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*(subject to editorial corrections)**

FAMILY PROCEEDINGS COURT SITTING AT DUNGANNON

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COUNTY COURT DIVISION OF FERMANAGH AND TYRONE

_____

BETWEEN:

O

Applicant;

-and-

P

Respondent.

_____

AND BY CROSS-APPLICATION

BETWEEN:

P

-and-

O

_____

Judgment of Dungannon Family Proceedings Court, sitting on 20th December, 2012

_____

Meehan, District Judge (MC)

[1] All information which might tend to identify the family concerned has been removed from this text, in order to protect the rights of the family and of the children concerned. The judgment is being distributed on the strict understanding that in any report no person may be identified by name or

location, other than as disclosed in this text, and in particular the anonymity of the children and the adult members of their family must be strictly preserved.

The background

[2] This was a father's application, dated 25th May 2012, for a Residence Order in respect of the 3 subject children of his marriage with Mrs. P, as she is now known, following her recent re-marriage. The Respondent, in turn, issued a cross-Application dated 18th July. By that cross-application, Mrs. P sought a Residence Order in respect of G only, a Contact Order in respect of her other 2 children and a Prohibited Steps Order to prevent the Applicant removing any of the children from the UK without leave of the Court. One treats that as properly an application to prevent removal from Northern Ireland.

[3] Mr. O is from Algeria, where he was raised as a Muslim. He is 43. He adheres to all tenets of that creed religiously and has always done so. Mrs. P is Northern Irish and 46 years old. They commenced a relationship in December 1996 and were married in February 1997, so it was a very short courtship.

[4] It was agreed between these parties at the time that any children would be raised as Muslims. Mrs. P converted to Islam in July 1997. Throughout the marriage, during which the growing family lived in Belfast, all Muslim customs were strictly observed, including the consumption of only Halal meat, Ramadan, appropriate dress and regular attendance at their Mosque in the city. Mrs. P covered her head in public and at one stage was minded to go further. All 3 subject children were raised in accordance with Muslim creed and culture, up to 2010 at least.

[5] Concerning the breakdown of the marriage, Mrs. P made the case in her Statements of Evidence and in her testimony before us that this was due in large part to domestic violence. Nonetheless, she made no illusion to that in her Form C1, where she stated that the children were not, nor had been, at risk. Her Petition for Divorce, filed in April 2005, was evidenced on the simple fact of living apart for a period of 2 years, with her husband's consent.

[6] The parties did continue to live together in the same household at that time. Mrs. P asserts in one Statement that this was only during the annual period of Ramadan and because it was important for the man to be with his family at that particular time, but we reject that. The parties actually separated, in the sense that Mr. O moved to another house, only in 2010.

[7] This rather ambivalent situation does appear to have led to episodes of frustration on occasion. On 20th September 2006 (well over a year after filing a

Petition asserting that the parties were living apart), Mrs. P swore a Statement before a District Judge and thereby obtained an Interim Non-Molestation Order without Notice to Mr. O and on the basis of domestic violence allegations. At that time she had moved to a Women's Aid Refuge with the children. Her evidence before us on the subject was evasive, but it does appear that, while Mr. O was served with the Summons, he ignored the proceedings entirely. On the return date, Mrs. P withdrew the Complaint unilaterally. To us, she testified that "we were trying to sort things out for the children" and did not elaborate. In all, taking account of Mr. O's trenchant denial that there was any such domestic violence, we find that Mrs. P has failed to prove this aspect of her case. Mr. O's view was that the Court Order had been obtained simply to have something on record against him. Mrs. P had caused the Police to call and have him put out of the house and yet, within a day or two, she rang to ask him back.

[8] There was another flight which Mrs. P ascribed to domestic violence in her account to us. At one point, she testified, she fled to a Muslim refuge in England to escape her husband's cruelty. We found Mr. O's account more persuasive. He testified that she had in fact gone to a Muslim Women's conference, for the second year in a row. When he became concerned about her failure to answer his calls, he traced a contact number and spoke to a Muslim woman. She told Mr. O that Mrs. P would not be returning to Northern Ireland. He was not encouraging her in her religious observances, his interlocutor said, and had asked her to take off the Hijab, due to aggression encountered in the streets. For his part, he testified that he had no idea of this crisis previously. When Mrs. P rang him back she said that she would be returning to Northern Ireland in the full Burka, so far as public appearances were concerned. His response had been "No way". She would have been the first Muslim woman at that time, he told us, to wear the full black garb in Northern Ireland. In the event, the whole issue seems to have petered out. There was nothing in this which advanced Mrs. P's case that she had been driven away by virtue of domestic violence.

[9] G was born in March 2007, almost 2 years after the filing of the Divorce Petition. Mrs. P's rather laconic explanation for this was that she was a fully subjugated woman and that her husband's continued sexual interest formed part of that. Mr. O's version made more sense to us; she brightened up for a spell and became really friendly again, not like before, and the parties were still in the same household. He understood that she was using a contraceptive device, but it turned out that she had abandoned it. As he saw it, she did this on purpose so that she could have him for ever. He denied that he rejected G on that account. They were living together in the same house at that time. He accepted G even before he saw her, he said.

[10] It was at this point in cross-examination that counsel for Mrs. P indicated that she now acknowledged that the Applicant had in fact lived in the family home until January 2010. (For his part, Mr. O had always maintained that he had bought another house, jointly with friends, in 2008, but did not move into it until 2010). We do not accept that Mrs. P could have been so mistaken about this contentious point up until the opening of the case and we conclude that she had been trying to mislead the court.

[11] That recantation pulled away a major plank in Mrs. P's efforts to establish some kind of distinction between G and the other 2 subject children. Mrs. P had stated in writing that the parties had separated in 2003. She further claimed that her husband had never lived with G. This was quite untrue. On either version, Mr. O lived in the same household until G was 3 or $3^1/_2$. Despite this, Mrs. P signed two separate Statements of Evidence asserting that the Applicant had never lived with G.

[12] Mr. O did move out sometime in the first half of 2010, though only to a house which was just a couple of streets away. He also re-married in July that year, to an Algerian woman. Since then, they have had 2 further children. Mrs. P, who had secured her Decree Absolute of divorce in July 2008, described this re-marriage to the court at one point, with feeling, as "bigamy". It may be that she meant that her ex-husband's re-marriage was thus regarded under Muslim law, but we are certainly not aware that this is the case.

[13] Mrs. P also found a new partner and married him in May 2012. Prior to that, she had a relationship with another Algerian and he lived with her and the children for a period. Her new husband had also been living with her for some time beforehand. That impending marriage appears to have been the catalyst for the present crisis. For the previous 2 years, all 3 children of the marriage enjoyed the distinct advantage of being able to move fairly freely between their parents - so far as visits were concerned. It had been agreed when they finally separated in 2010 that it was in the best interests of the 3 children that they remain together in the care of their mother. It rather seems to us that, by the time of her own re-marriage, Mrs. P, who had shown extreme swings of allegiance in the past, wished to have a complete break with her ex-husband. That seems to have become by then her overriding priority. By that stage, though, there had also been important changes in the living arrangements for the children, which may also have formed part of her motives.

[14] H moved to his father as early as September 2010. Mrs. P states that she was sad to see him go, but that he had been exhibiting difficult behavioural traits and she had been finding it hard to handle him. Be that as it may, it seems to us significant that Mrs. P was unable to retain her son's allegiance. Mr. O, for his

part, does not make much of the event; he took over the full time care of his son from then on. There continued to be family events on each Wednesday, but H was not very willing to spend weekends at his mother's.

[15] The breach between J and her mother, in March 2012, was more dramatic. There remain allegations and counter-allegations between mother and daughter as to the immediate cause, but it is clear, on either version, that the relationship had descended to the level of physical violence. J walked out and moved to her father's, while Mrs. P then packed her daughter's bags and left them over. We were not impressed with Mrs. P's belated concession in cross-examination that she had felt obliged to deliver her daughter's clothes and books for school (she had previously denied as much): the gesture was intended to signify an irrevocable breach to her daughter, in our view. Mr. O's Statement recounts how his ex-wife, along with a neighbour, brought all belongings round in a box and, in J's hearing, said "I don't want her anymore with the disrespect to [Mr. P] and to me. She has to behave." This echoes a passage in Mrs. P's own Statement dated 9th August 2012; "[J] did not like being reprimanded by my new husband for being disobedient and disrespectful toward me."

[16] The more significant element for the Panel was the harsh terms in which Mrs. P spoke of her daughter in her testimony. She showed no compunction in describing J as a liar. As she spoke of how she was the one to lay down the law about homework and to impose punishments - criticising Mr. O for operating on "cruise control" by contrast - we had the distinct impression that her relationship with J had lacked adequate affection and sympathy by then. The young girl's school attendance was also slipping. This usually indicates that parental control is weakening.

[17] We placed more confidence in Mr. O's account of matters, in refuting that allegation that J moved to him because he was soft. He would say that J's poor performance in school was the result of the ongoing conflict between her parents. As to the complaint that he had not turned J's school performance around by June, he pointed out there was nothing magic he could do between March and June. He felt that he had stabilised matters and that, given another year, he would have things much improved. He did not accept that he gave in to J. As he saw things, he did not shout at her, nor get violent; he was indeed softly spoken, but "I ask and they do." He contrasted his approach to that of Mrs. P, who would just shout at the children over homework, in his presence. He has knowledge of several of the school subjects (he would be fluent in French, of course, as an Algerian). The Panel did discern some evidence in the school reports that J's slide has been halted and felt that there was indeed some evidence already that her school performance has improved since she had moved in with her father. As for H, he is doing very well, with straight A's in the last class tests, except for

a B in one subject. This is not achieved by parental "cruise control". It is a very pleasing performance, for which Mrs. P seems to accord no credit; she has never sought a copy of her son's school reports.

[18] Thus it was that, as Mrs. P's re-marriage approached, she had only 1 child of the marriage still in her care, little G, then turning 6 and, as such, well short of any stage at which she might be competent to make her own choice as to living arrangements. Indeed, Mrs. P had not only seen 2 of her children opt to leave her in favour of the father: she also has a son, now 22, who had previously left her and was then raised by his father. It may well be that Mrs. P decided to take the opportunity to seize control of the situation to ensure that she would have the opportunity to raise at least one child to full adulthood.

[19] Mrs. P did not invite either H or J to her wedding to Mr. P, even though, before the breach, she had bought J a dress for the occasion. It is not enough for Mrs. P to say, as she did to us, that she knew what answer she would get, had she done so; this could only be seen by her son and elder daughter as testament of an estrangement. It was for the adult in this conflict to put on record that she had asked, but she did not.

[20] Nothing in any of this is intended to suggest that Mrs P does not love each of these children, nor to minimise in any way what it must have meant for her to lose each one of these children to his or her father. Indeed, if I may say so, it may well be that Mrs. P has yet to recognise the depths of her own pain arising from those losses, girded as she seems to be at present with a robust displacement of responsibility; she may well need professional help in bringing those issues to the fore and achieve some reconciliation with each child concerned. More than that, both H and J need their mother. Already, the effects of an absolute breach are manifesting themselves in sentiments of bitterness and compensatory ideological postures. These children need their mother to be actively involved in their lives if they are not to be damaged by their own secession. One hopes that their father is alive to these issues as well.

The court's evaluation of the parties.

[21] Before I come to the key question of contact as it has existed since March 2012, this may be the appropriate point at which to record our appraisal of each of the two personalities involved.

[22] Once Mr. O embarked upon his testimony, Mrs. P began signalling her strong disagreement with just about all he was saying. There was a distracting level of movement and mutterings from her until she was discretely advised, twice, to restrain herself. This behaviour, though, signified a high level of

hostility on her part toward Mr. O. For his part, he gave his evidence in a calm and reasonable manner, slipping only into argumentation once or twice as an understandable result of that unfortunate practice of so many advocates, using what is supposed to be cross-examination on the facts averred during evidence-in-chief as a vehicle for conveying the other party's reasoning to the Bench. There is an important distinction to be maintained between cross-examination of, and discussions with, a witness.

[23] Two passages, in particular, demonstrated Mr. O's nature. First, the matter of his previous conviction for handling stolen goods. When put to him, he calmly acknowledged the event. While he indicated some demure upon the inferences, he made no attempt to evade the issue and plainly recognised opposing counsel's right to highlight the point.

[24] More telling still was the matter of the bussing arrangements for G when she is now going to school from her new home. In his Statement of Evidence, Mr. O had highlighted his concern that the child was simply being left down to await a passing bus, travelled unaccompanied for a lengthy journey and, likewise, he had asserted, had to make her own way back from bus stop to house at the end of the day.

[25] It was put to Mr. O that this was a designated school bus; No, he had not realised that. It was further put to him that only school children travelled on that bus; No, he was not aware of that. Further, the children were properly and appropriately supervised at all times. Again, he had not known that. It was perfectly normal in the countryside that many children would need to travel by such a bus in order to attend school. Now that he had learnt all of this, did it make any difference to his view?

[26] A more belligerent man would have answered that he still felt this did not compare with being accompanied to school by a parent. Instead, Mr. O simply answered "I'm happy with this."

[27] Mrs. P made an entirely different impression in her evidence. At an early stage, she launched into an allegation that home life with Mr. O was challenged by a constant undertone of criminal activities involving false passports, visas, money being sent and other things. There had been no prior intimation whatsoever, including the cross-examination of Mr. O on the issue of the one past crime; we gave these exaggerations no credence.

[28] After a passage amounting to a litany of allegations of cruelty against her husband, Mrs. P then asserted that when she became pregnant in 2006 he had given her the money for an abortion in London. Apart from the fact that this

moment was the one occasion when Mr. O, sitting opposite her, exhibited plain shock, it was likewise something never previously intimated. We as a Panel were satisfied that this was a gross and gratuitous attack upon Mr. O's values.

[29] Or again, in recounting home life, Mrs. P asserted that her ex-husband had her staying at home for financial advantage. He bought the other house in 2008 but did not move out. He did not move out, she explained, because he regarded her as someone to do the cleaning and support him; he told her to go on benefits and let the Government support you. Now, the incontrovertible fact is that Mr. O is a hard-working man and always has been, since moving to Northern Ireland. He works as a taxi driver. Previously he would work the late shift, but, when he took over childcare responsibilities in respect of H, he switched his commitments so that he could deliver the children to school and then be free from 5.00 pm or so, in order to spend the evenings with them. The notion that he was someone who took the view that life was a free ride and that he, as an industrious immigrant, exulted in any opportunity to milk the system just did not appear to us to be credible.

[30] There was much else in Mrs. P's evidence in the same vein, such as her account of H's move to his father (she asserted that he only went over in the afternoons for help with his homework and returned to her for all of the evenings). When commenting on how G had responded to the weekend contact in November, Mrs. P faltered for a moment and remarked that she had not wanted to play it up previously, but there had been a certain amount of bed-wetting associated with that phase. We did not believe this.

[31] Overall, we considered Mrs. P a most unreliable witness.

The Respondent's Move.

[32] On 14th April 2012, a Saturday, neighbours alerted Mr. O to the fact that there was a furniture van at the former matrimonial home. That was as much intimation that he, H or J got about Mrs. P's move, first to her sister's in Newtownards and then to Fermanagh. She had simply upped and left with G by the time Mr. O next attended the house to collect G for weekly contact. For several weeks, neither he nor the other two children knew of G's whereabouts and Mrs. P made absolutely no effort to contact any of them. She meanwhile held Social Services to her requirement that her new address be not disclosed to G's father during that phase.

[33] We could find no justification for that extreme behaviour on Mrs. P's part. It was patently contrary to G's best interests that she be uprooted so abruptly and

denied all the important reassurance that sustained contact with her father and siblings could have afforded.

[34] Mrs. P, for her part, sought to place this flight in the context of a general background of domestic violence and with reference to a particular incident which occurred at her house on 6th April 2012 when Mr. O called for G in accordance with established contact arrangements. In what follows we reflect Mr. O's account, because we considered that the more reliable. On Saturday, 6th April, he called at the house and knocked the front door. It was however Mr. P who answered. He bluntly told Mr. O to clear off and wait for a Court Order if he wanted further contact with G. Mr. O acknowledges that a row ensued; he considered that Mr. P had no authority over him or his children and was not entitled to forbid him contact. On the other hand, he denies that he was standing, knocking or kicking loudly at the door as his ex-wife maintains. There was no violence, just a row. He could hear G crying in the background and was aggrieved that Mrs. P would not come down to explain what was going on.

[35] For her part, Mrs. P tried to make the episode out to be the cause of her abrupt departure, 7 days later. She sought to persuade the Court that she was thrown into great fear by Mr. O's behaviour; "I felt intimidated and unsafe around this man and I didn't know what he would do... When someone is terrified of their life of someone they wouldn't want that man to come near." Upon pronouncing those words, Mrs. P broke down in tears. I have to say that the Panel was not moved, despite what she clearly intended. It is simply not credible that she was thrown into a state of such terror by this episode, even if one were to accept her account of the man standing out in the street, banging on the door and creating a scene. She had Mr. P with her and he seemed to have no difficulty in seeing Mr. O off, on either version.

[36] The wider context, we believe, begins with that breach between Mrs. P and her daughter J the previous month. Mrs. P had, in effect, put J out, saying she did not want her daughter back until she learnt to behave. The child had raised allegations of physical violence and an investigation was underway; the case had been passed to the Gateway team. All of this would have created a strong sense of grievance and exasperation on Mrs. P's part. It is significant that in the 3 weeks after J moved out, Mrs. P did not allow her, H or Mr. O any contact with G. Already, contact with G was linked to Mrs. P's issues. As she did mention in her evidence to us, she had found a new partner to whom she was shortly to be married. Mr. O had a new wife. That family was just around the corner, with two additional babies. She had a poor relationship with H (on one occasion he had allegedly "torn down" the pictures from her wall because such things were apparently forbidden by Islam). For all these reasons, and most likely with Mr. P's full support, Mrs. P had already decided that they were

moving. According to Her Honour Judge Loughran's note on the evidence taken from Mrs. P in the Care Centre on 4th October 2012, her simple explanation then for the move to village X, in mid-Ulster, was that Mr. P, who is in the car repair business, was able to obtain better-paid employment there. That suggests a degree of advance planning.

[37] We do not believe that the move was conceived and executed in the space of one week. The rebuff to Mr. O the previous Saturday (when he called for G) reflected the fact that Mr. and Mrs. P had already determined, we deduce, that G would move with them and start a new life without her father or siblings. We treat the suspension of all contact with G in the preceding weeks as supporting that scenario; then again, if G had been told about the plan her mother may have wished to avoid her giving the game away. That there was then a row was simply a useful peg upon which Mrs. P might hang the history.

[38] We are satisfied that, though Mrs. P sincerely believes that G can have just as good a life in Fermanagh as in Belfast, she reaches that conclusion without any adequate consideration of what it is to cut this little girl off, as Mrs, P did, from the rest of her family, friends, school and culture. She gave no adequate consideration to the fact that any such move could only work well if steps were taken to mitigate the disruption, both in the manner of executing the change and with a view to sustaining as much as possible of what G liked about living in Belfast and her needs in that respect.

[39] We conclude that it was neither reasonable nor necessary that Mrs. P should move out of Belfast, whether to mark her new marriage or to ensure that she would not suffer a transfer of loyalties in later years from G.

Contact after the Move

[40] Where one might have expected Mrs. P to have made efforts to contact and reassure the children she had left behind, the opposite proved to be the case. Mrs. P sought to minimise the length of time it took for her to make any effort in that respect ("a few weeks"). The reason she gave for 7 weeks of silence was that she "... needed things to calm down." That simply will not do as an explanation. Her protracted silence manifests a failure on her part to prioritise the needs of her children over her own. And then again, having chosen an email as the appropriate vehicle with which to re-establish contact, the ensuing exchanges make for disturbing reading:

On 31st May, Mrs. P wrote:

> "Hi [J] how are you can't seem to get in touch with you I hope you guys are OK just to let you know im thinking about lots big hugs and kisses luv you I hope you are doing ok luv mum."

J replied on the same day:

> "Well hello there you I'm OK... I miss [G] ... is she fine I hope she is .. it took you a while to say at least Hi. I am happy now but I would STRONGLY love to see [G]! You say it took you a while to contact when you know where we live, you know my Skype and [H]'s and my email but yet you hesitate to get in contact. This is a LAME EXCUSE! Have a nice day."

Mrs. P's reply was hardly impetuous; it was issued on 3rd June:

> "Hi [J]. With regards the last reply you sent first ask your dad the truth about [Q] secondly [H] and thirdly you [J]. [J] I haven't run away from you or your brother. It was the best decision that I had to make. We made the move so that we could start a new life and be happy. J you and H did not know how to treat me. I felt I was being used and abused by two young teenagers which you too had seen over the years so it was imbedded in yours and your brother's head. You both needed me as I need you but I needed some form of love kindness caring in my life. [Mr. P] came along and gave me all that I wanted in my life. He accepted me and my three children."

J replied on 6th June:

> "You don't know the truth about me and [H]. And I have been asking about [G]. But you haven't said ANYTHING about her! I will underline where I asked about her. Clearly I care more than you."

[41] There we have one aspect of the flotsam that emerges when a breach such as this has been landed on a family unit. J feels keenly the loss of her sister. She makes a fair point that her enquiry about the child was ignored, after such a prolonged and inexcusable silence. By the same token, the remarks contained in Mrs. P's missive of 3rd June to her adolescent daughter were inappropriate and immature. They will have done further damage to the relationship.

[42] It took the institution of court proceedings and the intervention of the Court Children's Officer before a first contact session could be arranged. The agreement at court was for it to take place in Lisburn. Mrs. P switched this at the last minute to Enniskillen, a considerably greater inconvenience for Mr. O, his wife, their own two infants, as well as J and H. Mr. O had brought J and H along because, he said, he thought Mrs. P would want to see them. In the event, contact took place at the shopping centre in Enniskillen on 15th July from 2.30 pm to 5.00 pm. G was brought to the meeting by an aunt. She asked J and H if they would like to see their mother, but they refused this third party suggestion. Mrs. P arrived in person after about an hour. She did say Hello to J and H from a distance, but they did not respond and she thereafter spent her time with G.

[43] There was one other contact that month between the children (Mr. O being tied up with work). In other words, G was not allowed contact with the rest of her family for all of the period between J moving house in March until that get-together in mid-July, a period of some 4 months in the life of a 5-year-old. The last time she had spent the night with her father and siblings had been 17th March. The last time she had seen any of them at all had been 19th March.

[44] Contact again faltered after that and there seems to have been little enough in either August or September. Arrangements were agreed again, at court, on 21st September, in consequence of which Mr. O texted the next day; *Hi there. What time will you be here tomorrow*? The answer was *See your lawyer no visits.*

[45] It then took the particular efforts of Her Honour Judge Loughran at an appearance in the Care Centre on 4th October to advance matters again. Her Honour did manage to have the parties agree to arrangements for staying contact at Mr. O's home from Saturday at 2.00 pm to Sunday 5.00 pm, commencing 13th October. Mr. O contacted his ex-wife on 19th October, the second scheduled weekend, to ask when contact would be taking place that coming weekend. He got no response whatever. Mrs. P considered the exercise complete with just the one visit. By then, she was manifesting a pronounced hostility toward any contact, notwithstanding contrary formulations in written Statements and in court.

[46] Back at court on 16th October, Mrs. P agreed to family contact for G on the Muslin festival of Eid, whereby she would stay over from 5.00 pm Thursday 25th October until 4.00pm on Saturday the 27th. Mr. O was to collect G on Thursday and Mrs, P, in turn, would take her back on Saturday. On 25th October, though, Mrs. P rang to put back the collection time to 6.00 pm, for no apparent reason. Mr. O duly complied and, indeed, Mrs. P gave him presents and cards to pass on to J and H. For their part, they rejected the distant gesture. On Friday evening,

the 26th, Mrs. P texted to offer an extension of the contact through to Sunday, otherwise she would be collected at 2.00pm (not 4.00pm) on Saturday; but Mr. O would have to drive G back on Sunday at 3.00 pm. It is of course fundamental to the stable evolution of contact arrangements that deals are not changed capriciously by either party.

[47] This proposal from Mrs. P was thinly-veiled pressure on Mr. O to take over responsibility for driving G back to Fermanagh, contrary to the equal sharing of the exercise as agreed. Mr. O was not prepared to undertake another 2-hour journey (by which we think he may have meant 2 hours each way) so soon after the Thursday expedition. Mrs. P therefore imposed her penalty by way of a 2-hour reduction in G's visit.

[48] By the same token, Mrs. P thought it sufficient to send a blunt text to Mr. O on Saturday, 27th October; *I want* [H] *and* [J] *for an hour*. He responded *ok,* and proceeded to get all 3 children ready. The children all stepped out and Mr. O went back indoors. Within 10 minutes, J and H were back; they had refused to get into the car with Mr. P present and Mrs. P, in turn, had simply driven off. G, meanwhile, thinking that her brother and sister were coming with her to Fermanagh, had been very happy until that point and naturally was reduced to tears when the whole expedition fell apart. Mr. O contacted Mrs. P by phone, asking that she bring G back so that she could be calmed down and consoled but Mrs. P refused to do this. This again suggests to us that Mrs. P's parenting style can be insensitive when she is agitated.

[49] Finally, with the Hearing at Dungannon Family Proceedings Court scheduled for 3rd December, the parties did agree to overnight weekend contact which began in November. However, after three such sessions, on the 10th, 17th and 24th November, Mrs. P broke off all contact once again.

[50] The next such contact session was scheduled to commence on 1st December. Instead, Mr. O got a message to say that Mrs. P was not bringing G for the handover. He responded by asking why and was simply informed that G had "something on". It turns out that this "something" was an outing to see the Santa train. In her evidence, Mrs. P told us that she and her husband did not really think about it; she simply told Mr. O that G had something to do, adding, nonetheless, that she knew her refusal "would cause uproar".

[51] Bearing in mind that this arrangement for weekly staying contact for G was ordered by the Care Centre on 4th October (though it did not get underway until the following month), Mr. O expected such contact to be resumed the following weekend, 8th December.

[52] What resulted was the pitiful event, when Mr. O, his wife, their two babies, plus J and H all sat in the car for well over an hour at Ballygawley Roundabout that Saturday, waiting fruitlessly for G to arrive. Mrs. P had ignored all Mr. O's texts that morning (a device to which she resorted on a number of occasions in this saga) and only contacted him as he and the family were driving off home without G, at 1.50 pm. She then declared it as her understanding that weekly contact was only supposed to run until the next court, 3rd December, now re-scheduled for the 20th.

[53] Insofar as it requires any answer at all, there can be no credible basis for the obstructive position taken by Mrs. P. It was an order of the Care Centre, dated 4th October, that contact for G was to take place from 2.00pm on Saturday in Belfast until 5.00pm on Sunday. There was also provision for review on 16th October, but no question of the court's order for contact being time-lined on that account or otherwise. The case itself was transferred back from the Care Centre to the Family Proceedings Court on 16th October. At the same time Her Honour Judge Loughran directed that the case be listed for a full Hearing before me on 8th November. There was no variation of the Contact Order for the meantime. It therefore subsisted unless or until I ruled otherwise. The Hearing could not proceed on 8th November because one of Mr. O's youngest children had suddenly taken ill that day. There was no question of the weekly contact arrangements being thereupon suspended; the issue was not raised. The case was then re-scheduled for Hearing in 3rd December, as a special sitting. Once it became apparent that there was in fact no courtroom available for that date, a Direction was issued, re-listing the case for mention on 27th November. On that date, the final Hearing was then set for 20th December. There is no credible basis for Mrs. P's assertion that these exigencies meant that contact would, somehow, "run out" on, or be suspended with effect from, 3rd December. Mrs. P simply withheld all contact in the meantime, in defiance of the subsisting order of the Care Centre.

[54] Mr. O, in any event, had a particular reason for assuming that Mrs. P would be attentive to contact on the weekend of 8th December. It was H's birthday on the 9th. It was therefore particularly unfeeling for Mrs. P to block a family gathering, howsoever diminished without her, on that occasion. It was particularly negligent of G's best interests that her mother should deny the girl the chance of being present at her big brother's birthday. The court did not hear any evidence that Mrs. P, for her part, acknowledged her son's birthday in some other way.

[55] There was a second reason proffered to us by Mrs. P for not facilitating weekend contact for G through the month of December. That, she pointed out, was "a really, really busy month", what with people coming and going at the

house, bringing presents and so forth. I do not think I can recall a parent ever making a statement before me in a family court, in attempting to explain why she blocked a child's right to contact with her father, with less prospect of it making sense to any reasonable audience. A parent who thinks that the child would rather see a Santa train than her daddy, brother and big sister, or would rather meet a string of seasonal visitors at her mother's house, has a fundamental problem in recognising the child's priorities, her rights and her best interests.

[56] I have set out the history of the contact arrangements in some detail so as to make quite clear that, despite her assurances to the contrary, Mrs. P remains opposed to proper and meaningful contact between G and the O family. She seems, by her actions, to refuse to accept that, because she moved so far away, such contact would necessarily entail her having to travel to Belfast on a regular basis. To her, this would frustrate her avowed goal of making a new life for herself, her husband and G, in Fermanagh.

[57] In her evidence to us, Mrs. P again asserted that she believed that contact was in G's best interests and that she supported it. By the same token, although it was put to her more than once, she had no comment or explanation to offer in respect of texts from her declaring that there would be no such contact without rulings from a court.

The prospects for future contact.

[58] The bleak conclusion, after so much time and energy expended by so many (and at such expense) over so much of the year, is that if G were to remain with her mother it would involve the loss for G of any real relationship with the rest of her birth family. It cannot be doubted that Mrs. P has been given every reasonable opportunity to show willing on the subject, but she presents at Court at the end of the year quite content, it would seem, that all contact has once again been suspended by her.

[59] Mrs. P told us that she had "no problem" about G having contact … "so long as she is not bribed; like – we'll give you chocolate." I did ask Mrs. P what kind of additional contact she might have in mind for the future, when she mentioned that possibility as a supplement to staying contact.

[60] She cited Skype as a possibility; they would all have plenty of time to talk that way " ... so long as it was not at teatime … or bedtime … or anything like that ... so long as there was no cyber abuse thrown in." One got the distinct impression, having articulated the proposal, that Mrs. P was immediately thinking up reasons why it was not going to work.

[61] She also testified that, for a proper level contact to be established, "There will have to be some sort of communication. If there's something on, we will have to learn to discuss." Earlier, commenting on the fact that contact could only have been re-established from time to time through the court, she explained, "It was organised through the court [in July], but we could have come to some agreement if he met me halfway. I did not have discussions with him because previous experience was that he was just arrogant and bad-tempered." When she was referred to the three successive weekends of overnight contact for G in November and asked how that went, her response was, "Well, she wasn't crying or anything".

[62] Mrs. P, we find, has paid mere lip service to the benefits of promoting meaningful contact between G and the rest of her family but has demonstrated that she will not really promote it at all. Her fear remains the same as motivated her to move the child away from the rest of her family in the first place. In our view, Mrs. P's fear is that, if G were to be permitted normal and good relations with her father and siblings then she too, in time, would opt to reunite with them. This not a healthy situation for G, where Mrs. P continues to prioritise her own needs over that of the child.

[63] No case law was cited by either counsel at Hearing. The judgment of Lady Butler-Sloss in E (Minors) [1997] EWCA Civ. 3084, though, is instructive. On the facts in that case, the courts were afforded the proper opportunity to rule upon residence and living arrangements before the departing parent actually set up home with the children elsewhere. The immediate issue in law was as to whether it was right, when granting residence, to attach a condition as to where the care parent and subject children should live; whether it was right to grant residence to the mother, but also stipulate that the children should not be moved out of London, so as to preserve good quality contact with the father and his side of the family.

[64] The Court of Appeal ruled that the proper approach was to determine, first, which parent should be afforded residence. The following extracts from the judgment expand on this.

> "7. At the hearing there were cross applications for a residence order. The father sought in the alternative defined contact and an order preventing the mother from removing the children from London to live in Blackpool. The father`s family of five sisters, three of whom have children, all live in north London whereas the mother`s family all live in the Blackpool area. The father was principally concerned to keep the children in London in order that

they might continue to be in close contact with his side of the family. He told the court welfare officer that his application for a residence order was motivated by his desire to keep the children in London. The mother sought to be released from her undertaking to remain in the former matrimonial home or to be given leave to remove the children to Blackpool.

8. The court welfare officer said that the mother was very child-focused; their best interests were her highest priority and he was very impressed with her parenting skills. The mother impressed the judge very favourably and he was completely satisfied that her care of the children was excellent. She had not worked since the birth of Ai. She hoped however to obtain a job in Blackpool and rely upon her family to help with the child care. She had arranged to rent a house from her sister, relying initially upon state benefits. The judge found that the proposed arrangements made by the mother were satisfactory.

9. The father is a commodity broker. He rented a house from a cousin in Dagenham. He asserted that he would be able to care for the children with the help of a sister. The judge found that he had through his business other pressures on his time. He said to the welfare officer that he was married to his business. The judge had no difficulty in coming to the firm conclusion that, although the father and children were devoted to each other and he would be a good enough carer of the children, it would be profoundly disturbing for the girl to be moved from her mother who was obviously the parent to care for both children.
…..

21. The correct approach is to look at the issue of where the children will live as one of the relevant factors in the context of the cross-applications for residence and not as a separate issue divorced from the question of residence. If the case is finely balanced between the respective advantages and disadvantages of the parents, the proposals put forward by each parent will assume considerable importance. If one parent`s plan is to remove the children against their wishes to a part of the country less suitable for them, it is an important factor to be taken into account by the court and might persuade the court in some cases to make a residence order in favour of the other parent. But, on the facts of the present appeal, it is clear that the welfare of the children points firmly to their living with their mother, and the advantage of

remaining in London is outweighed by the other factors leading to granting a residence order to the mother.

22. The judge attempted to identify the present circumstances as exceptional, but even if he were justified in imposing the condition, which in my view he was not, it would give rise to the temptation to impose conditions in many cases where the proposals for the children were not, as they often are not, ideal. It is not unusual for the suggested arrangements to have the effect of depriving the children of frequent contact with the other parent and his relatives, of their present home, of their schools and their friends. There are increasing numbers of mixed marriages and the areas of concentration of mixed communities are not evenly distributed. The situation facing the judge in this case was not unique and may well become more frequent.

23. In my view the principles set out in a long line of authorities relating to leave to remove permanently from the jurisdiction have no application to conditions proposed under section 11(7). Miss Allen for the mother was also justified in criticising the judge for requiring the mother to live with the children in London because the father was unreliable over contact. As Miss Allen said, the mother was being penalised for the inadequacies of the father. Bearing in mind that Eh. is 11 and Ai. although only 6 has a close relationship with her father, the requirement for frequent rather than extended contact appears to me to be unnecessary and was not suggested to be necessary by the court welfare officer. The importance of maintaining close links with the father and with his family in London must not be under-estimated by the mother. Suitable contact arrangements can however be made for a major part of the school holidays, part of half terms and rely less upon weekend contact which would involve the children in a 600 mile journey over two days. This extended contact can be made not only with the father, who may continue to put his business first but also, with the agreement of the paternal aunts, with them and the cousins in London or holidays abroad as before."

[65] In its own way the case of Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision) [2001] 1 FLR 571 further emphasised that, where the issue concerned an aspect of religious upbringing, the choice as to which parent was more appropriate to have immediate care of the child was equally a highly significant reference point. That case involved a non-practising Christian and a father who was Muslim, though not particularly observant.

[66] This is not to say that there are no fact situations in which such conditions may not be properly imposed upon the parent having residence. In this respect, one might consider the headnote to B v B (Residence: Condition Limiting Geographic Area) [2004] FLR 979:

> "Sally Bradley QC sitting as a deputy High Court judge
>
> Judgment date13 May 2004
>
> Keyword Residence orders – Condition that mother and child should live within specified geographical area – Highly exceptional case – Children Act 1989, s 11(7)
>
> Headnote The mother applied for leave to remove the child, then aged 6 years old, permanently from the jurisdiction to Australia. The application was withdrawn 3 months later, but the mother made a second similar application. This was pursued until she was given permission to withdraw it. In the interim, and on hearing that the mother was planning to move to the north of England, the father applied for a specific issue order to determine the child's future schooling. He also issued an originating summons in wardship. The mother wished to move to Newcastle and had found two schools for the child and her older brother, a child from a previous relationship. The father wished the child to remain at school in the area in which she was currently living. He was paying maintenance and school fees for both children. He believed that the mother was proposing to move to create as much distance as possible between him and the child and ultimately cause difficulties in the contact arrangements. There had been protracted and contentious litigation between the parties in relation to contact, with two detailed contact orders. In two judgments in the context of the contact litigation, the district judge expressed firm views about the mother's intransigence and unwillingness to co-operate with the father. The children had told the children and family reporter that the mother wanted to go to Australia to get away from the father.
> Held – discharging the wardship and adjourning the father's specific issue order – making a residence order in the mother's favour with a condition that she and the child should reside within an area bounded by the A4 to the north, the M25 to the west and the A3 to the south and east until further order – amending the

previous contact order and directing that the parents should agree the child's school from September 2004 –

> (1) The real question was whether the proposed move was in the child's best interests. A move in this case was a move to a geographically distant location where all contact arrangements would depend on the mother ensuring that the child would board an aeroplane for London. The mother was so hostile to contact and to the father that she could not be relied upon to promote contact. She had misled the court and the father on a number of very serious issues (see paras [19], [22], [23]).
>
> (2) A move to a school out of the geographical area where she currently lived would not be in the child's best interests. It would be in her best interests to remain in an area where appropriate schooling was available and, importantly, where there was a greater prospect of contact continuing (see para [24]).
>
> (3) The court had the power under s 11(7) of the Children Act 1989 to impose conditions upon any residence order made. The geographical condition proposed was not a permanent prohibition on relocation. It was what was needed now. Section 11(7) conditions were only to be attached in exceptional circumstances. This was a highly exceptional case. The mother had made two applications to go to Australia, with the prime motive being to get away from the father (see paras [25], [26], [28]).
>
> (4) As regards wardship, the powers which the court had under the Children Act 1989 were adequate for the purpose of the dispute between the parents and more than adequate to protect the child's interests and ensure that her welfare was promoted (see para [30]).
>
> (5) In relation to the issue of the costs of the mother's abandoned application for leave to remove permanently from the jurisdiction, there was no reason to depart from the general principle that there should be no order to costs in children cases (see para [32]).

Statutory provisions considered

Children Act 1989, ss 8, 11(7), 13(1)(b)

Cases referred to in judgment

E (Residence: Imposition of Conditions), Re [1997] 2 FLR 638, CA
S (A Child) (Residence Order: Condition), Re [2001] EWCA Civ 847, [2001] 3 FCR 154, CA"

[67] During a Directions Hearing on 4th October in the Care Centre, Her Honour Judge Loughran asked Mrs. P, while taking evidence from her, whether she might consider returning to Belfast, in order to re-establish the "two homes" arrangement. After the Hearing, the learned judge was approached by Mrs. P's counsel and asked to consider recusing herself because both her client and instructing solicitor now believed that Mrs. P would not otherwise get a fair hearing because of the judge's remarks about a move back to Belfast.

[68] It is quite clear, then, that Mrs. P does not countenance a return to Belfast and her Application for a Residence Order in respect of G must be considered in that context; it is to be all or nothing.

[69] Apart from that, there is the issue as to how to address the situation where the care parent has shown herself obstructive to any satisfactory contact arrangements. This case does not present the extreme circumstances as were found to be the case in Re M (Intractable Contact Dispute: Interim Care Order) [2003] EWHC 1024 (Fam). There, the parents separated in 1996 and were divorced in 2001. Contact was ordered and took place, to a more limited extent than the Order anticipated, up to 1999. The mother, the care parent, falsely and maliciously instilled in the children an entirely false belief that their father and paternal grandparents had physically and sexually abused them. All contact ceased, in consequence of the children accepting that fiction. After a court finding on the true history, contact was ordered, but the mother refused to comply. By the time the case reached the Family Division of the High Court, the mother was subject to a deferred prison term of 42 days. The High Court appointed a Guardian Ad Litem and made a Care Order, pursuant to what in this jurisdiction would be an invitation to Social Services to investigate the merits of a public law application. The children were removed for the purposes of an assessment and, ultimately, their care was transferred to their father on foot of a Residence Order. The judgment of Wall, J was delivered in May 2003, ending, in effect, a period of 7 years contention.

[70] With reference to the guidance given there by Wall, J. as to how to approach such a serious case, one ought nonetheless to highlight that this court

has not considered it appropriate to invoke the procedure under Article 56, much less to grant and Interim Care Order or appoint a Guardian Ad Litem for the child. Moreover, I refused an application on the mother's part, moved, I believe, on 8th November, for an Article 4 Report.

[71] Article 4 of the 1995 Order provides:

> "4.—(1) A court considering any question with respect to a child under this Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

[72] It is to be recalled that 8th November had been set by the Care Centre as the date for Final Hearing. This highly contentious case had been before the courts since 28th May 2012. Mr. O's ex-parte Applications for Residence and Contact were refused on that date and the matter listed for inter-partes Hearing on 6th June. This was at Newtownards Family Proceedings Court. On 6th June, it was transferred to Omagh Family Proceedings Court, reflecting Mrs. P's movement of the child in the meantime. On 5th July, it was adjourned there to 19th July for oral report from Mrs. Carol Colton, the Court Children's Officer and then adjourned to 6th September, for a final Hearing of the cross-Applications for residence of G. A deputy District Judge (Magistrates' Court) was then persuaded, quite wrongly I think, to transfer the whole case to the Care Centre at Dungannon, on the grounds that Mr. O was an Algerian and Algeria was not a Hague Convention signatory State. Matters were considered there in some detail, as already mentioned, with a view to exploring the possibility of resolutions before it was returned to this court.

[73] Article 3 of the 1995 Order also provides:

> "(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child."

[74] An application to vacate a Final Hearing date on foot of an application for any kind of Report is to be treated with considerable circumspection, in the context of the additional delay thereby entailed. On the sequence of Court appearances just outlined, the Respondent had every opportunity in the past to seek an Article 4 Report, but did not do so. To obtain such a Report, in my experience, can take between 2 and 4 months, sometimes longer. In that context,

bearing in mind the issues to be determined by the Court, I did not feel that such further delay in affording the Applicant a Hearing on his suit, first filed, as an emergency, last May, could be justified. In this respect, I also bore in mind that the Court Children's Officer had already been involved and that one had been supplied with an UNOCINI Report on J's situation in April.

[75] I was somewhat bemused to hear Mrs. P's counsel "renew" her application for an Article 4 Report at the opening of the re-scheduled Hearing on 20th December. There had been no appeal from my decision on 8th November, whereas the only change since then was that there had been further delay in getting the Final Hearing underway.

The issue of Religious Upbringing

[76] I have already recorded the agreement between these parents that their children should be raised in the Muslim faith. Since Mr. O's departure in 2010, it is questionable whether Mrs. P honoured that commitment. Mr. O certainly thinks not, based on remarks from H, in particular, but I need not delve further into that period, up to April 2012. One need simply note here the relevant passages from Mrs. P's Statements of Evidence, which she adopted upon her Affirmation.

[77] In her first Statement, dated 9th August 2012, Mrs. P asserted that she became a Muslim during her marriage "...assigning myself to the subordinate and supporting role in that religion"; hardly the perspective of a devotee. She claimed nevertheless to have been the one to teach the children their religion and that Mr. O merely paid lip service to the faith. In her Statement dated 24th October 2012, para. 6, Mrs. P asserts that it was she who "... actively took the children to the Mosque and encouraged their development as followers of Islam. Mr. O did not have any involvement in the children's religion."

[78] This version of events might also be contrasted with the Respondent's evidence to the court. At the stage when we were exploring with her what benefits she saw in contact, she remarked that "he has more knowledge and would take the prime part in her education in religion. He can teach her more about Islam. He could take her to the Mosque."

[79] At paragraph 7 of her Statement dated 9th August 2012 she continued; "I continue to be of the Muslim faith and make [G] aware of the Muslim beliefs. I have no intention of forcing [G] to renounce Islam but welcome the fact that she is now subject to different influences and that ultimately she can make up her own mind concerning her beliefs."

[80] This is a confusing passage. One the one hand, there is the unequivocal assertion that Mrs. P continues to practice the Muslim faith. On the other hand, there is this Hellenistic complacency as to what religious path her daughter might choose in later life. The two do not sit well together. If Mrs. P were a devout Muslim, as she then claimed, it seems to us that she would recognise it as her parental duty to instil that faith in her daughter, so as to protect her from the ungodly ways of the world. All world religions regard the lay community at large as essentially ungodly and misguided, if not frankly damned. Parents with religious conviction do not leave it to their children to choose their faith. For those parents, it is a duty to raise their children in the faith and a positive obligation to ensure that their children have sufficient confidence in that faith that they will be protected from the snares of the world, once they leave home as young adults.

[81] During her evidence before the court, I asked Mrs. P whether she was still a practising Muslim. Her only specific answer, despite being pressed, was that she believed in God. That in itself, of course, means that her previous Statements of Evidence on the point were false. The assertion by counsel for Mr. O, to the effect that he had been repeatedly told up to then that she remained a practising Muslim, was not contraverted.

[82] I then asked Mrs. P if she was raising G as a follower of Islam. She attested that she was. I asked her how she did this. She said that she told G about the tenets of the Muslim creed and had her watch Muslim websites. I asked her to name one and indeed she was able to do so. She then went on about how she wished G to know about other religions. I asked for more; she spoke of baby Jesus - and broke into laughter as she used that expression. She went on to highlight her view that religion had been the source of so much conflict in the past and her belief that people needed to take a wider view of such things. I then asked about how she would say that she inculcated the Muslim creed in G. We went at it more than once. The striking fact was that - despite the prominence given to the issue in Mr. O's Statements - and despite the several opportunities afforded to her - she never once mentioned diet, a fundamental issue for Muslims.

[83] I then turned to the question of G's schooling. She had been placed in St. Mary's, a Roman Catholic school, in September 2012. Mrs. P's evidence was that the school had been very understanding when she told them that G was a Muslim and could not participate in Roman Catholic religious practices. I had some difficulty with that proposition. I explained my understanding that a Catholic school considered that the inculcation of religious piety was integrated within all aspects of the school day; that the Roman Catholic ethos formed an inextricable part of the education of any child. Prayers, for example, would be

recited on the hour, every hour. How would G be expected to deal with that, as a Muslim; and then there was the Angelus, at 12.00 noon each day: was G to join in those prayers in class? Mrs. P's answer was that the school already knew that G could not be expected to bless herself.

[84] From all this it was clear to the Panel that Mrs. P was no longer a practising Muslim and that she was not raising G as a Muslim either. She moved from Belfast, the only place in which a Mosque is to be found in Northern Ireland (there are 2 in the city). She had placed G in a Roman Catholic school despite the fact that there are 3 integrated schools in the area. Mrs. P would appear to have simply reverted to the cultural mores of her own childhood, enrolling G in a Catholic school, but with no particular doctrinal commitment.

[85] Mr. O's Statement of Evidence dated 3rd August 2012 set out in detail his commitment to his religion and the extent to which the children participated. It was true, he explained in court, that he had not brought G to the Mosque when she was staying with him and the other children any weekend, but that was because Friday was the day for attending the Mosque. The last prayers in the Mosque were at 5.00pm and, on Saturdays, he was only picking her up at Ballygowan in the afternoon. There was no point in bringing her down "to look at four walls". In his household, all religious precepts were observed, including strictly Halal meat. The children were dressed modestly, with the children separated by sex from the age of 10. Both H and J had moved on rather early, by their own choice, to full observance of fasting during Ramadan. They all spoke only Arabic at home and watch Arabic television, including English language programmes. They do not watch "popular cultural music". He had found, when she returned, that G had lost a good deal of the language in the intervening period, but she had, in turn, regained a good deal over the few consecutive weekends in November and he was confident that she would achieve fluency without great difficulty.

[86] He knew that G was going to Irish dancing classes in Fermanagh, but he did not approve; he did not think it appropriate for a Muslim child. To go to a dance maybe once or twice a year might be alright, but it was not appropriate for a girl to be participating more regularly in that kind of dance. It was true that he was not paying any maintenance at present in respect of G, just as his ex-wife was not paying maintenance in respect of J or H. He did not think it appropriate that he pay maintenance for G in the present circumstances.

[87] In this context, one is reminded of the remarks of Hughes, L.J., quoted by Munby. L.J. in Re G (Children), unreported Judgment in the Court of Appeal, Civil side, dated 7th September 2012, para. 38:

> "The issue, he said, is: 'not simply a matter of choice of school but a much more fundamental one of way of life. "Lifestyle" scarcely does the issue justice. It is a matter of the rules for living'."

[88] It became clear to the Panel in the course of the day's Hearing that this case was not going to be resolved by ordering some kind of generous staying contact for G with the O family. In view of Mrs. P's track record there was simply no credible prospect of getting any such regime to work for any length of time. By the same token, it was apparent that there was a stark contrast between the culture in the P home and that being observed in the O household. G either was or was not to be raised as a Muslim, with all that this entailed, and she would not be raised as a Muslim by Mrs. P.

[89] Then again, while G undoubtedly enjoys a close relationship with her mother at this stage - and perhaps a perfectly good relationship with her step-father likewise - there was a real question mark as to what the future held in this respect. While it was not something which predicted the future in any way, one nonetheless had to take some account of the fact that all of Mrs. P's other three children, each one, had opted to leave her, once old enough, it seems, to exercise his or her own choice. Mrs. P's text message to J on 3rd June last, by the same token, reveals a person who simply blamed her children for this: they had not learnt to treat her properly.

[90] In the final analysis, Mrs. P, by her action in moving G abruptly from her familiar family life, cultural ambiance, religion and familiar environment and in thwarting all efforts to sustain meaningful contact with these things thereafter had thrust a highly unpalatable choice upon the Court. One might resign oneself to the losses entailed for G and on the basis that, regardless, she belonged in the care of her mother, or one could confront the prospect of having to part the child from her mother.

The Welfare Criteria

[91] The starting point for the Court, in seeking to reach a conclusion as to what is in the children's best interests is of course the Welfare Criteria, as they are commonly known, set out in Article 3 of The Children (Northern Ireland) Order 1995. Paragraph (1) provides that the welfare of the child is to be the court's primary consideration.

[92] In Re G (Children) (supra), Munby, LJ made the following observations with respect to what this concept meant, in a case which also concerned a dispute

about religious upbringing, where both parents, in their different ways, were practising Jews;

> "54. In *In re McGrath (Infants)* [1893] 1 Ch 143, 148, Lidley LJ said:
>
> > 55. 'The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.'
>
> 55. Those words are as true today as a century ago. Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach. As Thorpe LJ once remarked (*In re S (Adult Patient: Sterilisation)* [2001} Fam 15, 30), 'it would be undesirable and probably impossible to set bounds to what is relevant to a welfare determination'."

To this Munby LJ added:

> "60. I have also referred to the child's familial, educational and social environment, and his or her social, cultural, ethnic and religious community. The well-being of a child cannot be assessed in isolation. Human beings live within a network of relationships. Men and women are sociable beings. As John Donne famously remarked, "No man is an Island…"

> Blackstone observed that "Man was formed for society". And long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must either be a beast or a god". As Herring and Foster comment [*Welfare means rationality, virtue and altruism*, (2012) 32 Legal Studies 480], relationships are central to our sense and understanding of ourselves. Our characters and understandings of ourselves from the earliest days are chartered by reference to our relationships with others. It is only by considering the child's network of relationships that their (sic) well-being can be properly considered. So a child's relationships, both within and without the family, are always relevant to the child's interests; often they will be determinative."

[93] It was made equally clear in that important judgment that it is not the function of a court to choose between conflicting religious opinions.

> "72. It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are 'legally and socially acceptable' (Purchas LJ in *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, 171) and not "immoral or socially obnoxious" (Scarman LJ in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244) or "pernicious" (Latey J in *Re B and G (Minors) (Custody)* [1985] FLR 134, 157, referring to scientology)."

[94] Article 3(3) of the 1995 Order lists the matters to which the court is to have particular regard. I take each one of them in turn:

> (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding:
>
> G is only 6 and, as such, her wishes and feeling must be treated with a degree of caution. As a senior Social Work practitioner wisely remarked in a recent judicial seminar, a child must be given a voice, not asked to make a choice. We take it that G is happy in her mother's care at this time, that she loves her mother and has a strong attachment to her. By the same

token, there is no reason to doubt that she also feels the perfectly natural love and affection for her big sister, her brother and her father and that she also has strong attachments to them. One or two incidents in recent months do suggest that she is distressed when she finds herself parted from them, but that is not to say that she would have any view that she would prefer to leave her mother on that account. G loses something and will experience distress, no matter which way the decision goes.

Both H and J are very clear that they wish their little sister to be returned and would very much wish that her care be transferred to that of their father.

But there are more negative aspects to this. At the start of business on 20th December, I was informed that Mr. O had brought both H and J to the court, his reason being that they wished to give evidence in the case. That struck me as a singularly inappropriate act by their father. Counsel did point out that Her Honour Judge Loughran had at one stage expressed a disposition to meet with the two children, but that does not afford any adequate explanation. It is always of considerable importance that children be kept out of their parents' disputes. If there had been any prior application to file a Statement of Evidence from J or H, I would have refused it for precisely that reason. It was Mr. O's responsibility to avoid anything which might amount to recruiting the children as combatants.

There was also a disturbing email from J to her mother dated 27th September 2012 which included the following passage:

> "And also use [G] for revenge? You didn't even think about us kids, as brothers and sisters! That we should be together, not only seeing each other once a month! We are happy enough but we would be even more happier if [G] was living with us.
> '...
> Allah is with us to get [G] back, Inshallah and in Allah we trust!
> JUSTICE ABOVE ALL!'"

A better watchword would be "LOVE ABOVE ALL". One would have thought that sight of such phrases in that email would have caused her father to intervene and help J attain a less bitter, less damaging, appraisal of the issues.

It is quite wrong to caricature Mrs. P's motives, in bringing G with her when she moved, as one of revenge. She loves her daughter deeply,

perhaps desperately, as the last of her children still giving her unconditional love. To translate her declared reason for leaving secretively, that she did not know what her ex-husband would do, her greatest fear would have been that Mr. O would have been able to take legal steps to prevent her removing G, had he known of the plan. That is why she hid away for so many weeks afterwards and tried to keep her whereabouts secret. I am afraid she calculated that no-one could stop her taking G with her in those circumstances. Once she had the time to bed in the new living arrangements, it would have seemed inconceivable to her that anyone would remove G from her. Others would have to work with her, then, to establish mutually satisfactory contact arrangements, under her control. Of course, mindful of the risk that she might ultimately lose G if she came to prefer the life as experienced by her elder sister and brother, those contact arrangements were never likely to be liberal, if established at all. The imperative would then be that she controlled all contact.

One who accuses her of taking G out of spite only reveals a lack of understanding. J needs to be guided away from such a negative and hostile appraisal if she is to achieve a reconciliation with her mother. Before Mr. O can help her in that, he must examine his own level of insight into the affair.

In any event, on the issue of the wishes and feelings of the two elder subject children, it is quite clear that they have been greatly hurt by all this; equally it may well be that to return G to their family unit would of itself make a significant contribution to the prospects of some reconciliation between them and their mother, over time.

(b) his physical, emotional and educational needs:

All 3 children need a sense of safety, free of conflict over the most fundamental issues concerning their upbringing: with whom they are to live; their religious upbringing. Without an adequate sense of security they will continue to feel defensive and may resort to rigid and uncompromising views about one or other parent, to the great detriment of the children themselves.

Each parent here is able to provide for the physical needs of their children. Mr. O lives presently in a 2-bedroom house which he owns jointly with a friend. They bought it originally as an investment. He has converted one of the reception rooms into a third bedroom. He lives there with his wife, 2 infant children, J and H. No doubt, it is all a bit of a squeeze at present,

but he plans to rent a larger house and this seems a perfectly reasonable prospect. Likewise, no question was raised about the financial capacity of either the O or the P family to provide for G as well. The only financial issue raised has been by Mrs. P, who has cited financial constraints where current efforts at meaningful contact have been concerned.

The issues surrounding the children's emotional needs are more complex. All the children have been put through a great deal as a result of the acrimonious breakdown in their parents' marriage. Unfortunately, both J and H were at an age at which the conscious decision in each case to switch allegiance has taken a great deal out of them, emotionally. In J's case, in particular, her mother did not handle matters well and has said and done things which do feed into a temptation on the child's part to revise history and adopt the view that her mother never really loved her. Mrs. P asserts that their father has a duty to encourage J and H to have contact with her. She has not established that he is not doing so, but she must recognise that the ball is essentially in her court in this regard and that there are things which others cannot do for her. She needs to abandon the notion that it is for the children to come unto her. She has been making some efforts recently with emails, but one cannot achieve what she wants by way of writing; indeed the record shows that it only puts more incendiary material between her and J, in particular. She has stated, in August, (in what are probably her lawyers' words) that she will make all reasonable efforts to facilitate contact "within the constraints of finances and the children's routine". Is it really so outlandish to contemplate, so impossible to date, that Mrs. P might travel to Belfast, on her own, and stand in front of her own children?

On a more negative side, G will undoubtedly have been caused a significant degree of emotional harm in being removed abruptly from her home, her school, her father, brother and sister and then to have been denied virtually any contact over the ensuing months and up to now. She is likely to have wanted desperately to restore her relationships with the 3 other significant people in her family circle and whom her mother has effectively barred to her, time and again. The evidence of her crying in the background within the house, or crying in a departing car on occasion, signals how distressing she has found the situation on occasion. In Mrs. P's deeply conflicted state, she has proven unable to address this most important issue. As already explained, the likelihood, in the Panel's judgement, is that she will continue to be unable to correct that, should the matter remain under her control. A stop-start pattern of contact, suspended almost capriciously on occasion, and the subject of litigation

extending over many months, if not years, is not to be tolerated. In short, G is to be recognised as a child at risk.

We must also recognise, of course, that for G to be removed from her mother would also be highly distressing, especially if Mrs. P is unable to hide her own agonies at the prospect from the child. There are other issues, such as removal from the school she has been enjoying since September, or removal from the many aspects of country life which she will have enjoyed, but these do not compare.

What a child of vulnerable years needs most in coming to terms with such a move is, first, reassurance that nothing awful has befallen the parent she has left - that she has not died, or been imprisoned, for example. Secondly, and linked, she needs to be allowed to continue her relationship with that parent unabated, bearing in mind that she continues to love that parent keenly. Thirdly, she needs to be reassured that the parent concerned still loves her and wants her to be happy and settled in her new situation within the reorganised family. All this was blocked by Mrs. P when she removed G from her father and siblings. If she had been afforded an opportunity to answer these observations, Mrs. P would almost certainly point out that she spoke to G a great deal in order to see her reassured. Well, words alone, without demonstrable evidence, or action, are not sufficient to quell a child's darker fears, nor to meet her acute needs.

It will take sensitivity and generosity from Mr. O toward Mrs. P, for G's sake, in order that a transfer of her care can be managed without needless emotional harm to the child. Further, Mr. O must recognise that all 3 children need to have a healthy relationship for their birth mother, if their own views on family relationships are not to become twisted. Mr. O no doubt hopes that each of these children will be able to enter into stable family relationships on their own part as adults. He needs to recognise that their experience of family life has significantly negative elements which need to be mitigated at this stage.

When these parents ultimately came to separate in mid-2010, they agreed that it was best for the children to stay together in their mother's care, while their father moved to a new home close by. It was further agreed that the children would spend their weekends with their father. That was an excellent arrangement, reflecting the children's best interests. It did not endure, however. Increasing conflict in the relationship with H and J on the mother's part led to those children electing to move. Each parent re-married and Mrs. P, in particular, felt the strong urge to break away from

what appears to have been too intimate an arrangement when she was committing herself to her new husband. It is worth pointing out here that, had things worked out differently and both J and H been living still with their mother, they were of an age to flatly refuse to move away with her. They are by now embedded in their Muslim family culture. They had disapproved of their mother bringing boyfriends into the household, on that account. They have a strong relationship with their father. They would have gone to him as soon as they got wind of their mother's intentions and Mr. O would undoubtedly have taken steps to protect his relationship with G as well. Mrs. P's decision to flee with G was partly to leave while she still had a child in her care; it was also possible only because she had only that child, a child too young to thwart the plan. A child too young to express her wishes and feelings.

It follows that, out of the wreckage to which a previously harmonious separation arrangement has been reduced, the obvious goal should be to recreate an arrangement whereby the children live with their father, but go to stay with their mother each weekend. For G, in particular, nothing less will do at this stage, provided always that Mrs. P consents.

For J and H, the position is less straightforward. For a start, baser sentiments may be at the fore in their minds in the immediate aftermath to these proceedings and an outcome which, as children, they may be expected to define as a victory. Mr. O needs to recognise that it is primarily up to him to continue to work on these negative sentiments. He is undoubtedly a figure of some charisma in their eyes and he has a way of promulgating as absolute imperatives what are value judgments. He tells us that he has "encouraged" contact between J and H and their mother. He might usefully invoke some of that charisma in his dealings with two reluctant adolescents. After all, he has raised them to submit to moral imperatives.

Beyond that, these two young people are city dwellers. Mrs. P has planted herself on ground which is not their natural habitat. Even without all the emotional baggage they now carry, they will not travel well. It is highly unlikely that they would ever agree to go and stay with their mother every weekend, all weekend. Their views will have to be accommodated, within a framework of parental guidance and alliance. As already intimated, Mrs. P, on her part, needs to re-open doors for them, rather than waiting for them to knock.

(c) the likely effect on him of any change in his circumstances:

Much of this has just been answered, particularly in G's case. We are confident that a situation in which G is re-united with the greater part of her family, embedded in a warm and busy family environment and growing up with her elder sister and brother as role models, re-united with her friends in school, enjoying the change from being baby in the family to third up, will inure to her great advantage and happiness. It will promote her sense of identity, of place and of security. By the same token, her feelings of bereavement upon being separated in this way from her mother will have to be handled with sensitivity and magnanimity by both of her parents, supported by their respective partners. None of this, we think, is too much to ask.

J and H, of course, are already where they belong.

(d) his age, sex, background and any characteristics of his which the court considers relevant:

All three children are properly of a Muslim background. J and H would appear to be already strong in their faith. G's religious education has been neglected by her mother over the last couple of years, but, at such an age, that is not critical. By orthodox Christian teachings, she, at 6, has not yet attained the Use of Reason. As already set out, the court does not regard it as better to be Christian or Muslim, or of any other particular faith belief for that matter, nor does it hold that a religious upbringing is better than the purely secular. The issue for a civil court is simply one of background. G's true background in this respect, a key facet of her birth identity, cannot be sustained by her mother, who has now become alienated from all orthodox styles of worship and holds to the perfectly tenable view that there has in the past been far too much attention paid to the subject. To hold that view is her absolute prerogative. On the other hand, to raise her child accordingly constitutes a breach of a fundamental compact made with that child's father.

(e) Any harm which he has suffered or is at risk of suffering:

One need only repeat here that, for reasons set out above, G has suffered harm and is likely to continue to suffer harm without the court's intervention. Mrs. P has presented us with the starkest of choices and, after careful consideration, we are of the firm and unanimous view that steps simply must now be taken (in the sense of being taken without

further delay) to deal with her refusal to establish any adequate contact between G and the rest of her birth family, having been afforded the greater part of a year, and every encouragement, to do so. Generalised allusions to financial constraints, or a periodically hectic social life, constitute no excuse.

(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:

There was nothing in the evidence before us that led us to suspect that Mr. O had shown himself materially deficient in this respect nor in regard to any of the 3 subject children. On the contrary, the history as was put before us indicated that when H and J, by turns, proved too much for their mother it was he who successfully took over their parenting, sorted out H and is well on the way to doing the same for J. That is not to say that he was without fault (any more than any of us), but that is not the test. Adequate parenting is the benchmark.

(g) 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:

In contrast, there are, we believe, reasonable grounds to suspect that Mrs. P, struggling with her own emotional needs, finds it a real challenge to handle children as they reach adolescence. Three, one by one, have opted to leave her and that striking feature of the family history must be given some, but by no means determinative, weight. We followed closely her account of the breakdown in the relationship with J, in particular, partly because it was only a matter of months ago and partly because J was the one daughter concerned, thus far.

The parents agreed that J had had a difficult time in grammar school last year. No further detail was forthcoming. However, it is a fact that her attendance went down to 87%, which is just 2% above the point at which the education authorities deem it necessary to take authoritative action. We considered that deeply concerning. Where a child absents herself from school to anything like that extent then that signals a failure of parental control.

We recognise J as headstrong. That is not surprising; both her parents are strong-willed, after all. The emails from J from which I have previously quoted also reveal her as sharp-witted and articulate. Clearly, she is capable of giving as good as she gets, if it comes to that. The problem is that it does seem to have come to that quite a lot in Mrs. P's house. What seemed to us notable by its absence throughout Mrs. P's evidence about her terminal difficulties with J was warmth. As with H, all the talk was of confiscating this or that, of screaming matches and, ultimately, of violence. That is domestic violence. We formed the view that a major element creating such confrontations was a kind of panic on Mrs. P's part. In consequence, she seems to have resorted too often to a rigid and authoritarian mode of behaviour with these children; the response on the child's part was simply rebellion. Overall, it seems to us that Mrs. P's particular parenting technique - quite a different thing from her love for any of her children - played a major part in the process whereby she finally lost parental control. The significance of all this is that she might well require some professional intervention if the same pattern were not to repeat itself a fourth time. On the other hand, it takes two to fight and we simply do not know whether G is of a more placid disposition. Children of that type will often learn to simply avoid triggering conflict and will suppress their resentments, awaiting the liberation of an independent life.

Our observations of Mr. O tended to support his own self-portrait as placid but firm, one who did not feel the need to resort to tantrums and who could nonetheless maintain control of his children.

On the evidence before us we could not form any particular view about Mr. O's present wife. On the other hand, there was a deal too much about reports (unsubstantiated) of Mr. P being another disciplinarian toward the children, of him forcing children into cars and, above all, about his own behaviour on 8th April, to allow us to regard him as a potential peacekeeper in this conflict. On 8th April, it will be recalled, it was he who answered Mr. O at the door, telling him to clear off and wait for a court order. We have already concluded that this was at a time when he and his wife had most likely already set in motion their plans to go into hiding. Such obstruction was obviously contrary to G's needs, properly understood.

(h) The range of powers available to the court under this Order in the proceedings in question:

At this junction, one might also address the "No Order" precept enshrined in paragraph (5):

> "Where the court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all."

Quite apart from our own residual discretion, there were a range of orders proposed by the parties. Mr. O sought a Residence Order for all 3 children, so that they would all live with him. Mrs. P sought a Residence Order in respect of G, and, having accepted that H and J preferred to live with their father for the time being, a Contact Order in respect of J and H and, to protect the children against the risk of an international abduction by their father, a Prohibited Steps Order to prevent them being removed from the jurisdiction.

One possibility which occurred to me at the outset of this Hearing, which ran over a full day (which is long in Northern Ireland terms), was that there might be an arrangement struck whereby G stayed with her mother and step-father, while she also enjoyed contact with her father, siblings and all others in that household throughout each weekend. The difficulty, which proved insuperable, was that Mrs. P has shown herself overwhelmingly obstructive toward any regular contact for G with her father and siblings. We were ultimately forced to recognise that there was just no basis for a realistic expectation that Mrs. P would comply with any such Contact Order. We could only foresee that such an order would be repeatedly breached by her. There might be endless court applications for enforcement or variation. For all her verbal and written assurances, Mrs. P has demonstrated that, driven by her own need to make a break from Mr. O, she is incapable of taking on board G's need for stable and extensive contact, both with her father and also with her siblings. Unfortunately, the Respondent was somewhat embittered by what she saw as the past misconduct of H and J, in particular. In her frustration of all efforts to get contact underway, she has demonstrated a critical failure to understand the level of distress, frustration and disaffection toward her which her attitude has established, thus far, in the minds of the other 2 subject children and also to the immense waste of time which she occasioned for everyone else in the birth family - and for all the others involved - over some 9 months. In all of this she has only damaged further her relationship with H and J. She has shown herself unable to

surmount her negative feelings toward Mr. O and, indeed, toward her other 2 subject children, so as to prioritise G's interests.

Fundamentally, allowing Mrs. P responsibility for contact would only lead to further emotional harm for all 3 subject children: and it would not work, anyway.

Secondly, it transpired at Hearing that Mrs. P had been quite untruthful in her previous representations about raising G as a Muslim, a matter of immense importance to the other family members. She had misled both Mr. O and the Court. At the Hearing, she was more frank. She elected for the affirmation rather than any religious Oath. She admitted that she was not a churchgoer, though she did believe in God, but persisted in her claim that she was raising G as a Muslim. That we found to be untrue. She may well have been making G aware of the Muslim faith, but only in the sense of supplying general information, much as one might with the history of the Ark. She would not, we concluded, be telling G that there was any truth in it. By the same token, we did not imagine that Mrs. P would resist explaining to G, sooner or later, why she had chosen to abandon that creed and one doubts if that would be a balanced or sympathetic account. The oft-remarked fervour of the convert is most likely matched only by the disillusionment of the apostate. It was clear that G would be acquiring the cultural identity of a Roman Catholic (the Irish dancing and Gaelic football, for example). It was not enough for Mrs. P to say that G was simply getting experience of a mixed society. She was not about to sign up G in a pipe band on the grounds of cultural diversity, after all.

Should G continue to be raised by her mother then the child would lose her Muslim identity (it is presently "on hold", like her acquisition of Arabic). This would, we believe, raise a real obstruction in respect of her empathy for her father and siblings and significantly diminish her sense of communion, emotionally and intellectually, with each of them. That loss would perhaps be even more marked in adult years. We concluded that this was not in the G's best interests, nor in the best interests of her brother and sister, who likewise would suffer a real loss in consequence.

[95] And so it was that we had to conclude that it was in fact necessary that G be moved back to the larger part of her family, in order to safeguard her, to sustain her family bonds and to preserve her cultural and religious identity. More than that, and with the acute awareness of the very real pressures and passions on Mrs. P's part, we have also concluded that a life for G within the O family is appropriate with respect to meeting her own emotional needs.

[96] By the same token, her strong attachment to her mother - not to mention all that her mother can contribute to her development - would require extensive contact. Ultimately, notwithstanding the pain involved for Mrs. P, we were satisfied that it was in the best interests of all 3 children that they be reunited and that only Mr. O offered that arrangement. One would like to think that their father will honour his commitment to regular weekend contact with her mother for G, but that is not something of which we can be entirely confident at this juncture. After all, he has been unable to restore relations between Mrs. P and the other 2 children. We therefore decided upon an Interim Residence Order, directing that G be transferred by 29th December. The case would be reviewed on 22nd January so as to establish what contact has been put in place and whether Mr. O has proven up to the task.

[97] That leaves only the question of the Prohibited Steps application, seeking to bar Mr. O from removing any of the children from the jurisdiction without leave of the court. With reference to the No Order principle, we were not persuaded that this was necessary. There is no credible evidence that Mr. O has any intention of unlawfully removing any of the children. Both he and they are embedded here and this is borne out by the history of events since the marriage. On the other hand, just as the children used to spend several weeks each year in Algeria, it seems to us that it would be a very good thing if this were reinstated and we see no good reason why each such trip should have to be preceded by a court application.

[98] Mrs. P should release the children's passports to their father upon resolution of these matters, but we will defer consideration of any Specific Issue Order in this respect, pending the outcome of the forthcoming evaluation of contact arrangements.

Post Script: The Court delivered its ex-tempore judgment on 20th December, ruling that G should be returned to the O family by 29th December. An appeal was promptly lodged by the Respondent. Before the matter was otherwise due for mention again on 22nd January in the Family Proceedings Court, though, Mr. P (a South African) and Mrs. P fled the country, taking G with them, destination unknown.