



Neutral Citation Number: [2021] EWHC 1279 (Fam)

Case No: FD20F00017 & FD20P00160

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date of formal hand down: 13/05/2021

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

Between :

XM

Applicant

- and -

XF

Respondent

Ms Hannah Markham QC (instructed by Expatriate Law) for the applicant mother
Ms Katherine Kelsey (instructed by Birketts Solicitors) for the respondent father

Hearing dates: 29 and 30 March 2021

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Roberts :

1. The court is concerned with the arrangements for two small children in relation the time they will spend between their two parents' homes in circumstances where those parents are now living separately and apart following the breakdown of their marriage in March last year. On 16 March 2020 the mother, XM, issued an application seeking a number of private law orders. The focus of this hearing has been on the children's living arrangements going forwards. XF, the children's father, is fully engaged in those arrangements. He, too, accepts that court intervention is now necessary because of their inability to agree how to chart an independent way forward. At the centre of the current dispute are two delightful children, L and S, who are now respectively 6 and 3 years old. They are much-loved children and, in turn, it is clear to me that each of the girls has a close and loving relationship with each of their mother and father. The last twelve months have presented particular challenges for each of these parents. The children's passage into their new experience of their parents' separation has undoubtedly impacted upon their emotional wellbeing and sense of security.
2. I accept what each of the parties told me in terms of their collective wish to resolve these issues in order that they can together move on with their lives on the basis of a structured arrangement which recognises and reflects the needs of their children as they grow and develop over the months and years ahead.
3. In order to protect the parties', and the family's anonymity, I propose to refer to them in this judgment as "the father" and "the mother". I do so only for those purposes and not in any way to dilute or obscure their individual personalities which came through clearly as I observed them and listened to their evidence. Each has a great deal to give these children and they clearly take enormous delight from their respective roles as parents.

Background

4. The family is based in Dubai in the United Arab Emirates. That will remain the position for the foreseeable future since the parties are working parents with

careers in that jurisdiction. The father is now 40 years old; the mother is 33. The father told me that they have been in a relationship for some sixteen years. They married in England in July 2012. The father was a serving officer in the British Army at the time. At the end of 2013, they moved to Dubai where the father had found employment in the field of private security services. L was born in 2015 and S three years later in 2018. The mother works in an important role locally as an operations manager. Whilst she took some maternity leave around the births of the children, she is now working full-time. The family is fortunate to have retained their live-out nanny who has been a constant presence in the children's lives.

5. Difficulties surfaced in the marriage at the end of 2019. It was a difficult time for each of them. The mother suffered a miscarriage in October that year. I accept that was a traumatic loss for both of them. Shortly thereafter, the father became aware of matters which caused him to believe, rightly or wrongly, that she may have been involved in an inappropriate relationship with another man. The first few weeks of 2020 were a significant challenge in terms of the developing dynamic between them as they contemplated a formal separation. In March 2020 the mother issued a petition seeking the dissolution of their marriage. The father accepts that he behaved badly during much of this period and indeed beyond and threatened to expose what he believed to be her infidelity to the local authorities in Dubai. I am satisfied both that he used these implied threats to hurt her and that she was genuinely afraid that any such action on his part might result in the fracture of her relationship with, and ability to care for, their children. The father now admits that his distress at the breakdown of his marriage and its impact on their family life had taken him to a very dark place. He accepts, and I find, that many of his actions were inappropriate at the time. In circumstances where Dubai was also in a state of lockdown, he required the mother to stay overnight in a local hotel. She left the family home after the children had been put to bed and returned in the morning before they awoke. Whether or not they believed that this façade would somehow protect their children from the consequences of what was going on in the home, I accept that their description of the atmosphere within the home as “toxic” was accurate. There is no doubt in my mind that these children will have been affected by the

significant tensions between their parents. They were very young children at the time.

6. The litigation in this jurisdiction was triggered by the issue of the mother's divorce petition. On the same date, she issued proceedings for a raft of orders including a prohibited steps order which prevented the children's removal from Dubai, a non-molestation injunction, and an anti-suit injunction to prevent the father from issuing parallel proceedings in relation to the children in the local courts in Dubai.

Jurisdiction

7. In terms of jurisdiction, it is agreed that the English court has jurisdiction to deal with all these matters on the following basis:
 - (i) in relation to the Children Act 1989 from sections 1(1)(a), 2(1)(b)(i) and 2A of the Family Law Act 1986, as interpreted by section 42(2) and the interpretation of those provisions by Moylan LJ in *Lachaux v Lachaux* [2019] EWCA Civ 738 at paras 97-105, 185 and 187;
 - (ii) in relation to the Matrimonial Causes Act 1973 on the basis of the parties' domicile; and
 - (iii) in relation to the Family Law Act 1996 from section 42(2)(b) and section 33(1).
8. On 16 and 17 March 2020, Judd J made the orders which the mother sought. She was represented on that occasion by Ms Hannah Markham QC who continues to represent her at this hearing. The father was then in person. There is a clear preamble to that order, recorded as a recital, in these terms:

“AND UPON the court recording that the Applicant mother has made it plain through her Counsel that she values the father's relationship with the children, and that nothing in this order is designed to remove him from the family home, or to prevent him from having care of the children.”

9. That was an important caveat since it recognised that, notwithstanding the complete collapse of their personal relationship, the mother recognised the importance to these children of their relationship with their father. The order which was produced at the conclusion of the second day of that hearing recorded the fact that further discussion between the parties had served to narrow the issues, including the joint appointment of an independent social worker who was to be instructed to assist with the ongoing living arrangements for the children. By that stage, it had been agreed that the mother would move to her own rented property. Recorded on the face of the order is the court’s indication that, following that move, it would be beneficial for the children to spend more frequent time with each parent for at least the first month after the move. The “steer” from the court on that occasion was a staged plan which involved a rotation between the two homes “possibly 3/4 then 5/2”.
10. The mother moved to her current accommodation with the children on 27 April 2020.
11. The matter was back before the court on 11 May 2020. Orders were made on that occasion by Cohen J. By this stage, the father had instructed Ms Katherine Kelsey of counsel. She has appeared on his behalf for the purposes of this hearing. Mrs Debbie Gaskin, the jointly appointed ISW, was also present. As the order records, the father had already engaged various counselling services in order to address his emotional reaction to the breakdown of the marriage. The court made interim orders under the Children Act 1989 which provided that the children should live with their mother and spend time with their father on the basis of a two-weekly cycle. The “school week” in Dubai runs from Sunday to Thursday. The children’s “weekend” started on Thursday afternoon and ended on Saturday evening. The court order provided that in week one, they were to spend three nights on Thursday, Friday and Saturday with their father. In week two, they would spend one night each alternating week on a Wednesday. Handovers were to take place at school with assistance, where necessary, from the children’s nanny. Indirect contact through FaceTime or similar was to take place daily between the children and whichever parent they were not with at the time.

12. That order provided the structure for regular and frequent contact between the children and both parents for the next six months until the dispute resolution appointment before Francis J on 23 September 2020. Once again, Mrs Gaskin made herself available for that hearing although the court heard no oral evidence. The order records the father's ongoing commitment to therapeutic support. Both parents agreed to engaged in work designed to assist separating parents. The children's passports were, by agreement, to be held for the time being by the mother's London solicitors. As Cohen J had done at the earlier hearing in May last year, Francis J urged the parties to reach agreement through some form of mediation.
13. The contact arrangements were revisited at that hearing. Instead of spending three nights with their father on week one of the fortnightly cycle, the children's time was reduced to two nights on a Thursday and Friday with a return to their mother by 5pm on the Saturday evening. On week 2, they were to spend Monday and Thursday afternoons with him from 5.30pm until 7pm. The court directed that, if the father was able to leave work earlier, he should be able to have the children for longer. As in all these arrangements, the court stressed to the parties the need for an element of flexibility. Indirect contact with the other parent whilst the children were with the other parent was continued on the basis of daily FaceTime calls at a time convenient for the children.
14. Directions were made for the filing of further evidence in preparation for the final two-day hearing which is now before me.
15. There is now a great deal of written evidence before the court. In addition to the original statement filed in March 2020 by the mother's solicitor, Mr James, I have two lengthy statements from the mother, one of which exhibits a series of electronic diary entries about the children's day to day progress and the development of the contact arrangements. I have three statements from the father, the latter two having been sworn in June last year and March this year. I have three reports from Mrs Gaskin, the ISW, the most recent of which was prepared in mid-March this year. She has recently responded to a series of written questions put to her by solicitors for both the mother and the father.

16. Finally, I have reports Dr Claire Lewis, a clinical psychologist based in Dubai, and Una Archer, a professional who has worked with the father on a parenting course. Dr Lewis's report records the progress which he has made through a series of counselling sessions. It was prepared in the two weeks leading up this hearing and confirms that this was an independent self-referral made by the father who thereafter had seven separate sessions with Dr Lewis. She saw her role as providing psychological support during the legal process of separation and divorce. The report refers to his "consistent [expression of] his dedication towards the well-being of his children, his eagerness to be involved in their upbringing as well as his commitment to his parenting role and responsibilities".
17. Ms Archer's report, also prepared shortly before this hearing, contains the following observation:

"I found [the father] to be very committed to making the most of our work together. He showed up to our sessions on time, prepared and stayed engaged with the material of each session. I experienced [him] as a loving and caring father who does his best for his children in each given situation. We had many conversations about the children's emotional needs – [he] was able to identify what children needed in the case studies we looked at, and when reflecting on his time with his children. He was also able to reflect on how he would respond to challenging situations now, using what he learned – recognising his children's needs, the importance of looking after his emotional state and repair in relationships."
18. I heard oral evidence from both the father, the mother and Mrs Gaskin as to the way forwards in terms of their individual views about the children and the manner in which they could happily and safely enjoy time with each of their parents. The mother has also engaged in therapeutic parenting work which she has undertaken with Mrs Gaskin. This work appears to have covered a broad reach of topics associated with the emotional impact of separation on the whole family and the need for clear lines of parental communication.
19. That evidence has to be seen against the background of some very significant emotional distress which each of these children has experienced over the course

of the last few months. It needs to be said at the outset that, in common with most children, they have had to adjust to all the changes which the global Covid-19 pandemic has brought to families across the world. Their school and nursery routines have been significantly disrupted. They had to cope with a return to school in late August/early September 2020 having spent several weeks at home with their nanny and their parents. They have had to adapt to an evolving pattern of staying overnight with their father. Each of their parents is now living separately in a new home.

20. In addition, they have undoubtedly had to absorb and process aspects of the parental conflict which they have observed at first hand despite the better inclinations of their parents to protect them from it.
21. It is against that background that Mrs Gaskin highlights several aspects of concern for these children. In her final report dated 12 March 2021, she records these observations of S (then 3 years old):-

“At the beginning of my involvement, I observed a content little girl, who despite a degree of instability in her young life, was happy, sociable, and energetic in presentation. She was comfortable in both parents’ care and has moved easily between the two parents. She has always been described as clingy on return to Mum after the weekend family time with Father.”

22. Having set out S’s ability in the early days to manage well the three-night stays with her father, Mrs Gaskin set out the significant distress and disruption which her sister, L, began to experience as a result of this extended separation from her mother. This had prompted the reduction of those stays to two nights on alternate weeks in September last year. Mrs Gaskin reported that S was becoming aware of her sister’s distress and that, in turn, was impacting on the younger child’s presentation:

“[S] is described as increasingly unable to cope with separation from Mother and becomes distressed in anticipation of separation. On return to Mother, she appears to have an elevated level of anxiety, she is unable to accept as she was previously that Mother may be in another room, and that

she could move independently using Mother as her “secure base” whilst in her care. She has been seeking comfort by being carried on Mother’s hip, becoming distressed if not in her sight, and frequent checking out that Mother is available to her. She has been having disrupted night’s sleep, waking regularly and getting p to look for Mother, to the extent that Mother has to remain close. [S] was observed previously to be independent, and curious, but now unwilling to be and distressed at separation. [L] has spoken to Mother about disruption to [S’s] pattern of sleep when in Father’s care, and how [S] gets out of bed at night, looks for Mother and cries for her. Father advises that there is no disruption to [S’s] sleep and that he experiences no emotional distress when in his care. [L] describes a degree of understandable responsibility for her younger sister and her protection and well-being.”

23. Of [L], Mrs Gaskin says this:-

“[L] is a delightful little girl who has been exposed to far too much information arising from the parents’ difficulties. As reported in my previous assessment, she has been exposed to domestic abuse in the parental relationship, Mother makes allegations, which Father denies, and Findings are not actively sought in relation to the same. Notwithstanding this I am of the view that she is acutely aware of the tension in adult relationships and continues to carry [a] significant emotional burden in relation to then parents and her relationship with each of them. She has managed to negotiate and accommodate the changes to her living circumstances over the last year. She is in my view increasingly contained regarding the many changes of the last 15 months. This containment is beneficial in that she is able to regulate her emotions, but can create difficulties for children, and can be the trigger for further emotional distress or turmoil, and expression of trauma in a different manner.

Over recent weeks [L’s] presentation has become increasingly concerning, she has had some emotional outbursts whilst in her Mum’s care, but more concerning she has begun self-soothing herself to sleep, placing pillows, soft toys between her legs and rocking on the same, as a means of self-

soothing herself to sleep. Mother describes a level of distress in [L] when going off to sleep, she uses the above technique to soothe herself.”

24. Whilst Mrs Gaskin explicitly rules out any suggestion of sexual harm from any source, she nevertheless describes this behaviour as not what she would expect to see in a 6-year old child. She concludes, “... it is my firm belief that this is a different expression of trauma because of all the change, disruption and tensions of the last year”. L told Mrs Gaskin that she liked the current arrangements whereby she went to her father’s home from Thursdays to Saturday afternoons. She was happier with seeing him on Mondays and Thursdays during the week when she had no staying contact. She liked it when he came to collect her from school. She had a calendar on which she had days which were clearly marked as days which would be spent with her father, and she knows how many “sleeps” it is until she will see him again.
25. L was able to express to Mrs Gaskin that at times she felt overwhelmed by ‘worries’ although she could not always articulate what those worries were. She and the mother had found a means of exploring those worries through story books and talking. As a result of her conversation with L, Mrs Gaskin was able to report that L now appears to have a clear understanding about the two families which have evolved as a result of her parents’ separation. She is aware that she is loved by each of her parents and their extended families. She worried for S and described, unprompted, occasions when S had awoken at her father’s home during the night and was out of bed looking for her mother. “She said that she worried about her when [S] was upset and looking for Mummy”. There were no adverse reports about L from her school teachers who were happy with her progress “emotionally and academically”.
26. I had a graphic description from the parents themselves in relation to L’s emotional distress when she was returned to the mother’s care after spending last weekend with her father. She articulated plainly that she did not want to leave her father and refused to leave the car. When gentle encouragement by her parents failed, she had to be physically removed from the car and returned, kicking and screaming, to her mother’s arms. She was able to settle relatively swiftly with the father’s encouragement. He telephoned the mother on his drive

home and she was able to reassure him that L was fine and had recovered from her distress.

27. Each of the parents gave evidence at the hearing. Each spoke lovingly about their daughters in a manner which demonstrated the strength of their attachment to, and love for, their children. It was clear to me that each has found the increasing tensions around the issue of the children's arrangements taxing and difficult. The children's deteriorating behaviour in their mother's home has been challenging for her. She describes evolving stages in L's behaviour. When she returned to school in September last year having been at home for several months during a local lockdown, the mother describes L as having been "violent, angry and upset" when she returned from time spent with her father. She told me that it could take up to three hours to settle L for bed on these occasions. L would often refuse to get dressed in the mornings and travelled in her mother's car to school in her pyjamas. She would ask to be carried into the school premises and was anxious about separating from her mother.
28. L's behaviour appeared to be much more settled as the weeks went on and the school routine became more familiar to her. The mother told me she was much happier at school and able to manage her emotions. By February this year, the kicking and punching had stopped and she was happy and settled with her school routine. However, it appears that L's anxieties remained. She developed the self-soothing strategies I have described as Mrs Gaskin has reported.
29. I have no reason to doubt what the mother told me about L. The fact that the father does not experience this type of behaviour when he has the children does not diminish the force of the mother's account. I accept that L's insecurities were not properly recognised and addressed in the very early days of the breakdown of the parents' relationship. The father has recognised his part in exposing the children to far too much of the parental conflict. L has clearly picked up on his distress and has challenged her mother on frequent occasions as to the reasons why her family now lives apart. She has made frequent references to being told by her father that "Mummy has done a bad thing". Whilst he has gained considerably more insight into the effects of his behaviour as a result of the therapeutic intervention he has sought, the father must realise

that his words and actions in the earlier months of the separation have had consequences for these children and those consequences must now be addressed before these parties can move on and rebuild. L, in particular, has to learn to regulate her emotional responses to moving between their two homes.

30. The mother remains anxious about the father's intentions in relation to the circumstances surrounding the breakdown of their marriage. She has installed a security system in her home. Her anxiety continues to inform the dynamic of the parental relationship which they are trying to rebuild. There remains an unresolved issue in relation to financial matters flowing from their divorce and this ongoing litigation is bringing its own pressures to bear. The mother is anxious about the effect on the children of the introduction into the father's life of a new companion, N. No criticism is made of her presence at his home during some of the time which the girls spend with their father or of the care which she can help him to provide. The concerns flow rather more in relation to the additional confusion this has created in the children's minds.
31. It was clear from aspects of the mother's evidence which emerged in cross-examination by Ms Kelsey that she continues to harbour residual and deep-seated feelings of mistrust and antipathy towards the father for his reaction to their separation. She describes his behaviour as both threatening and controlling and I have no doubt that she experienced it as such. She perceives much of the children's anxiety surrounding separation to be a consequence of his actions in requiring her to leave the family home overnight in the aftermath of the events of last year. She told me that she and the children often "co-sleep" to address these anxieties.
32. She perceived the father's actions over the Christmas period last year as further evidence of control. S had been unwell. The father allowed her to go swimming at a time when she had been diagnosed with pneumonia and had only recently completed a course of antibiotics. She was very concerned that he had sought to downplay the significance of S's illness and, with justification in my view, she felt undermined when he sought to involve his family in these matters. They had travelled from England to spend time over the holiday period with the father. He gave them Mrs Gaskin's email address and she became involved in

these issues as a result. However high feelings were running at that time amongst the father's family, I regard it as an error of judgment on the father's part to have allowed them to become involved in this way. Whilst it is but one aspect of a period which presented challenges for both parents, it continues to inform the mother's concerns about the father's willingness to engage openly with her about S's health. It is those concerns which provide the platform for her application that this court should impose restrictions on the exercise of his parental responsibility in this context.

33. I was struck by the mother's description of the current proceedings. She told me that her wish to reduce the father's contact had not been "a land grab" on her part. She wishes only to create a period of space and stability for the children whom she perceives to have regressed significantly in terms of their behaviour.
34. The father feels keenly what he perceives to be the gradual erosion of his time with the children. He points to the spirit of the earlier agreement which the parties made in the context of these proceedings at a time when the mother was being assisted by advice from Ms Markham QC. Following a round table meeting instigated by her and her legal team, the parties agreed upon a number of aspects in relation to the exercise of their parental responsibility for these girls. The precise allocation of time as between their two homes was yet to be determined but the mother's proposals were based upon him having at least three days during a seven-day rota together with alternating weekends. He sees her current attempts to reduce contact as a deliberate attempt to marginalise his role to that of an occasional 'weekend parent'. He has consistently stressed to all the professionals involved in this case, and to this court, that he wishes to be fully involved in their lives to the extent that he can be. I accept that as a genuine expression of commitment on his part.
35. The mother has assured me that, whatever the decision of the court, she is prepared to work with those new arrangements. For his part, the father acknowledges the vital role which the mother plays in ensuring the emotional safety and stability which these children need. He has the insight to recognise

how damaging much of his behaviour last year was in terms of the children's perception of their safety and wellbeing. He told me during his oral evidence:

“I accept 100% that [L] has been harmed by this. [S] is very young and has probably not gauged what is going on. But she is getting older. Of course being passed from house to house will have an effect on her.”

“I accept the need for stability in their lives. In the last year there have been seven changes to their routine. There has not been any stability and this has not worked for the girls or us as parents.”

36. One of the unfortunate aspects to emerge in recent weeks has been the father's apparent loss of confidence in the work and support which Mrs Gaskin's role has brought to this family. He perceives her as having supported the mother's case in preference to his own. He has been concerned about the fact that he has been criticised for undertaking the work he has done in relation to his parenting skills with third party professionals. He told me that he had not realised that it was her understanding that he was to carry out this work with her, as the mother has done. Mrs Gaskin has been critical of some of the father's behaviour towards the mother, and properly so in my judgment. But it would be unfair to characterise her input or her recommendations as 'antagonistic' or biased in some way against the father. I am entirely satisfied that, as an experienced professional social worker, she has properly evaluated the situation in which these children find themselves. She has carried out an appropriate analysis of why they are exhibiting the behaviours which the parents have described and she has approached the case and her evidence to this court from the foot of what she believes to be in the best interests of the children's physical and emotional welfare. That her involvement has not been conventional in terms of the current lockdown restrictions is unfortunate. She has not been able to meet the parents or the children in person. She has not had the ability to observe any of the handovers or time spent by the children in each household. She has had to engage with the parents via a video platform which is no substitute for direct face to face engagement in a situation such as this. Given the fact that the parents live outside the jurisdiction which they engaged for the resolution of

these matters and their decision to jointly instruct an expert based in England, it may be that Mrs Gaskin's involvement would always have been limited by these constraints even in the absence of a global pandemic. She continues to harbour concerns about the father's true insight into the children's emotional needs and the extent to which he can put into practice what he has learnt from the work he has undertaken over recent months.

37. So where does this evidence lead the court in terms of the best outcome for these children. In terms of a time frame for the development of contact, and at my request, Mrs Gaskin has prepared a 'road map' which sets out her views on what the future might look like for the children. She told me that currently neither child would cope with increased stays overnight away from their mother. Any increase in her view should begin incrementally and within the structure of a clear routine.

My conclusions and the 'road map' which I intend to put in place at the conclusion of these proceedings

38. Despite the fact that these proceedings have been an excoriating process for both these parents, some positive pointers for the future have emerged. There is no doubt whatsoever that each loves the children and each recognises the value which the other parent brings to the lives of their daughters. There remains a high level of distrust between the parties and this continues to provide a platform for ongoing conflict over the arrangements for the future. I suspect that time will prove to be a healer for each of them but they must continue to work towards a resolution of that conflict rather than using it as a means of exploiting their differences to the detriment of the children. L, in particular, is agreed to be a perceptive child who is attuned to what goes on around her. I suspect that she has been only too well aware of the anxieties felt by her mother just as she has been exposed to the hostility which her father has felt towards her mother. My focus remains, as it must be, the welfare of these children. I agree with Mrs Gaskin's assessment that they need a period of respite during which they can recover from the undeniable effects of the last few months of instability. I am equally satisfied that they love their father and need to spend time in his care when he can provide much-needed reassurance that they are loved and remain

part of his family albeit in its reconstituted form in separate households. That is the best outcome for these children in circumstances where their parents are no longer able to share a common home.

39. Absent the unresolved feelings of hurt and anxiety which each of these parents holds, I am entirely persuaded that each is perfectly capable of meeting the needs of their children. Each can provide for their physical and financial needs going forwards and each has the ability to provide emotional warmth and empathetic parenting. The father accepts that the court should make an order that the children should live with their mother and spend time with him. On his behalf, Ms Kelsey submits that there is nothing in the evidence to suggest that a reduction in the time he presently spends with the children will address the children's difficulties within their mother's home. She further submits that to reduce his contact to once every three weeks in line with the mother's proposal might well impact adversely on them. She points to the fact that, as recently as 16 March 2021 in her responses to specific questions put to her, Mrs Gaskin was supporting alternating weekends with the father despite S's recent presentation. Her recommendation was made in the context of L having made "significant progress" in terms of regulating her emotions. She said this:

"[L] has been able to accommodate many of the changes from the last year, to the extent that she contains her emotions more. I am of the view that the behaviours which have recently emerged are another expression of trauma and distress from the harm she has been exposed to. I am hopeful that they will subside over time, and with nurturing."

40. On behalf of the mother, Ms Markham QC reminds me that the last year has been extremely difficult for her client. She has been very unwell and has undergone fairly major surgery as well as a course of chemotherapy. The children will undoubtedly have picked up on the fact that their mother was unwell in addition to the ongoing conflict between their parents and the distress of each of them. She seeks a finding that the children have suffered emotional harm through this period. As set out earlier in this judgment, it is a finding I have no hesitation in making. I am also satisfied that the children's attachment to their mother at the present time is not as secure as it should be, or once was,

and that a period of respite is required for them to settle whilst still seeing their father for appropriate periods of time. Both girls must be considered as individuals but I am satisfied that their sibling bond and the support which each gives to the other requires the arrangements for time with their father to be the same. The behaviour which M has described in S (who has only just celebrated her third birthday) is a matter of concern. She is now back in nappies and manifesting a clear need for the comfort of physical connection with her mother.

41. I spoke earlier of the positive indicators in this case. I am quite sure that the continuity of care which the children's nanny has provided throughout the last year has been of significant benefit for these children and their parents. The father has recognised and acknowledged that it is not in the children's interests for him to pursue an equal sharing in terms of the children's care. I am conscious of the need to move at a pace with which the children can cope and that is what I intend to achieve with the order I propose to make.
42. Mrs Gaskin has proposed that the matter should be approached on the basis of a three-stage process. For the first stage, which would last for 8 weeks, there would be a reduction in the level of staying contact with the father (once every three weeks for two nights) on the basis that he continued to see the children for tea after school twice a week on the intervening weeks. During school holidays, he should spend full days with the children rather than tea-time visits after school. Stage 2 would reflect the current arrangements (two overnight stays on alternate weekends. With provision made for additional time during the school summer holidays, Stage 3 would commence at the beginning of the Autumn term at the end of August 2021. By this stage, the father will be having the children for three overnight stays on alternate weekends with a single overnight stay during every other week. The mother does not wish to move to Stage 3 until after Christmas / the New Year in 2022.
43. On the basis of all the evidence which is now before the court, I take the view that the aspiration of the level of time spent with the father which is envisaged by Stage 3 is both realistic and appropriate. With some re-definition, it is an approach, or 'road map', which I propose to adopt for these children and their parents.

44. In specific terms, these are the arrangements which will underpin the order which I propose to invite counsel to draft.

Stage 1

45. The children are currently on holiday and will return to school on Sunday, 11 April 2021. I am proposing to leave the parties to make specific arrangements about the short period which remains of the Easter holidays but on the basis that the father will be entitled to spend at least two full days with the children over the coming week (without overnight stays). For the next eight weeks, which I have taken to commence on Sunday, 11 April 2021 the father will spend time caring for the children as follows:-

Weeks 1, 2, 4, 6 and 8: on Mondays and Thursdays after school (2pm to 6.30pm);

Weeks 3, 5 and 7: overnight stays on Thursday and Friday returning to mother at 5pm on Saturday evening.

46. I appreciate that his 'after school' visits can be accommodated from 2pm whilst he is not required to attend daily at his office. That said, I had the impression from his evidence that he has a significant degree of flexibility in terms of how he organises his working hours. Thus I would hope and expect that, even if the local lockdown in Dubai is eased, he will still be in a position to spend this time with the children.

Stage 2

47. With effect from the week commencing 13 June 2021, the current arrangements will be reinstated. In other words:

Weeks 1 and 3: Mondays and Thursdays after school (2pm to 6.30pm);

Weeks 2 and 4: overnight stays on Thursday and Friday returning to mother at 5pm on Saturday evening.

48. The summer school holidays commence on 8 July 2021. That would mean that Stage 2 and these arrangements would run for a period of just under four weeks prior to the start of the holidays. During any short intervening holidays (if, for example there are half terms or national holidays, the after-school visits should be extended for a full day which the children can spend with their father.
49. I understand that the mother may wish to take a short summer break with the children this year. She is a full-time working mother, just as the father has a full-time job. I appreciate that her health has been adversely affected by illness over the course of the last year and I regard it as essential that she has a full week to spend with the children away from the demands of her job. It may be premature to think of a return back to the UK this year but I propose that the contact schedule during the school Summer holidays can properly be interrupted to allow for this holiday. Subject to those dates being agreed, I propose to continue the two-weekly cycle of arrangements which I have set out above in paragraph 47 above save that on weeks 1 and 3, the children will spend full days with their father on Mondays and Thursdays provided that he is available to care for them. I would hope that the parents will be able to agree additional days during the summer holidays when the children can spend time with the father but I am not going to be prescriptive about specific dates. The mother will presumably be working throughout most of the summer holidays and the father should be in a position to engage the nanny to assist with these arrangements given that it is she who will otherwise be looking after the children.
50. The Autumn term commences on Sunday, 29 August 2021. That will be an important time for S who will be starting school. I recognise this as a milestone for her. I am proceeding nevertheless on the basis that the arrangements for Stage 2 (para 47) will continue through the Autumn term. Each of the parents must be sensitive to S's needs at this time. She will be 3½ years old and she will be tired at the end of her school weeks. She should then be used to these arrangements but it will take love and sensitivity on the part of both these parents to ensure that she makes the transition to school happily and with appropriate reassurance.

Stage 3: the move to three overnight stays on alternate weekends

51. Having considered matters carefully, I have decided that, if these arrangements are to succeed as we all hope and expect that they will, the move to three overnight stays on alternate weeks should be delayed until the commencement of the new school term after Christmas. Thus, if all is proceeding well, with effect from Sunday 2 January 2022, the father's time with the children will be extended as follows:-

Weeks 1 and 3: after school on Mondays until 6.30pm and overnight on Thursdays (returning to the mother on Fridays at 11am);

Weeks 2 and 4: overnight on Thursday, Friday and Saturday with the father delivering the children to school on the Sunday morning.

52. In general terms, the children should be free to spend time with their extended families in the United Kingdom whilst in the care of each parent once international travel is permitted. This will need to be arranged during holiday periods and, in order to avoid unnecessary travel for the children, I would encourage the parents to agree dates when this can happen when both are visiting the United Kingdom.
53. They will need to be flexible when family visits are made to the UAE. This will require forward planning and each will need to give the other proper and adequate notice as soon as dates are known.
54. By the Easter holidays of 2022, the court's expectation is that the children will broadly divide their holiday time between their parents' two homes. It is not possible for this court to provide further definition in respect of precise dates or handover arrangements. By this time the parties will have been operating these contact arrangements for over a year and I would expect them to agree the dates between them. I was told on more than one occasion how important routine and forward-planning is for L, as for all young children. Predictability and consistency are key to the success of these arrangements. As a general principle, important days or celebrations (such as Mother's Day, Father's Day and the parents' birthdays) should be spent with the parent concerned. Christmas this year (2021) will be divided on the basis that the children are with the mother until 5pm on 24 December 2021. They will then spend the rest of that day,

Christmas day itself and the morning of 26 December with their father returning to the mother at 12 noon on Boxing Day. In following years, these arrangements will be alternated.

55. In terms of telephone and FaceTime calls, I accept that the children are used to daily calls with their father when they are not spending time with him. Whereas I might normally take the view that these might be intrusive in terms of the mother's routine with the children, I bear in mind in this case that the father's point of contact with the children is the nanny rather than the mother who is at work. There is no evidence that the children are not coping with these regular calls and they may provide them with ongoing reassurance that their father remains a presence in their day to day lives even when they are not with him. He appears to have a good relationship with the nanny and she has raised no objection to facilitating these calls. Provided that the father exercises common sense in relation to how long children of this age can expect to be engaged on daily calls, I see no reason to limit this form of contact. He, in turn, must facilitate the children's indirect contact with their mother whilst they are with him.
56. In terms of the current litigation, I intend my orders at the conclusion of this hearing to bring these proceedings to an end. I cannot see that it is in the interests of the children or these parents to prolong the court's involvement in decision-making which should be their responsibility. For so long as the litigation continues, there is the subliminal traction on evidence-gathering as well as the ongoing emotional and financial pressure on the family. Whilst there is no basis upon which I can prevent either party from making further applications in relation to the children, I would encourage them both to see the court as a remedy of last resort. If Mrs Gaskin's involvement ends with the conclusion of these proceedings, both parents appear keen to engage the services of someone who might act as a 'parental co-ordinator'. Ms Kelsey on behalf of her client has suggested two individuals who might be available to assist. Both are solicitors and family mediators. I would urge these parents to consider any form of mediation which works effectively to resolve any ongoing issues between them.

57. In terms of the children's passports, the father has agreed that these should be held by the mother on the basis that they will be released to him if he is travelling with the children and/or if they are required for visa renewal or any other official local requirements. That is the order I propose to make.
58. In terms of parental responsibility and the limitation which the mother seeks, I do not propose to make any order which limits or dilutes the parental responsibility which each of these parties share. Clearly each must be entitled to make immediate decisions in the event of a medical or other emergency. They must also notify the other immediately in that event. The mother is concerned that she cannot trust the father in matters which concern S's health. Whilst I consider that his actions at the end of December last year were a matter of concern for the mother, I do not believe that he would put either of his children at risk in terms of health issues. What was singularly lacking over that period was any attempt at effective communication between these parents. The father took no steps to reassure the mother that their child was safe and well. Instead, as I have found, he took the wholly inappropriate step of allowing his family to become involved in the dispute. That was unwise but it was not sufficient in my judgment to provide an evidential basis for the sort of restriction on his parental responsibility which the mother seeks. Each of these parents has the very considerable joy of raising these two lovely children. Each bears the responsibility for ensuring that the children receive the love, nurture and support which they will need if they are to develop into the happy, confident children they have the potential to become.
59. I propose to ask counsel to draw an order which reflects my decision. I commend it to the parties as a working blueprint which should be followed as closely as the children's individual circumstances allow. As time goes on and their school and social lives evolve, there will need to be changes. I have tried to avoid being over-prescriptive whilst providing a structure for moving forward. I end this judgment by urging these parents to remember that communication and flexibility will be key in ensuring that these arrangements work successfully for them and their children. To the extent that there is to be

external and ongoing involvement from a mediator or ‘parent co-ordinator’, I will give permission for my judgment to be disclosed to that individual.

Order accordingly