

[2024 Gib LR 513]

**IN THE MATTER OF C (A CHILD)
(RELOCATION TO LONDON)****A v. B**

SUPREME COURT (Restano, J.): October 7th, 2024

2024/GSC/037

Family Law—children—removal from jurisdiction—child’s welfare paramount consideration—court dismissed father’s application to remove 7-year-old with special education needs from Gibraltar to London—child’s welfare best met by remaining with mother in Gibraltar

The applicant applied for permission to remove his child permanently from Gibraltar.

The applicant (the father) and the respondent (the mother) married in 2012. Their child, C, was born in the UK in 2016. They moved to Spain in 2018 and to Gibraltar in 2020. The father and the mother separated in 2021. A separation agreement provided for equal contact with C and equal sharing of expenses. In 2023, the father moved to London, where he now lived with his new partner. C remained in Gibraltar with the mother. The father travelled regularly to Gibraltar to visit C.

C was 7 years old. She was dyslexic, appeared to have ADHD and might be mildly autistic, although she had not yet been tested for autism. She attended a school in Gibraltar which had learning support facilities.

The father applied under s.25(1)(d) of the Children Act 2009 for permission to remove C permanently from Gibraltar to live with him in London. He considered that C’s needs would be best met there and he proposed that she would attend a private school. The father had recently been appointed as a consultant by two companies, which would provide a combined annual income of some £40,000 before tax. He also expected to receive an inheritance of some £133,000 and a further share of a sale of a property. He proposed contact between C and the mother which included at least one weekend per month and a share of holidays. He disputed the mother’s claims that she would be unable to afford to visit C in London.

The mother opposed the application, arguing that it was not in C’s best interests to be removed from Gibraltar where she was well settled. Although C did not have her own room in the mother’s flat, the mother intended to address this. The mother agreed that C had learning difficulties

but did not consider C's condition to be as serious as the father suggested. All of C's needs were being met in Gibraltar.

The social worker who prepared the court welfare report recommended that C should remain in Gibraltar where the status quo was working well.

Held, dismissing the application:

C's welfare was the paramount consideration. The court carried out a holistic balancing exercise having regard, in particular, to the factors set out in s.4 of the Children Act. C was 7 years old and had special educational needs. She was happy with both of her parents. There were no safeguarding issues. Both parents loved her and were able to meet her needs. C's educational needs had been identified and were being addressed in the school she attended in Gibraltar which appeared well suited to cater for her needs. The court had some reservations about the financial viability of the father's proposal for C to attend a private school in London. As to C's healthcare needs, she was adequately supported by a number of medical professionals in Gibraltar, although further tests might be required. The father was to be commended for wanting to access specialist private healthcare for C in London but there was no reason why this could not happen in conjunction with the GHA in Gibraltar. The need for continuity was a weighty consideration and C had a particular need for routine and structure. Further, it would be damaging for C not to have her mother with her if she were to move to London. Contact as proposed by the father at least once a month would potentially cause C distress. It was quite likely that the mother's financial and work situation would place significant constraints on her ability to travel to London. The father had travelled regularly to Gibraltar to visit C and C appeared to have settled well into that routine. To order C's relocation in this case would be wholly disproportionate. C's rights were paramount and it was important that she was provided with continuity and that the existing relationship with her mother was not affected, especially after a turbulent time in her life. C's welfare was best met by staying in Gibraltar at this stage of her life (paras. 65–103).

Cases cited:

- (1) *F (A Child) (International Relocation Case), Re*, [2015] EWCA Civ 882; [2016] Fam. Law 565; [2016] 2 F.C.R. 368; [2017] 1 FLR 979, considered.
- (2) *K (A Child), Re*, [2020] EWHC 488 (Fam), considered.
- (3) *P v. P*, [2001] EWCA Civ 166; [2001] 2 W.L.R. 1826; [2001] Fam. 473; [2001] 1 F.C.R. 425; [2001] 1 FLR 1052; [2001] Crim. L.R. 842; [2001] U.K.H.R.R. 484; [2001] HRLR 28; [2001] 1 Cr. App. R. 36, considered.

Legislation construed:

Children Act 2009, s.4(3): The relevant terms of this subsection are set out at para. 10.

C. Pizzarello (instructed by Hassans) for the applicant;
J. Daswani (instructed by Attias & Levy) for the respondent.

1 RESTANO, J.:

Introduction

This is an application by A, the father, for permission to remove his child, C, permanently from Gibraltar where she lives with B, her mother, and for C to have contact with her mother. The mother opposes the application.

2 This hearing took place on September 3rd–6th, 2024, with closing submissions following in writing on September 11th, 2024.

Basic chronology

3 The mother and father met in 2005, and they married in 2012. For the last few years, the mother has worked as a nurse (on a “zero hours” contract) and as a private carer. The father is at present a part ACCA qualified accountant.

4 C was born in the UK in December 2016, and she is now 7 years old.

5 The mother and father lived in the UK until November 2018 when they decided to move to Spain in search of new opportunities and a better quality of life. In 2020, they moved to Gibraltar mainly because C was reaching school age and Gibraltar was an English-speaking territory.

6 The mother and father separated in March 2021, although they continued to live together until they were both able to move out to separate flats in early 2022. A separation agreement was signed by the parties in August 2021 providing for equal contact with C, and the equal sharing of expenses.

7 In July 2023, the father moved to London where he now lives with his new partner.

8 This application was filed by the father on April 2nd, 2024.

The relevant principles

9 This application is made under s.25(1)(d) of the Children Act 2009, which allows the court to make a specific issue order. The question in this case is whether C should be allowed to reside with their father in London.

10 The law is set out in s.4 of the Children Act. The child’s welfare is the court’s paramount consideration. The court’s welfare assessment must be informed by an analysis of the factors in the welfare checklist under s.4(3) of the Children Act, namely:

- “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
- (g) the range of powers available to the court under this Act in the proceedings in question.”

11 Further, s.4(5) of the Children Act provides that when a court is considering whether or not to make an order under that Act, it shall not make the order unless it considers that doing so would be better for the child than making no order at all. Thus, the court should only intervene and make an order if it can be shown that it would be in the child’s best interests to do so. This is commonly referred to as the “no order principle.”

12 There are many cases in which guidance has been given by the courts about how to approach relocation cases. A useful summary of these principles can be found in the judgment of Mr. Justice Williams in *Re K (A Child)* (2) ([2020] EWHC 488 (Fam), at paras. 44–50). In the judge’s judgment in that case, he referred (*ibid.*, at para. 45) to *Re F (A Child) (International Relocation Case)* (1), which provides the following framework:

- “i) The only authentic principle is the paramount welfare of the child.
- ii) The implementation of section 1(2A) of the Children Act [1989] makes clear the heightened scrutiny required of proposals which interfere with the relationship between a child and his parents.
- iii) The welfare checklist is relevant whether the case is brought under section 8 or section 13.
- iv) The effect of previous guidance in cases such as [*P v. P*] may be misleading, unless viewed in its proper context, which is no more than it may assist the judge to identify potentially relevant issues.
- v) In assessing paramount welfare in international relocation cases the court must carry out a holistic and non-linear comparative evaluation of the plans proposed by each parent.

vi) In addition to Article 8 rights, indeed probably as a component of the Article 8 rights, I must factor in the right of the child to maintain personal relations and direct contact with both parents on a regular basis, unless that is contrary to his interests. That is in accordance with Article 9 of the UN Convention on the Rights of the Child.

vii) Furthermore, the court must also take into account the Article 8 rights of the parents. In the usual case the child's rights will take priority over the parents, but that should not cause the court to overlook the Article 8 rights of others affected and the court should balance the competing rights.

viii) It is likely that other family members' rights will be affected by a decision, of course the further removed from the parents and the child the individuals affected the less their rights are likely to be infringed and thus the less weight they are likely to carry in comparison to the parents and of course, at the top of the list, the child."

13 The checklist of four factors provided by the Court of Appeal in the now controversial judgment in *P v. P* (3) (referred to at (iv) above) are as follows ([2001] 2 W.L.R. 1826, at para. 40):

(1) Is the application motivated by a genuine desire to move and backed up by realistic proposals?

(2) Is the opposition genuine, or does it have some ulterior motive? Would the parent-child relationship be so badly damaged by a move that this loss to the child would not be outweighed by closer ties with extended family in their homeland?

(3) If the proposal is refused, what would be the negative impact on the applicant, their new partner, and eventually on the child?

(4) Finally, the second and third appraisals must be brought into an overriding review of the child's welfare as the paramount consideration.

14 This guidance may be misleading unless viewed in its proper context, which is no more than to assist the judge to identify potentially relevant issues. This guidance should only be considered as part of, and not a substitute for, the wider legal analysis that the court must undertake.

15 Relocation applications should therefore be approached holistically, focusing on the child's best interests, with particular reference to the welfare-checklist factors, which have at their heart children's physical, emotional and educational needs.

The evidence

16 I have read the contents of the court bundles. These contained two statements by the father and mother each, and a welfare report dated June

18th, 2024 by Lydia Green, a social worker at the Care Agency. I have also considered carefully the evidence given by the witnesses at the hearing, and counsel's oral and written submissions.

17 I do not propose to rehearse all aspects of the evidence, some of which was not relevant or sufficiently child-focused. The fact that I have not summarized all this evidence or that it does not feature expressly in this judgment does not mean that it has been overlooked.

The father

18 The father dealt with the early years of the relationship with the mother and his move to Gibraltar. He described how the cracks in the marriage started to show, with the parties hoping that having a child would bring them closer together. He referred to the fact that he was more interested in having a child than the mother, and how the practical arrangements of caring for C worked out in the early years, with him taking a lead in many of these arrangements. He referred to the fact that the mother stayed behind in the UK for a while before she joined them.

19 The father worked in three different companies in Gibraltar, including as an accountant at a trust management company from November 2018 to March 2021, and then at a Fintech company until July 7th, 2023. According to the father, his employment with the last employer ended in unfortunate circumstances although he said that they parted ways by mutual agreement in April 2023. The father then said that he tried his best to find a new job in Gibraltar but that he decided to move to London where he was offered a good position starting in July 2023 as a management accountant at a reputable healthcare company.

20 The father met his new partner, D, in October 2022 when she happened to be in Gibraltar on a business trip. The father travelled to London in December 2022 to visit D, and he introduced her to C in January 2023. The father lives with D in London where they share a flat in St. John's Wood.

21 The father's view is that C's particular needs are best met by living with him in London where she would have many opportunities and her own bedroom at his flat in London, which she does not have at the mother's flat. Further, he said that the mother, who is now C's primary carer, does not prioritize her needs.

22 Although it was not the only basis on which this application was made, the father's application focused on his view that C's educational and healthcare needs can best be met in London. The context for this is that C has special educational needs, having been diagnosed as dyslexic in both London (where the father had her tested by a chartered psychologist and an educational psychologist) and Gibraltar. The chartered psychologist in London diagnosed C with pronounced symptoms of ADHD. He has

provided recommendations for teaching such as ways to avoid distractions, receiving tuition from a tutor skilled in teaching students with ADHD and so forth. The educational psychologist said that ADHD would need to be diagnosed by a paediatrician. Further, ASD has not been completely ruled out, although, if anything, it appears that in C would fall at the mild end of the spectrum.

23 The father has said that he is particularly concerned about C's symptoms becoming more acute since October 2023 and that further investigation and assessment is required. Further, he said that the mother has overlooked or delayed appropriate investigations until this application was made, or that she has acted reactively and minimized the importance of these conditions.

24 Until recently, C attended School E but she has recently started at School F, which has dedicated learning support facilities ("LSF") to support children like C. The father said that because C's condition has worsened recently, she is falling further behind with her work, and that raising C in London is a better option given the array of resources available for her education and treatment there. Further, he stated that she would receive a more rigorous education there, and that he is not confident that she is receiving the education and support she requires.

25 The father also referred to a number of matters which he said pointed to the mother not parenting appropriately and ultimately that C was being neglected by her. He also referred to difficulties with contact and child arrangements, saying that the mother has been rude, nasty, difficult, and even alleged that she was alienating C from him.

26 Turning to the proposed arrangements, the father said that C would live with him and his partner at their rented flat in St. John's Wood where C has her own room. He said that he contributed £1,000 p.m. in rent and £200 p.m. for other expenses.

27 The father's preference is for C to attend a private school in the area where he lives in London. His first choice was St. Christina's School (basic termly fees: £6,150), and his second choice was Sarum Hall School (basic termly fees: £6,975). The range of what these schools can offer was included, and other possible schools were also identified by him. In his witness statement, the father said that if C went to St. Christina's School, she would be in small classes and have the support of specialist learning support teachers, amongst other advantages. By way of update at the hearing, however, the father explained that the school had said that they were not sure that they could offer C what she needed, although he thought this could still be pursued.

28 I should say a word at this point about the support that is available in the UK for children with special educational needs. Special Educational

Needs and Disability (SEND) support and a SENCO is available for all children with special educational needs. The father explained that the private schools he had identified offered the support based on a pupil's needs. He also confirmed that he would be happy to fund further additional support for C as might be necessary.

29 The father provided St. Christina's SEND policy which referred to three waves of support provided, and which consist of:

“Wave 1 (support in class by teacher/TA) Interventions are shown on termly Individualised Provision Maps

Wave 2 (SENCo support) Interventions are indicated on termly Individualised Provision Maps

Wave 3 (External professionals such as Speech and Language Therapy, Occupational Therapy, Psychological Assessments). Interventions are indicated on termly Individual Provision Maps.

30 In the UK, further support for young people up to the age of 25 can be provided if they qualify for an Educational, Health and Care Plan (EHC plan). This is also referred to in St. Christina's SEND policy as follows:

“Education and Health Care Plan (EHCP) (formerly a Statement of Special Needs) with close liaison with the Local Authority and NHS professionals such as CAMHS, Child Development Services.”

31 The father also referred to Sarum Hall School's Special Educational Needs and Disabilities Policy.

32 Turning now to the father's means. When the application was made, the father was still working as an accountant at the healthcare company, but this ended in August 2024. He explained that this was because his former employer was not sufficiently flexible to enable him to prioritize C's needs.

33 At the hearing for the first time, the father explained that he now had been appointed as a consultant by two companies, and he produced the two relevant consultancy agreements which provided for a combined annual income of £40,800 p.a. gross, around £32,000 p.a. net. Both these positions were both to commence on September 9th, 2024, which meant that at the time of the hearing, the father had not yet started these new roles. Under both these agreements, either party can terminate the agreement giving at least one month's notice. He also said that he would look out for other similar opportunities to increase his income, or possibly a return to full time employment, and explore further career paths.

34 In terms of savings, the father referred to a personal cryptocurrency investment and, recently, a family inheritance.

35 The investment in cryptocurrency was made using his share of the profit from the sale of a property he owned in the UK with the mother, which came to £80,000 each. A recent valuation for this investment came to around US\$48,000, which meant that it had dropped to around half, although this fluctuates all the time.

36 As for the family inheritance, the father said at the hearing for the first time that he was awaiting this to come from a trust fund. Further, he said that this amounted to CHF155,000 (around £133,000) plus, later on, a share in the sale of a property, which he estimated to come to around US\$50,000.

37 The father set out his detailed proposals for contact with the mother, which include contact for a weekend or long weekend at least once a month, and a split of holidays. Further, he confirmed that he would promote contact with the mother, and that the mother's claims that she would be unable to afford the costs of visiting C in London were not credible.

The mother

38 The mother opposed the application, stating that it was not in C's best interests to be removed from Gibraltar where she is well settled in school and socially. She said that C has come to know and love Gibraltar, and that it was in any event a safer place to be brought up in than London.

39 The mother said that C had been affected by the father's relocation to London, which she said was driven by his desire to move in with his new partner, and that C had suffered significant emotional and psychological distress because of this. Further, she said that moving to London would be detrimental to C as all her "dynamics" would change, and she would not be there with her.

40 The mother referred to her move to Gibraltar with the father, and the subsequent breakdown of the marriage. She said that she supported the father when he wanted to move to Spain and Gibraltar, including financially by initially staying behind in England to work as a nurse and provide an income, but that she travelled regularly to be with them. In her view, the marriage ended because of incidents in 2014 when the father admitted having accessed adult content (albeit not illegal or damaging material), and in 2018 when he expressed interest in a threesome. The mother said that these were not isolated incidents, that the father suffered from an addiction, and that this not only resulted in huge debts at the time, but that it continued to affect him financially even now.

41 The mother said that the father's own portrayal as a doting father was inaccurate. She said that he is irresponsible as is shown by various matters, including his impulsive move to London with his partner who he had only met eight months before, and that he could have stayed and obtained a job

in Gibraltar as an accountant. The mother also questioned the reason for the termination of the father's last job in Gibraltar.

42 The mother rejected allegations made by the father that she had no maternal instinct, and said that she had a close bond with C. Further, she said that before they split up, she and the father shared responsibility for C.

43 The mother explained that she takes good care of C, she takes her to various extracurricular activities, which change from time to time. She said that C had recently dropped ballet, and that she was about to start Ju Jitsu and Creative Movement. C also enjoys swimming, going to the library, going to the beach, and spending time with her friends. She also said that C has an active social life, that she has a good routine, and that she has a happy and fulfilling life in Gibraltar.

44 The mother said that whilst C does not have her own room in the flat where they live and which she bought using her share of the profit from the sale of her property in the UK, she intends to address this. She said that she has looked into converting the balcony into a room, which she estimated would cost around £6,000. Alternatively, she is looking to buy or rent a two-bedroom flat.

45 At the hearing, the mother referred to her relationship with a new partner but, following the conclusion of the hearing, I was informed that this relationship had ended—see further my postscript below.

46 The mother agreed that C has learning difficulties. In the mother's view, however, dyslexia was common. Whilst she said that she was not sure whether ADHD was as common, her view was that C's condition was not as profound as the father was making out. In any event, she said that all of C's needs were being met. As well as the move to School F, the mother referred to appointments with a speech and language therapist, an occupational therapist, a GP and a school psychologist. Her view was that the multi-professional team in Gibraltar were well equipped to assist and support C.

47 Further, the mother also said that although C's symptoms appeared to have worsened recently, this had to be seen holistically with the change in dynamics in her life, and the impact that the father's relocation has had on her.

48 The mother was also upset that the father had arranged private assessments in England for C. In particular, she was upset because the test for ADHD included a blood test which she had not consented to, and because she felt that this should have been done following a referral from the relevant professionals in Gibraltar who were treating C.

Court welfare report by Lydia Green

49 Ms. Green, who is a social worker at the Care Agency, prepared a report for the court dated June 18th, 2024. This was based on her review of court documents, and meetings including a meeting with C's teachers at School E (including the SENCO), the father and his partner, and the mother. Ms. Green also met C on one occasion but was not able to elicit answers to any direct questions. C, however, did not express any worries or concerns to her, and talked positively of both parents and her time in both Gibraltar and England.

50 It was clear that Ms. Green had taken great care over her role. Further, Ms. Green attended the hearing, heard the evidence given by the mother and father, and she was able to take this into account before she gave evidence herself. I should say from the outset that I found her evidence considered, clear and helpful.

51 Ms. Green explained that following a decision of a "SEN" panel in Gibraltar, C has been placed in a learning support facility or LSF at School F. C is currently supported by a special needs learning support assistant, *i.e.* one-to-one support, when needed. This support is informed by her individual education plan and her individual behaviour plan.

52 Ms. Green explained that in Gibraltar support of this type is "needs led," *i.e.* no formal diagnosis is required. She contrasted this with the position generally in the UK, which is that a diagnosis is required before a child is able to access additional support at school. As for the availability of an EHC plan in the UK, Ms. Green made the point that whilst there is no similar statutory scheme in Gibraltar, there is an escalation of the provision of similar professional support in Gibraltar. Understandably, however, she could not provide a detailed comparison of the position in the two jurisdictions although she pointed out that a number of the matters covered by the EHC plan would appear to be covered in Gibraltar. She also pointed out that from her experience in the UK, applications for an EHC plan often took some time (16–20 weeks), that they were often rejected by local authorities, and that an appeal can be brought against a refusal.

53 Turning to the father's desire to provide a private education for C in London, Ms. Green made a number of observations. First, although she had said in her report that the father and his partner had the resources to provide C with a private education, in her testimony and after having heard evidence about this, she said that she did not consider that her statement in that regard was accurate. She also said that whilst private schools are generally better resourced than state funded schools in the UK, she could not say that the schools in question would better meet C's needs or that School F was not adequate in any way.

54 Although she thought that in the long term C might enjoy more opportunities and support in the UK, in her view it was in C's best interests to continue with the level of support she currently enjoys in Gibraltar. She considered that a move at this stage would be disruptive to C given her needs, and she was not confident that the support for C in the UK in the short term would be the same as the support she is receiving in Gibraltar. She also highlighted the lengthy and uncertain process of applying for an EHC plan there, should this be required.

55 Ms. Green addressed the father's concern about the worsening of C's condition. Ms. Green's view, further to a discussion with C's SENCO, was that this might be a regulatory behaviour called "stimming," and did not inherently indicate that there had been a regression in C's condition.

56 Further, Ms. Green also carefully reviewed C's school reports and explained that, overall, this showed that she had been making satisfactory progress except for the period covered by the last school report. She pointed out that the period covered by her last school report coincided with a big change in her life, namely, her father moving away from Gibraltar. Further, she said that this was now also being addressed, with attending School F. Ms. Green did not therefore agree with the father that there was a marked deterioration in C's progress which was necessarily linked to her schooling, but also expressed the view that the mother might be minimizing C's needs.

57 Ms. Green said that there were no safeguarding issues, and that "it was abundantly clear that both parties love and care for C and wish to see her cared for." She also observed that they have both been the primary caregiver to C at different times. In her view, the motivation behind the father's application was genuine.

58 If the relocation were to go ahead, Ms. Green expressed concern that the mother may not be able to commit to as much contact with C as the father has done. She noted that the father's proposal if the relocation goes ahead is for the mother to have contact at least once a month, which is less frequent than the contact that the father currently enjoys. Her view was that this would be distressing for C as the mother had been her primary caregiver since September 2023, and that C needs routine and structure.

59 Ms. Green pointed out that C's ability to settle should not be compared with a child who does not have additional social communication difficulties. Ms. Green also said that C's teachers had also highlighted her need for routine and structure. Although there is no diagnosis of ASD, this appears to be a possibility, and Ms. Green made the further point that changes to routine can be particularly challenging for children with ASD, who thrive on predictability and routine.

60 After a review of the contact that C had had with the father since he left Gibraltar, Ms. Green's view was this had been meaningful and frequent. In her view, this shows the father's commitment and love for C. This also showed that C was used to spending longer periods with her father during school holidays.

61 In her view, whilst the father and his partner had demonstrated that they had promoted contact more positively than the mother, the mother had not alienated C from the father, and C had enjoyed quality and meaningful contact with the father. Further, she pointed out that the mother had in fact offered more contact, which was inconsistent with the allegation of parental alienation made by the father.

62 Ms. Green said that C has been subject to multiple medical appointments in different jurisdictions, and that both parents had made decisions independently of each other. Whilst she noted the father's concerns about C's care in Gibraltar, she added that the approach taken so far could be confusing, and that co-parenting needed to improve in this area.

63 Ms. Green explained that it had not been easy for her to make a recommendation in this case, which she had not done lightly. After weighing up the pros and cons of moving, however, Ms. Green's recommendation was for C to remain in Gibraltar where she considered that the status quo was working well.

64 Ms. Green added that if the relocation is refused, the parents may benefit from the co-parenting programme offered by the Care Agency in order that both parents understand and practice the need to communicate effectively and promote contact with each other. She said, however, that it was important for both sides to be physically present at these sessions for the course to work effectively. Ms. Green stressed that child arrangements needed to be looked at from the perspective of C's welfare and not the parents' hang-ups about the breakdown of their marriage.

My welfare analysis

65 The paramount consideration for the court in considering this application is C's welfare. This requires a holistic balancing exercise having regard, in particular, to the factors set out in the welfare checklist as set out in s.4 of the Children Act. This is not a checklist in the sense of a linear list of tasks to be carried out in sequence but rather a means by which there can be consistency and completeness in the discretionary and fact-specific task of identifying the optimal welfare of a child through the evaluation of the competing options before the court. Although I have not set out my analysis below under headings reflecting these sub-sections, I should make it clear that they form the bedrock of my analysis.

66 As stated above, C is seven years old, and it is clear that she has special educational needs. She is dyslexic, appears to have ADHD, and may be mildly autistic, although she has not been tested for autism yet.

67 Although it has not been possible to ascertain C's wishes and feelings, as Ms. Green confirmed, C is happy with both of her parents, both in Gibraltar (where she has lived in 2019) and in London (when she visits her father). I agree with Ms. Green that there are no safeguarding issues in this case, and that both parents have the ability to meet C's needs independently of each other, even if their respective approaches to parenting are different, and their priorities differ.

68 Whilst this is not a specific issue application in respect of C's schooling, her educational and healthcare needs, however, were important features of the application.

69 Turning to education first. C has recently moved to School F because it has a dedicated LSF department which is the type of support that C needs. In my view, that shows that her educational needs have been identified, and they are being addressed.

70 Whilst C appears to have fallen behind recently, as Ms. Green observed, previous school reports point to C making satisfactory progress. Further, there are many reasons why C might have fallen behind recently, not least the effect on her of the father's move to London. I do not consider that one should infer from this that C's needs are not being met, and that this supports a move to London rather than allowing C to settle into her new school. In my view, each alternative must be considered carefully.

71 When considering the father's alternative proposal, which involves enrolling C in a private school in the area where he lives in London, the first question that needs to be considered is the father's ability to finance that. Further, in my view one needs to take a medium to long-term view in this regard.

72 The father's first choice of school is St. Christina's School where the annual fees are currently £18,450. There has been a development here as that school has indicated to the father that it may not be right school for C. Although the father said that he wished to pursue this further with the school, the father's second choice is Sarum Hall School where the annual fees are £20,925, and where C's possible enrolment would need to be further discussed with the school. These annual fees do not include any taxes which may be added, and which may include VAT in the near future.

73 Further, whilst these fees include special educational needs support, they may not include the cost of additional support that may well be required. That is a real possibility given St. Christina's School's initial response. The provision of an EHC plan, if required, is uncertain at this stage, and would in any event take some time to come into force if granted.

74 There are also always additional costs including the cost of school uniforms, school trips and so forth. Realistically, the cost of providing private education and support for C in London is likely to exceed the basic school fees.

75 The father has just started his new positions that provide him with a net income of around £32,000. He also contributes around £1,200 for rent and associated costs. There will also be other costs associated with living in London, especially if he wants to provide C with the many opportunities that he has referred to.

76 One can quickly see that his income at present would be insufficient to meet the costs of these private schools. Whilst the father has said that he will look at ways of supplementing his income, one also has to bear in mind that he has just started his consultancy roles, which can also be terminated at short notice, and things could go either way. I also have in mind the fact that there have been many changes in the father's professional life in the last few years, including a short period of unemployment. There is therefore in my view no certainty that the father could fund the private schooling that he has in mind for C from his current income.

77 Whilst the father said that he would be happy to use his savings to supplement his income, I have some concerns about this proposal when considering such an important decision.

78 First, the £80,000 profit that he made from the sale of a property has now been reduced to around half of that amount following his investment in cryptocurrency. Although the father said that he was hopeful that the value of this investment would improve, one cannot say with any certainty how that investment in cryptocurrency will perform. In my view, that investment is insufficient to provide any security for payment for C's private schooling and maintenance in London, taking a medium to long-term view about things.

79 The father also referred in the course of his testimony to an inheritance he would be receiving from a foreign trust fund, which he estimated will come to around £133,000. He also referred to a further US\$50,000 he was expecting as part of that inheritance from the sale of a foreign property. In his closing submissions, the father said that his inheritance alone would cover many if not all of C's school fees until she finishes school.

80 Given the big decision the court is faced with, I was concerned that there was no documentary evidence before the court supporting the father's evidence about this inheritance, which in any event appears to have been a recent development.

81 I therefore have some reservations about the financial viability of the father's proposal for C's private education.

82 One also needs to bear in mind that St. Christina's School has initially said that it may not be the right school for C (the same might apply to similar schools), and that there is uncertainty or at least delay in an EHC plan being approved should this be required.

83 I should make it clear that these reservations are not decisive welfare factors pointing away from the application being granted, but rather features that I place in the scales when undertaking my overall evaluation.

84 The alternative to a private school would be a state school in the area of St. John's Wood, and the father referred to St. Edward's School, which he said provided dedicated SEND support. I do not consider, however, that there is sufficient material before the court to consider what a state education would be like for C in London. Further, whilst the father did not discard that option, his focus was clearly on private schools.

85 Moving on to C's healthcare requirements. I am satisfied that C is being adequately supported by a number of medical professionals in Gibraltar, although it seems that further tests need to be carried out, especially to consider whether C is autistic.

86 It may be that this assessment, and indeed other tests and assessments, can be conducted more efficiently if carried out in conjunction with London based experts. Whether or not this is the case, it does not in my view in itself support the rather drastic step of ordering C's relocation to London. Whilst the father is to be commended for wanting to access specialist private healthcare for C, which can sometimes have its benefits, there is no reason why this cannot happen in conjunction with the GHA in Gibraltar. C will visit her father in London regularly, and can therefore attend appointments there, and Gibraltar healthcare professionals are accustomed to working alongside experts based in the UK. As Ms. Green has said, an issue here appears to be that both parents are making decisions independently of each other according to what they believe is in C's best interests.

87 Moving on, and as Ms. Green stated, there are no safeguarding issues. Both parents love and are able to care for C, even though their parenting styles and priorities may differ.

88 There are, however, many other complaints made by the father and mother against each other. Although they raised these matters in the context of C's welfare and the ability of each other to care for C, in my view these matters were largely about poor communication between them. I do not propose to go into each of these matters even though I have considered them all carefully.

89 By way of example, the continued reference by the mother to the episodes in 2014 and 2018 referred to above was in my view unjustified. Whilst this might have contributed to the breakdown of the marriage, there

was no evidence that this affects the father's ability to care for his daughter. This should now be water under the bridge.

90 That is not to say that there may be some merit in some of these complaints, especially some of the matters raised by the father. One that stood out was the incident where the mother exposed C to a disagreement over holiday arrangements for her. The mother said that if C had been exposed to adult discussions by her, it was inadvertent, that she was "not a robot" but that she tried her best to protect C from such discussions.

91 There were also other instances where it was clear that the mother's communication with the father was unsatisfactory about holiday and other arrangements concerning C. There is clearly a "tit for tat" atmosphere affecting some of these disagreements that must now be consigned to history. I can also see, however, that these court proceedings, where the stakes are so high, have served to undermine effective communication between the father and the mother.

92 I do not consider, however, that the allegation of parental alienation levelled by the father against the mother is justified. As Ms. Green said, such an allegation is not consistent with the fact that C regularly visits the father in London, they regularly communicate on video calls, and they appear to have a close bond.

93 In my view, all these complaints must be put in their proper context, as proportionality is a feature of the court's overall evaluation. I will return to this in a moment.

94 Standing back and looking at both options holistically, there are gains and losses in respect of each option.

95 If C moves to London, she will live with an undoubtedly caring father and his partner who appears to be fully committed to supporting him in looking after C. Further, C would have her own room in the flat that he rents with his partner. Subject to the reservations I have set out above, C could also potentially be enrolled in a top private school, have easy access to premium health care, and to the many opportunities available in London.

96 If C remains in Gibraltar where she is already settled, she will have continuity after an unsettling period in her life. Although at present, C does not have her own bedroom, the mother owns her own flat, and she is looking at the possibility of closing in her balcony or getting a larger flat. C will continue at School F where she has recently started, which appears to be well suited to cater for her needs.

97 The need for continuity is in my view a weighty consideration here. Whilst children, especially young children of C's age, generally have the capacity to cope with change, given C's particular circumstances and characteristics, what she needs most at this stage in her life is continuity,

rather than disruption. As Ms. Green said, C's ability to settle should not be compared with a child who does not have additional social communication difficulties, and she has a particular need for routine and structure. I accept Ms. Green's evidence in this regard, who has had the benefit of meeting C and speaking to C's teachers.

98 Further, I accept Ms. Green's evidence that it would be damaging for C not to have her mother with her if she were to move to London, and that contact at least once a month as proposed by the father would potentially cause her distress. In my view, this is a very significant factor to weigh in the scales, especially given C's age, circumstances and characteristics.

99 Whilst I have no doubt that the father would be accommodating and promote contact with the mother, one needs to bear in mind the practical obstacles that the mother would face to continue in C's life, including her work commitments and financial position. Even if greater contact were afforded to the mother than the father has proposed (apart from extended holiday contact), it is quite likely that her financial and work situation would place significant constraints on her ability to travel to London, even taking into account the availability of cheap flights these days. This would result on C having to embark on an entirely different type of relationship with her mother. C's relationship with her mother would inevitably change and be reduced, even if one takes into account the connectivity modern devices provide with free video calling apps, which can shrink the distance between a parent and departed child.

100 The father, who again is to be commended for this, has travelled regularly to Gibraltar to visit C, and has spent long periods with her during the holidays in London and elsewhere, with quality contact taking place. This is a routine that C appears to have settled well into. The father is clearly devoted to C, has made huge efforts to retain a central role in C's life following the separation, and I have no doubt that this will continue if C remains in Gibraltar. If C remains in Gibraltar, she will therefore continue to see her father regularly and that relationship will sustain. Indeed, this pattern of contact should be able to develop further given the father's more flexible work schedule and the mother's offer of longer contact periods when the father comes to Gibraltar at the weekends. If this is not agreed, then the court, as part of the range of powers that it has, can ensure that this happens.

101 I return now to the question of proportionality. Even if as I have said, there have been some instances where I consider that the mother could have communicated better with the father over C's arrangements (although that is in itself a multi-faceted issue) and still has hang-ups about the breakdown of her marriage, ordering a relocation would in my view be wholly disproportionate in this case. C's rights are paramount and as I have said above, it is important that C is provided with continuity and that the

existing relationship with her mother is not affected especially after a turbulent time in her life.

102 I consider that the proportionate way of dealing with some of the concerns that the father has raised would be for the parents to focus on improving their co-parenting skills. This might include attending a co-parenting course, and using co-parenting apps. The mother said that she would be prepared to attend the co-parenting course, which showed some insight on her part about the need to improve her relationship with the father in this regard. Further, the court can deal with any disagreements over holiday plans, contact and so forth if necessary.

Conclusion

103 Having considered welfare generally through the factors set out in the welfare checklist specifically, and the pros and cons of either staying in Gibraltar or moving to London, I have concluded that C's welfare is best met by staying in Gibraltar at this stage of her life.

104 The application for C to reside with the father in London and have contact with the mother is therefore dismissed.

Contact

105 I hope that the parties with the assistance of their legal representatives will be able to draw up an order giving effect to my decision. Further, they should try their best to work out a revised plan for C's contact with the father, and which may now include longer weekend contact. If revised arrangements for contact cannot be agreed, the matter should be raised at the handing down of this judgment so that arrangements can be made for any disagreements to be resolved as quickly as possible.

106 As I have outlined above, I consider that the father and the mother would benefit from attending a co-parenting course, and that this is the appropriate way of addressing disagreements between them. This will enable them to focus on child-centric co-parenting above all else. In the light of what Ms. Green has said about the importance of attending such a course in person, I would suggest that any contact plans which involve the father travelling to Gibraltar should, if possible, take into account the dates when the co-parenting course can take place.

Postscript

107 On September 30th, 2024, the parties wrote to the court to explain that there had been an incident involving the mother's partner and C after the conclusion of the hearing. The father (through his conversation with C) said that this involved the mother's partner pushing C, and throwing her iPad to the floor. The mother denies that there was any violence and states

that her partner had a nervous breakdown, that she called the police, and that he was taken to hospital. Further, she states that the relationship is now over.

108 At this stage, I have proceeded on the basis that the relationship between the mother and her partner is now over. If the father considers that there has been a relevant change of circumstances since the conclusion of this hearing, and wishes for further evidence to be heard in relation to this incident, this should be raised at the handing down of this judgment.

Application dismissed.
