a situation equivalent to the very positive reports from the school S attends in England.

89. As was submitted on her behalf, I accept that it is likely that S's spoken German is now good and that if she was unhappy at school in Germany it is unlikely that she would receive such positive reports from her English school or that her relationships with her mother and father would, with all its problems, be as good as the Guardian has observed them to be. However the approach of the mother has meant that a view of S's school and social life in Germany is based on inference as compared with clear and compelling third party evidence that S has settled well in her school here and has a number of friends. Although I accept that I should infer that S is not unhappy at school or at home in Germany my impression is that both she and the mother are fairly isolated and lonely. This based for example on the following:

i) S does not mention many friends in Germany and the mother was not able to identify many in her evidence either from school or from other sources including the children of Jehovah's Witnesses who the mother knows,

ii) the mother did not identify many people as her friends and answered the following question put as part of one of Dr Bisbey's tests as follows: "Question: "I need" Answer: "friends", and

iii) S appears to the Guardian to keep her lives in the two countries separate and talks little of her life in Germany but did tell the Guardian that she finds Kingdom Hall boring and that she likes being in England best and has lots of friends.

90. Medical records. On 23 November both the mother and the father were ordered to forward their medical records to Dr Bisbey. Neither did so on time and the mother has not done so. Dr Bisbey was of the view which I accept that this reflected the father's lack of understanding of her need and wish to check assertions from third party sources. As to the mother both Dr Bisbey and the Guardian were in my view correctly concerned that this was an example of the mother refusing to provide relevant information and of her suspicions and lack of trust of others. Indeed Dr Bisbey's expressed concern about the mother's mental health and that her suspicions of others is quite extreme.

91. These examples of the mother's approach to providing obviously relevant information about S's life in Germany with her and at school and medical records are examples of her withdrawing and building barriers and perhaps of her lack of trust in others. In my judgment this is not an approach that is likely to lead to the encouragement or promotion of S's relationship and contact with the father if S goes to school in Germany.

92. Also it is an approach that has the result that in assessing much of her life in Germany and her care of S the court has to proceed on inferences whereas on mirror image points it has evidence from the father and third parties.

Miscellaneous

93. The father is training as a teacher. Much of his motivation for doing so is related to him then being able to better care for S if she goes to school in England. It also has the effect that it would be easier for him to have holiday contact with S than it would have been if he had remained in his old job, and it would be for the mother given her holiday periods.

94. As I have said the mother seems isolated in Germany and it is not obvious why she does not seek employment elsewhere. She has the skills, qualifications and experience to do so and, for example, there are many jobs she could apply for in the UK. It would be much easier for her to move here than it would for the father to move to Germany albeit that he has skills, qualifications and experience that would mean that he could probably find work there, he does not speak the language and in my view he has a justified fear that if he moved there the mother would move to another country.

95. I have not placed weight on these factors because it seems to me that the wish of each parent to be in different countries looked at from their own perspectives is reasonable and the factors referred to as to which of them could move or more readily accommodate holiday contact balance each other out.

Conclusions

96. I agree with the Guardian and the submissions made on behalf of the mother that the most significant or magnetic factor in this case is which parent would be most likely to promote S's continuing relationship with and her contact with the parent who is not living in the country where S goes to school and who therefore will spend less time with her.

97. The reason for this is that in my view in difficult cases such as this it is appropriate to identify what is most likely, if successful, to promote the short, medium and long term welfare of the child and then to see if that is a realistic possibility and how it is best to be

achieved. Sadly here I agree with the Guardian that the court has to look at what is likely to be the least bad solution and has to be very aware that the goal may not be achieved.

98. As appears from my conclusions in respect of s. 37 Children Act at this stage it remains appropriate to seek to achieve a result in which S is able to continue and build on her relationship with both her parents, and to try to achieve this by providing as secure and stable situation as is possible in which she will be going to school from the home of one parent and visiting the other during holidays (and being visited by the parent who lives in a different country during term time). So I agree that the stage has not been reached that security and emotional stability for S should be sought by greatly reducing her contact with one of her parents or removing her from the day to day care of her parents. As I have indicated unless there is a significant change in the parenting of both the mother and the father such steps might have to be considered in the future.

99. The Guardian was of the view that by a fine margin the least bad option was to provide that S went to school in England. Dr Bisbey expressed the same view.

100. I have reached the same conclusion by a wider margin. The main reason for this is my conclusion expressed above, for the reasons set out above, that the risks that the mother will not promote S's relationship and contact with the father if S goes to school in Germany is higher than the same risk the other way round.

101. This is necessarily a prediction and I acknowledge that it involves a change of background circumstances and there are arguments persuasively advanced on behalf of the mother that the balance of competing factors favours a different assessment of risk and a different prediction. But for the reasons I have given I am not persuaded by those arguments. In particular it seems to me that the actions of the mother since the 2006 Order found the view I have reached that if S goes to school in Germany it is likely that the mother will be obstructive on many issues relating to contact and the promotion of S's relationship with her father.

102. I acknowledge the risk that the father will also not promote the mother's relationship and contact with S but, for the reasons I have given, in my view it is a significantly smaller one.

103. Other factors. I agree that weight should not be placed on S's view expressed to the Guardian that she prefers being in England and any indication from the pictures she drew for Dr Bisbey that they indicate that preference. She is too young to process the relevant factors and as the Guardian points out will miss her mother when she starts to spend more time in England.

104. As appears earlier I accept and agree with the conclusion of Dr Bisbey and the Guardian (which Dr Bisbey bases in part on the pictures) that S is very well aware of the conflict between her parents who both treat her as a small adult, involve her in their conflict and have their own needs in respect of their relationship with S. Those needs are different and S is already able to manipulate both parents and is anxious to please both. This underlies my view that, absent significant change, she is likely to suffer significant harm and the unhappy background to this case.

105. It leads me to conclude that S needs to have as much stability and security as is possible and that to promote this she needs to have as many outlets as possible to assist her to form

other relationships to assist her to develop into a balanced adult notwithstanding the conflict between her parents.

106. The religious conflict between her parents is not relevant as such in this respect but, as the cases show, the knock on effects of the ways of life of the parents by reference to their religious beliefs and practices is relevant and in my view here it is relevant to the question of S's stability and security to assist her development.

107. In my view such stability and security will be assisted by S having a wide group of friends of her own age, and relationships with adults, both from divergent backgrounds rather than a social life centred on the Jehovah's Witnesses. In my view such a peer group, and relationships with adults, would assist her general happiness and thus her security, stability and development. Such adults would include parents of friends, teachers and people running activities.

108. In my view the beliefs and practices of the mother as a Jehovah's Witness to parties and Christmas is likely to limit the width of S's friends of her own age and her contact with adults, who can help and influence her. Further it may well cause her problems at school simply because of the differences it will create between her and her class mates.

109. In this context I have not placed weight on the points raised about University education because it seems to me that given her background, and the point made that some Jehovah's Witnesses do go to University, this is something the mother would support.

110. So, in my view the likely social effects on S of the mother's beliefs and practices as a Jehovah's Witness are factors that favour S going to school in England. Absent such emotional insecurity flowing from the parental conflict those effects would have far less weight. Further, as I have indicated they are not the most important or magnetic considerations in this case. Rather they constitute a factor that supports the conclusion based on those most important and magnetic considerations.

111. Schooling. I shall therefore make an order that S goes to full time school in England.

112. Shared residence order. It was I think common ground that this should continue. In my view, in all the circumstances of this case it should be continued as a recognition that S has had two homes and to continue that situation as the best basis for promoting the continued participation of the mother in S's life.

113. Times spent with both parents and changes in the present regime. I will deal with this after this judgment is delivered in the light of the timetables and provisions suggested by the parties.