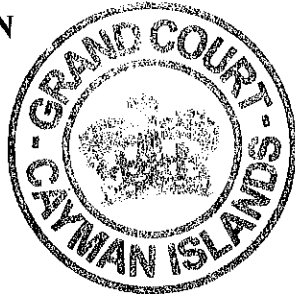


The judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

**CAUSE NO. FAM 18 OF 2014
L/A 0356 OF 2013**

BETWEEN



PC

PETITIONER

AND

JC

RESPONDENT

Appearances: Mr. David Holland of Samson & McGrath, Attorneys-at-Law for the Petitioner
Ms. Sarah Dobbyn of Sinclairs, Attorneys-at-Law for the Respondent

Before: The Hon. Justice Ingrid Mangatal, IN CHAMBERS

Heard: 8, 9 and 10 July 2015

**Written Closing
Submissions Delivered:** 24 July 2015

Date of decision: 31 July 2015

**Draft Reasons for
Judgment delivered:** 9 February 2016

Date of Judgment: 15 February 2016

HEADNOTE

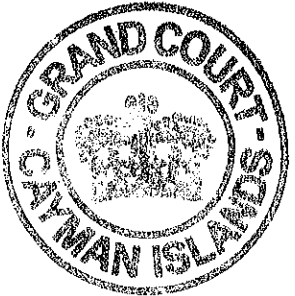
Family Law - Children - Application for leave to permanently remove children from the jurisdiction - No need for detailed classification of type of re-location case, as to whether "primary" or "shared care" case - Each child's welfare and best interests to be considered as paramount.

1. This application is concerned with two little boys, M and R, born respectively, on 7 March 2007 and 8 January 2010. It is the application of the Petitioner, mother of M and

1 R, ("PC"). PC seeks the Court's leave to relocate M and R, the children of the marriage
2 between herself and the children's father, the Respondent ("JC"), from this jurisdiction to
3 reside in London, England, during school term times or on such other terms as the Court
4 deems appropriate.

5
6 2. The application arises within ongoing divorce proceedings between the parties and has
7 been vigorously opposed by JC. JC wishes to be granted term time custody of the
8 children.

9
10 3. On 31 July 2015, I made the following decision/orders:

- 
- 11 1) By consent of the parties, a shared residence order is made.
 - 12 2) The Petitioner's application for relocation of the children, by way
13 of Summons filed 2nd February 2015 is refused.
 - 14 3) The children, M and R, are to continue to reside with JC during the
15 school term and are to reside with PC during the school vacation
16 periods.
 - 17 4) It is declared that the children are deemed to be habitually resident
18 in the Cayman Islands.
 - 19 5) PC is to return the children to this jurisdiction by 31st August 2015.

20
21 These are my reasons for the decision arrived at. I apologize to the parties for the delay
22 and thank them for their patience.

23
24 **BACKGROUND**

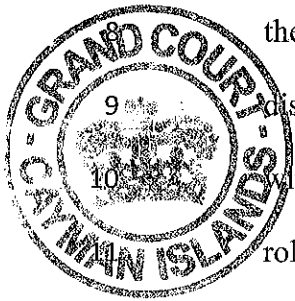
25 4. Both parties were born and grew up in England. They are both United Kingdom citizens
26 and met in England in 2003. At that time PC was working in promotions/events and JC

1 was a chartered accountant. They got married in Barbados in July 2005. The parties
2 decided that they liked island living and moved to the Cayman Islands in December
3 2005. JC was offered employment with a well-established company where he is still
4 employed as Chief Financial Officer to date.

5
6 5. An agreed case summary was helpfully provided for the hearing, and I have extracted
7 aspects of that summary here. The parties separated on 7 July 2013, with PC remaining in
8 the matrimonial home and JC moving out to live at Treasure Island Resort. There is a
9 dispute between the parties as to which one of them primarily had the children residing
10 with them between July and November 2013. However, in any event, the parties agreed a
11 rolling four day on, four day off, shared-care arrangement for the children from late
12 November to 19 March 2014.

13
14 6. Both parties' Immigration term limit in the Cayman Islands was December 2014.
15 Accordingly, they began to have discussions in and around December 2013 (after PC's
16 employment terminated) about future arrangements for themselves, and in particular, the
17 children.

18
19 7. In late January 2014 PC began to attend job interviews in the UK having lost her job in
20 Cayman in November 2013, and her evidence is that she began to investigate schooling
21 for the children in England. On 7 February 2014, to assist PC, JC paid for the deposit on
22 a rental property for PC in England. PC left the island on the 19 March 2014 to
23 commence her new employment in England.





1 8. The parties have a difference of opinion as to what they agreed between them regarding
2 the future care arrangements for the children. It is PC's position that the parties had
3 agreed that the children would relocate to England in the Summer of 2014, after the end
4 of the school year and that she had been putting plans in place to facilitate that. It is JC's
5 position that no firm agreement had been reached and that only different options were
6 being considered in December 2013. JC's position is that no later than January 2014 PC
7 knew that JC intended to stay in the Cayman Islands. Further, that his proposals were set
8 out in an open letter from his Attorneys Sinclairs dated 25 February 2014.

9
10 9. The parties are agreed that both parents should play a significant role in the children's
11 lives and that a shared residence order should be put in place. However the terms and
12 structure of the shared residence are in dispute. In essence, there is a disagreement as to
13 which parent the children should reside with during the school term and during school
14 vacation periods.

15
16 10. On the 9 July 2014, Henderson J. had before him an ancillary application in relation to
17 the children issues, in which both parties were agreed on a shared residence order but
18 disagreed as to the terms upon which the sharing would be divided. Each of the parties
19 wanted at that time (as they do now), to have the children reside with them during the
20 school term with the children residing with the other party during vacations.

21
22 11. In a written judgment, Henderson J. described the application before him as "premature"
23 and he acceded to the suggestion of Counsel on both sides during oral arguments before

1 him that the only reasonable solution at that time was to make a temporary order -
2 paragraph 20 of the Judgment. Henderson J. stated (at paragraph 19), based on the
3 circumstances as they then existed, that:

4 *"19.....I cannot conclude that the best interests of the children require that*
5 *they live permanently during term time with either parent. (JC) may well*
6 *not be permitted to live in the Cayman Islands in the long term. (PC) is*
7 *unemployed and not at present living in suitable accommodation for the*
8 *children. The unknowns outweigh the knowns on each side."*
9

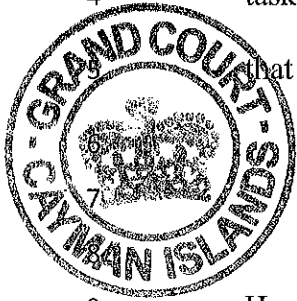
10 12. Henderson J. further concluded that:

11 *"For the immediate future, (JC) is better placed to look after the children*
12 *than (PC)".*
13

14 At paragraph 21 of the Judgment, the learned Judge set out the Order which he
15 made as follows:

- 16 1) By consent, a shared residence order.
17
18 2) The children are to reside with (JC) during the school term until
19 further order.
20
21 3) PC is entitled, at her discretion, to have the children reside with her
22 during the school vacation period.
23
24 4) The children may not be removed from the Cayman Islands except
25 that PC may, at her discretion, remove them to the United
26 Kingdom for the summer vacation period.
27
28 5) JC is at liberty to apply for a permanent order after he has obtained
29 permanent residency.
30
31 6) PC is at liberty to apply for a permanent order after she has been in
32 full-time permanent employment for at least six months and has
33 obtained suitable accommodation for the children.





1 13. Two Welfare Reports have been filed in relation to the children issues which ultimately
2 recommend that there be a shared residence order and that the children continue to reside
3 with JC during the school term time. The original social worker's report described the
4 task facing the Court quite accurately, as a "mammoth task". Henderson J. in respect of
that report, commented that:

*"Ms. Barnes' report concludes with the tepid recommendation for
maintaining the status quo".*

9 However, he acknowledged that Ms. Barnes' opinions were rightly guarded because her
10 report was not a comparative report, in the sense that whilst she was able to observe the
11 children's home circumstances here in Grand Cayman, she had not had an opportunity to
12 observe PC in a home environment, or to inspect the home which she then had in the
13 United Kingdom. The new social worker, Ms. Lucille Bodden has in effect endorsed that
14 recommendation in her report. PC strongly opposes those recommendations. JC (fully)
15 supports and endorses the recommendations.

16
17 14. As Williams J. commented in the leading case of **B v B** [2013] 1 CILR, at paragraphs
18 181-185 (and as pointed out by Mr. Holland, Counsel for PC), these Welfare Reports,
19 have not addressed a number of the specific factors that the Court needs to consider in
20 relocation cases. I therefore have not attached great weight to the overall
21 recommendations. However, the reports are useful for the factual observations and
22 opinions on specific matters e.g. the home environment provided by JC and reports
23 concerning M and R's schools.

1 15. The evidence is that the older of the boys, M, has a learning disability which has been
2 described as Attention Deficit Hyperactivity Disorder.

3
4 16. On 30 June 2015 PC filed an urgent Summons, seeking leave for M's school counselor to
5 release her counseling report for the purposes of the proceedings. JC indicated that he
6 would not consent to this, on the basis that in his view such disclosure would have a
7 detrimental effect on M and would amount to a betrayal of his trust in the counselor.

8 However, just prior to the hearing, the counselor's report dated 2 July 2015 was released
9 and produced to the parties. JC ultimately did not oppose that report going into evidence,
10 and indeed, it was referred to in his Counsel Ms. Dobbyn's Skeleton Argument, and
11 handed up to the Court, forming part of the evidence. Ultimately, PC's Counsel Mr.
12 Holland opined that the Court should give this report little weight.

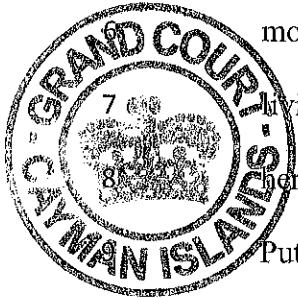
13
14 **PC'S CASE**

15 17. Since the matter was before Henderson J. in July 2014, PC in her evidence states that she
16 thinks that she has managed to accomplish a lot and is in an improved position, relative to
17 the circumstances that obtained at the time of the earlier hearing. She stated that she now
18 has a steady job with a global company, in their Recruitment team since September 2014.
19 Her job title is Talent Acquisition Specialist and she states that she passed through her
20 probationary period some time ago. PC indicated that she is enjoying her job, her
21 standard working hours are from 9:00 a.m. until 5:30 p.m. and she stated what her salary
22 is. She gave evidence that she also has an option to earn overtime and bonuses if she
23 works over and above her standard contract hours. The nature of her role allows her to

1 work from home and also to work flexi-hours, which would mean that if the boys were
2 living with her she would be able to work around their schedule and coordinate school
3 drop-offs, pick-ups and extra-curricular activities more easily.
4

5 18. PC stated that she had had to experience periods of unemployment over the last 18
6 months and received little or no financial support from JC. As a result, she ended up
7 living at a number of different addresses during that period. However, she stated that with
8 her secure employment, she has now rented and settled in a two bedroom maisonette in
9 Putney, which is a very nice and family oriented area in South West London. One of the
10 reasons for her choice was that Putney is located on the River Thames which has daily
11 sailing, boating and rowing activities. Since the boys grew up by water she wanted them
12 to be able to continue enjoying water-based activities.
13

14 19. As regards, education for the boys, it was PC's evidence that she has applied for positions
15 in a number of the schools, the top three choices of which are within walking distance of
16 her home. Her evidence is that all of the nearby schools have either 'good' or
17 'outstanding' OFSTED reports (reports from the UK's Office for Standards in Education)
18 and she attached a number of these reports. PC went on to state that the local Council
19 explained to her that, as the boys were not yet resident in the borough, the Council were
20 unable to allocate spaces yet. However, it was indicated that they can process the
21 applications for school places at any time, once it was certain that the children would be
22 there, and further, that they would try to offer places in the schools preferred by PC. After
23 the close of the hearings, the Court received evidence that it had been confirmed that both



1 boys had places in one of the Primary Schools, which represented the highest preference
2 of the schools listed by PC at which a place was available.

3

4 **JC'S CASE**

5 20. JC indicates, that since the hearing before Henderson J., he remains of the view that the
6 boys' best interest would be served by them remaining here in the Cayman Islands with
7 him, as this is their home. The boys were born and raised in Cayman. The boys currently
8 reside with JC at an address in South Sound, Grand Cayman, which was formerly the
9 matrimonial home. Both boys attended preschool and now both attend Preparatory
10 Schools.

11

12 21. It is JC's view that the boys have made tremendous progress under the present
13 arrangement. He expressed the view that if the boys were to relocate to the United
14 Kingdom, it is likely that they would experience significant adjustment and disruption
15 issues.

16

17 22. JC 's evidence is that he has always provided and continues to provide a safe, stable and
18 comfortable home environment that has ensured both boys' physical and psychological
19 well-being. He indicates that he has always been the primary caregiver to the boys
20 throughout their lives, having always been responsible for their regular routines,
21 including sleeping habits, meal planning, preparation and eating, bathing, grooming,
22 dressing, purchasing clothes and laundry, health care arrangements, transport, planning
23 extracurricular school activities and after school care arrangements.

1 23. JC has also given evidence that he has a girlfriend EG who lives with him. He says he
2 met EG in July 2013, after separating from PC. EG moved in in January 2015 after the
3 matter had been given much thought and after discussion with the boys. JC indicates that
4 EG has a very good relationship with M and R.

5
6 24. JC has applied for permanent residency in the Cayman Islands and has been advised that
7 he has a good chance of obtaining this status. He submitted a report from CML – (a
8 Cayman Islands Offshore Recruitment and Immigration Services Provider) which
9 purports to have immigration expertise. He was advised that he had excellent prospects of
10 being granted permanent residency - well above the threshold of 110 points to obtain
11 residency, even if his profession of Management Accountant is not ultimately included in
12 the list of priority occupations for which a further maximum of 15 points would be
13 awarded. This point is expanded upon later in this judgment.

14
15 **THE LAW**

16 25. These proceedings are proceedings governed by the **Children's Law (2012 Revision)**
17 ("the Law"). Section 10 of the Law deals with residence, contact and other orders with
18 respect to children.

19
20 26. The governing provision is s.3 of the Law, which states as follows:

21 *Welfare of the child*

22 3(1) *Where a court determines any question with respect to -*

23 *(a) the upbringing of a child; or*



1 (b) the administration of a child's property or the application
2 of any income from it;

3 *The child's welfare shall be the court's paramount consideration.*

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

8 (3) *In the circumstances mentioned in subsection (4) a court shall have*
9 *regard in particular to-*

10 (a) *the ascertainable wishes and feelings of the child*
11 *concerned (considered in the the light of his age and*
12 *understanding);*

13 (b) *his physical, educational and emotional needs;*

14 (c) *the likely effect on him of any change in his*
15 *circumstances;*

16 (d) *his age, sex, religious persuasion, background and any*
17 *characteristic of his which the court considers relevant;*

18 (e) *any harm he has suffered or is at risk of suffering;*

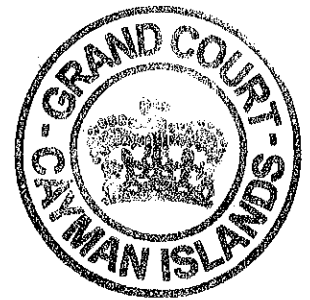
19 (f) *how capable each of his parents, and any other person in*
20 *relation to whom the court considers the question to be*
21 *relevant, is of meeting his needs; and*

22 (g) *the range of powers available to the court under this Law*
23 *in the proceedings in question.*

24 (4) *The circumstances are that -*

25 (a) *the court is considering whether to make, vary or*
26 *discharge a section 10 order, and the making variation or*
27 *discharge of the order is opposed by one party to the*
28 *proceedings; or*

29 (b) *the court is considering whether to make, vary or*
30 *discharge an order made under Part IV.*



1 (5) *Where a court is considering whether or not to make one or more*
2 *orders under this Law with respect to a child, it shall not make the order*
3 *or any of the orders, unless it considers that doing so would be better for*
4 *the child than making no order at all.*

5
6 27. In *Payne v Payne* [2001] EWCA Civ. 166, cited by Counsel for both parties, the English
7 Court of Appeal reviewed the case law on relocation. In that case there was no real issue
8 as to which parent was the primary carer for the child. Dame Elizabeth Butler-Sloss P.
9 stated as follows at paragraphs [85] and [86] of the Judgment:

10 *"[85] In summary I would suggest that the following considerations*
11 *should be in the forefront of the mind of a judge trying one of these*
12 *difficult cases. They are not and could not be exclusive of the other*
13 *important matters which arise in the individual case to be decided. All the*
14 *relevant factors need to be considered, including the points I make below,*
15 *so far as they are relevant and weighed in the balance. The points I make*
16 *are obvious but in view of the arguments presented to us in this case, it*
17 *may be worthwhile to repeat them:*

18 (i) *The welfare of the child is always paramount.*

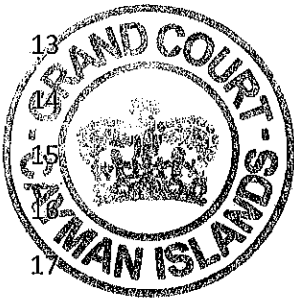
19 (ii) *There is no presumption created by s. 13(1) (b) in favour of*
20 *the applicant parent.*

21 (iii) *The reasonable proposals of the parent with a residence*
22 *order wishing to live abroad carry great weight.*

23 (iv) *Consequently the proposals have to be scrutinized with*
24 *care and the court needs to be satisfied that there is a genuine*
25 *motivation for the move and not the intention to bring contact*
26 *between the child and the other parent to an end.*

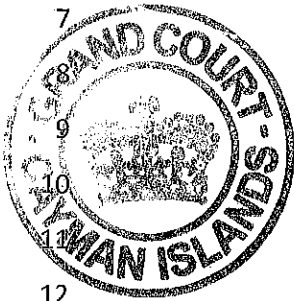
27 (v) *The effect upon the applicant parent and the new family of*
28 *the child of a refusal of leave is very important.*

29 (vi) *The effect upon the child of the denial of contact with the*
30 *other parent and in some cases his family is very important.*



1 (g) The opportunity of continuing contact between the child
2 and the parent left behind may be very significant.

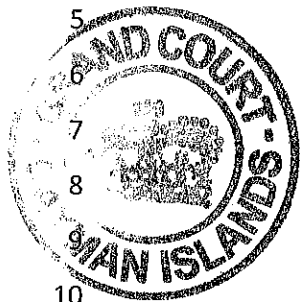
3 [86] All the above observations have been made on the premise that the
4 question of residence is not a live issue. If, however, there is a real dispute
5 as to which parent should be granted a residence order, and the decision
6 as to which parent is more suitable is finely balanced, the future plans of
7 each parent for the child are clearly relevant. If one parent intends to set
8 up home in another country and remove the child from school
9 surroundings and the other parent and his family, it may in some cases be
10 an important factor to weigh in the balance. But in a case where the
11 decision as to residence is clear as the judge in this case clearly thought it
12 was, the plans for removal from the jurisdiction would not be likely to be
13 significant in the decision over residence. The mother in this case already
14 had a residence order and the judge's decision on residence was not an
15 issue before this court."



16
17 28. At paragraphs 40 and 41, Thorpe L.J. also provides useful guidance as follows:

18 “(40) However, there is a danger that if the regard which the court pays
19 to the reasonable proposals of the primary carer were elevated into a
20 legal presumption then there would be an obvious risk of the breach of the
21 respondent's rights not only under Art 8 but also his rights under Art 6 to
22 a fair trial. To guard against the risk of too perfunctory an investigation
23 resulting from too ready an assumption that the mother's proposals are
24 necessarily compatible with the child's welfare I would suggest the
25 following discipline as a prelude to conclusion:

26 (a) Pose the question: is the mother's application genuine, in
27 the sense that it is not motivated by some selfish desire to
28 exclude the father from the child's life? Then ask is the
29 mother's application realistic, by which I mean founded on
30 practical proposals both well researched and investigated? If



1 *the application fails either of these tests refusal will inevitably*
2 *follow.*

3 *(b) If however the application passes these tests then there*
4 *must be a careful appraisal of the father's opposition: is it*
5 *motivated by genuine concern for the future of the child's*
6 *welfare or is it driven by some ulterior motive? What would be*
7 *the extent of the detriment to him and his future relationship*
8 *with the child were the application granted? To what extent*
9 *would that be offset by extension of the child's relationships*
10 *with the maternal family and homeland?*

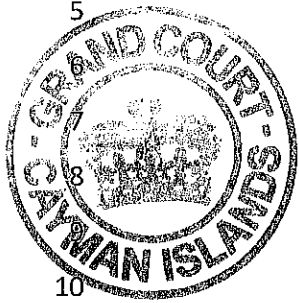
11 *(c) What would be the impact on the mother, either as the*
12 *single parent or as a new wife, of a refusal of her realistic*
13 *proposal?*

14 *(d) The outcome of the second and third appraisals must then*
15 *be brought into an overriding review of the child's welfare as*
16 *the paramount consideration, directed by the statutory*
17 *checklist insofar as appropriate.*

18 *(41) In suggesting such a discipline I would not wish to be thought to have*
19 *diminished the importance that this court has consistently attached to the*
20 *emotional and psychological well-being of the primary carer. In any*
21 *evaluation of the welfare of the child as the paramount consideration*
22 *great weight must be given to this factor."*

23
24 29. In *Re Y (Leave to Remove From Jurisdiction)* [2004] 2 FLR 330, having quoted
25 substantially from those two paragraphs referred to above in *Payne v Payne* , Hedley J.,
26 sitting in the English Family Division, expressed himself as follows in paragraphs [14] --
27 [17] (incl.) and [22] and [23]:

28 *"[14] Now, the court clearly contemplates two different states of affairs.*
29 *The one, the more common and in some ways the more obvious is where*



1 the child is clearly living with one parent, and it is that parent that wishes
2 to leave the jurisdiction, for whatever reason. The other, and much less
3 common state of affairs, is where that does not exist and either there is a
4 real issue about where the child should live, or there is in place an
5 arrangement which demonstrates that the child's home is equally with
6 both parents. In those circumstances, which are the ones that apply in this
7 case, many of the factors to which the court drew attention in **Payne v**
8 **Payne**, whilst relevant may carry less weight than otherwise they
9 commonly do.

10 [15] The father does have an application for a residence order in this case
11 but it was raised only in response to the mother's application for
12 permission to remove, and the father's actual proposal is for a
13 continuation of the present position.

14 [16] This case accordingly falls outside the main run of cases that one
15 encounters where the problem is raised and certainly within my own
16 experience is unique. What it seems to me I must do is remind myself of the
17 opening provisions of the Children Act 1989. Section 191 says that when a
18 court determines any question with respect to the upbringing of a child,
19 the child's welfare shall be the court's paramount consideration, and in
20 considering these issues I have to take a number of matters into account
21 as required by section 1(3). It seems to me that of those matters, the ones
22 that are important in this case are the educational and emotional needs of
23 Y, the likely effect on him of any change in his circumstances, and his age
24 and background so far as his life is presently concerned. It seems to me
25 that I need to remind myself that the welfare of this child is the lodestar by
26 which the court at the end of the day is guided.

27 [17] I have stated the case within a very short compass, because there
28 really is no significant dispute as to the essential facts in the case or as to
29 the factors which the court ought to take into account. The position of both
30 parents is entirely reasonable, entirely understandable and potentially
31 congruent with the best interests of Y. The problem is that the respective

1 positions are mutually exclusive, and thus one reasonable, honest and
2 decent parent is going to have to receive a devastatingly disappointing
3 blow.

4 ...

5 [22] I have given this case my closest and most anxious attention. I am
6 conscious of its unique circumstances and of the needs of this child, deeply
7 attached as he is to both parents. I am only too conscious of how much
8 this case means to both parents, who each see their preferred way of life
9 put at risk by this decision, and I hate the prospect of disappointing
10 anyone who has strived as these parents have to do things properly.
11 Nevertheless, decision there has to be.

12 [23] In the end I have concluded that the welfare of this child compels me
13 to refuse the mother's application. In my judgment the cost to this child of
14 such a move is too high. He is settled into a way of life in which he sees
15 effectively an equal amount of both parents, in which he is a settled
16 member of a school with a circle of friends and interests; he is a bilingual
17 and bicultural child. A move to Texas would not mean the complete loss of
18 all this-of course it would not- it would however involve a major
19 disruption and a significant loss. In this respect I have tested my
20 conclusion by asking myself what the position would be had the mother
21 had a settled determination to return to Texas with or without Y. Even in
22 those circumstances, great though the loss of the mother's daily care
23 would have been to him, I would still have concluded that Y's greater loss
24 would have been to have moved to Texas. In my judgment, when one looks
25 at his position in Wales, what he has and what he would lose by moving,
26 and then compares that with his position in Texas-what he would have
27 gained and what he would have lost- at the very least I find myself forced
28 to conclude that the course of less detriment is for him to continue to live
29 in Wales."
30

1 30. *B v B* cited by Counsel for both parties, is a careful and comprehensive Judgment of
2 Williams J., delivered April 2013. In that Judgment, Williams J. reviewed the leading
3 authorities on relocation. The Court of Appeal, in a written judgment delivered October
4 2014, approved the applicable law as discussed in *B v B*.

5
6 31. At paragraphs 12-14 of the Court of Appeal's Judgment, in *CICA (Civil) No. 16/2013*,
7 the Court of Appeal quoted extensively from the Judgment of Williams J. where he in
8 turn quoted from the Judgment of Munby L.J. in *Re F (Child International Relocation)*
9 [2012] EWCA 1364 as follows:



10 "[29] ... [Quoting from the headnot of *K v K*] *That the only principle to be*
11 *applied when determining an application to remove a child permanently*
12 *from the jurisdiction was that the welfare of the child was paramount and*
13 *overbore all other considerations however powerful and reasonable they*
14 *might be; that guidance given by the Court of Appeal as to factors to be*
15 *weighed in search of the welfare paramouncy and which directed the*
16 *exercise of the welfare discretion was valuable in so far as it helped*
17 *judges to identify which factors were likely to be the most important and*
18 *the weight which should generally be attached to them and promoted*
19 *consistency in decision-making, but that (per Moore-Bick and Black LJ),*
20 *since the circumstances in which such decisions had to be made varied*
21 *infinitely and the judge in each case had to be free to decide whatever was*
22 *in the best interests of the child, such guidance should not be applied*
23 *rigidly as if it contained principles from which no departure were*
24 *permitted.*

25 *I need quote only what Thorpe LJ said (paragraph [39]):*

26 *'...the only principle to be extracted from Payne v Payne is the*
27 *paramouncy principle. All the rest, whether in paragraphs 40 and 41 of*
28 *my judgment or in paragraphs 85 and 86 of the President's judgment is*

1 guidance as to factors to be weighed in search of the welfare
2 paramountcy.'

3 [37] In *K v K* there was a shared residence order. The mother sought to
4 relocate to her country of origin. The importance of *K v K* for present
5 purposes is its emphasis that even where the applicant is a primary carer
6 there is no presumption in favour of the applicant. That, after all, was
7 hardly new. As was pointed out in *K v K* both Thorpe LJ and the President
8 had made this clear in *Payne v Payne*. As Black LJ said (paragraph
9 [143]):

10 '... The effect of the guidance must not be overstated. Even
11 where the case concerns a true primary carer, there is no
12 presumption that the reasonable relocation plans of that
13 carer will be facilitated unless there is some compelling
14 reason to the contrary, nor any similar presumption
15 however it may be expressed. Thorpe LJ said so in terms in
16 *Payne* and it is not appropriate, therefore, to isolate other
17 sentences from his judgment, such as the final sentence of
18 paragraph 26 ('Therefore her application to relocate will
19 be granted unless the court concludes that it is
20 incompatible with the welfare of the children') for re-
21 elevation to a status akin to that of a determinative
22 presumption.'

23
24 There can be no presumption in a case governed by section 1 of the
25 Children Act 1989. From beginning to end the child's welfare is
26 paramount, and the evaluation of where the child's best interests truly lie
27 is to be determined having regard to the 'welfare checklist' in section
28 1(3).

29

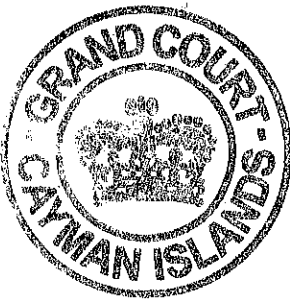
30 [40] Following a careful analysis of the authorities, Black LJ continued in
31 this important passage (paragraphs [141]-[142]):

32 '[141] The first point that is clear is that....the principle-
33 the only authentic principle- that runs through the entire
34 line of relocation authorities is that the welfare of the child
35 is the court's paramount consideration. Everything that is
36 considered by the court in reaching its determination is put
37 into the balance with a view to measuring its impact on the
38 child.'

1 [142] Whilst this is the only truly inescapable principle in
2 the jurisprudence, that does not mean that everything else-
3 the valuable guidance –can be ignored. It must be
4 heeded.....but as guidance not as rigid principle or so as to
5 dictate a particular outcome in a sphere of law where the
6 facts of individual cases are so infinitely variable.’
7

8 [41] She continued (paragraph [144]):

9 *‘Payne therefore identifies a number of factors which will*
10 *or may be relevant in a relocation case, explains their*
11 *importance to the welfare of the child, and suggests helpful*
12 *disciplines to ensure that the proper matters are considered*
13 *in reaching a decision but it does not dictate the outcome of*
14 *a case. I do not see Hedley J’s decision in **Re Y** as*
15 *representative of a different line of authority from Payne,*
16 *applicable where the child’s care is shared between the*
17 *parents as opposed to undertaken by one primary carer; I*
18 *see it as a decision within the framework of which Payne is*
19 *part. It exemplifies how the weight attached to the relevant*
20 *factors alters depending on the facts of the case.’”*
21



22 32. It is to be noted that in **K v K (Relocation: Shared Care Arrangement)** [2011] EWCA
23 Civ 793, [2012] 2 FLR 880, Thorpe L.J. and Black L.J. expressed differing views as to
24 the applicability of **Payne v Payne** to cases where care is genuinely shared between the
25 parties. Black L.J. opined that the principles in **Re Y** do not represent a departure from
26 **Payne v Payne**, but merely exemplify how the weight to be attached to particular factors
27 varies from case to case, as discussed in the quotation above. However, the Headnote in
28 **K v K** usefully summarizes the position of Thorpe L.J. as follows:

29 “– there was now clear authority that the guidance in **Payne v Payne** was
30 not to be followed in shared care cases, the judge should have applied **Re**
31 **Y (Leave to Remove From Jurisdiction)** [2004] 2 FLR 330 instead. The
32 guidance in **Payne v Payne** was posited on the premise that the applicant
33 was the primary carer; once care was shared the children were not so
34 dependent upon the stability and well-being of an individual parent and
35 the role of each parent might be equally important. What was significant

1 was not the nature of the residence order, but the practical arrangements
2 for sharing care between two equally committed carers.
3

4 33. In *Re F*, at paragraph 44, Mumby L.J. expressed himself to be of the view that the correct
5 approach was that of the majority, i.e. Black L.J. and Moore-Bick L.J. in *K v K*. At
6 paragraphs 60 and 61 of *Re F*, Mumby L.J. discerningly observed:

7 “60. There is another lesson to be learnt from this case. Adopting
8 conventional terminology, this was neither a ‘primary carer’ nor a
9 ‘shared care’ case. In other words, unlike a number of other international
10 relocation cases, it did not fall comfortably within the existing taxonomy.
11 This is hardly surprising. As Moore-Bick LJ said in *K v K*, “ the
12 circumstances in which these difficult decisions have to be made vary
13 infinitely.” This is not, I emphasise, a call for the elaboration of the
14 taxonomy. Quite the contrary. The last thing that this very difficult area of
15 family law requires is a satellite jurisprudence generating an ever-more
16 detailed classification of supposedly different types of relocation case. Any
17 move in that direction is, in my judgment, to be firmly resisted. But so too
18 advocates and judges must resist the temptation to try and force the facts
19 of the particular case with which they are concerned within some forensic
20 straitjacket. Asking whether a case is a “Payne type case” or a “*K v K*
21 type case” or a “*Re Y* type case”, when in truth it may be none of them, is
22 simply a recipe for unnecessary and inappropriate forensic dispute or
23 worse, it is to be avoided.

24 61. The focus from beginning to end must be on the child’s best interests.
25 The child’s welfare is paramount. Every case must be determined having
26 regard to the ‘welfare checklist’, though of course also having regard,
27 where relevant and helpful, to such guidance as may have been given by
28 this court.”
29



1 34. At paragraphs 85-89 (inclusive) Williams J. in **B v B** has provided useful insights and
2 guidance in this jurisdiction regarding the law relating to relocation. I adopt and rely
3 upon the judgment and can do no better than to quote those paragraphs in full:

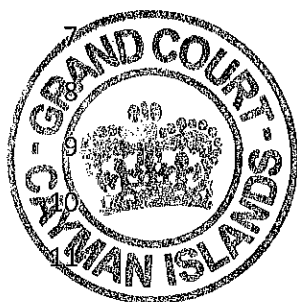
4 "85. The clear message being sent by Munby LJ is that the child's welfare
5 is the paramount principle to be applied in applications to permanently
6 relocate. To do this the Court should consider all the factors, whether they
7 were or were not contained in the guidance in **Payne v Payne**, in
8 reaching a decision as to what is in the child's best interests. The decision
9 appears to be advocating a single approach to all relocation cases, in
10 which the Payne factors may apply to all cases, albeit with varying weight.
11 Due to the very recent nature of this decision it may be too early, in what
12 would be a most welcome ruling from the Supreme Court, to conclusively
13 state that there exists in England and Wales an unquestionable single
14 analytical framework for all relocation disputes. Munby LJ was rightly
15 stressing that each case is different and that the court must not seek to
16 categorise the case in the manner sought by Miss Dowse.

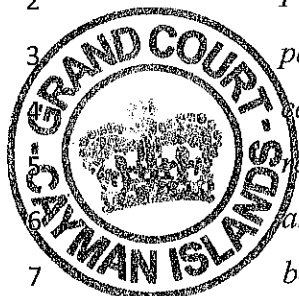
17 86. I am satisfied that Munby LJ's approach, in a judgment in which he
18 summarized the entire jurisprudence, is timely and shows the right way
19 forward.

20 87. I have considered carefully the guidance given in **Payne, K v K** and **Re**
21 **F**. From those cases one can derive a number of principles which should
22 be applied by a court in considering whether to make an order granting
23 leave to permanently relocate. A number of the following principles were
24 stated by Mostyn LJ in **Re AR**.

25 88. The first, and overarching principle, must be that the child welfare is
26 paramount. It takes precedent [sic] over any other consideration.

27 89. The next principle is that the Court should have regard to the guidance
28 handed down in case law when considering what factors are to be
29 weighed when determining what are in the child's best interests. It is
30 important to note that the guidance should no longer be confined by labels





1 given to the category of care. This means that a judge may consider the
2 Payne guidance, to an extent that he may determine to be relevant to the
3 particular facts of the case, even in what might be termed a shared care
4 case. Attorneys and judges should avoid detailed classification of
5 relocation cases and hearings should not get bogged down in taxonomical
6 arguments or preliminary skirmishes as to what characterization should
7 be applied to the case by virtue of the time spent with each parent or other
8 aspects of the care arrangements.”
9

10 35. I am more than content to adopt the lucid analysis of Williams J. in **B v B**, and, it is plain
11 that the focus from beginning to end must be on each of these children’s best interests.
12 Their welfare is paramount. The case must be determined having regard to the ‘welfare
13 checklist’, of course also having regard, where relevant and helpful, to such guidance as
14 may have been given in the relocation cases referred to previously. What the best
15 interests principle demonstrates is that the Court must focus on the child, and not on the
16 parents and their wishes or positions, save to the extent that the latter impact the best
17 interests of the children.
18

19 36. Whilst in this case there is some dispute as to who has been the primary caregiver, and
20 the Court will have to look at that, this is not a matter to dwell upon, or which should lead
21 to a completely different approach than would be the case where the issue of primary care
22 is not disputed or there is no dispute that it is a shared care case. I will approach this case
23 by adopting the very helpful headings set out by Williams J. at paragraph 90 of **B v B**.
24
25



1 **CREDIBILITY**

2 37. At this stage I also think it is appropriate to address the issue of credibility. This is
3 because, unlike in *Re Y*, there were a number of factual issues upon which PC and JC
4 disagreed and in respect of which their evidence was at times diametrically opposed. EG
5 also gave evidence and her evidence as to the conversation which took place between
6 herself and PC has been denied by PC. The varying accounts of what transpired cannot
7 both be true. There are therefore factual matters that I will have to determine in order to
8 decide what is in the best interests of the children and in order to apply the guidance set
9 out in the cases effectively and appropriately.

10
11 38. PC was very emotional when giving her evidence, and, given that the children have
12 continued to reside here in Grand Cayman away from her for the majority of the year,
13 that is understandable. I have made allowances for this and for the fact that, having the
14 status quo changed, and having the Court order that the children relocate and live with
15 her during term-time is a matter on which she is deeply focused. However, my
16 impression was that at times PC veered from the truth, and was given to exaggeration and
17 a bit of drama.

18
19 **JC'S EVIDENCE ABOUT NOT BEING ABLE TO LOCATE PC FOR A WEEK IN**
20 **AUGUST 2014 AND ABOUT PHYSICAL ATTACK**

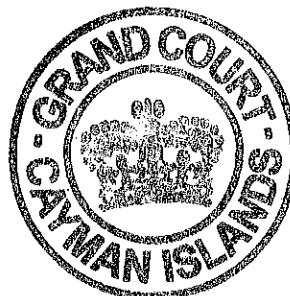
21 39. In his Affidavit filed 8 June 2015, JC indicates a number of matters which he deals with
22 under the caption "PETITIONER BEHAVIOR". Amongst the matters there stated was
23 that during the Summer term vacation of 2014, PC left the boys for a week over the 8

1 week Summer break that she had them to go on vacation in Copenhagen. JC exhibited
2 posts from PC, including a change of profile, and from JTH, (a man who JC gives
3 evidence PC was having a relationship with) on Facebook. It was JC's evidence that JTH
4 played a part in PC's decision to return to the UK to reside.

5
6 40. JC states, that having not seen the boys from the Spring of 2014, he would have thought
7 that there would be no bigger priority than spending time with the boys, especially since a
8 vacation could have been taken once the boys had returned to Cayman in September.

9
10 41. JC also stated that he endured a physical attack at PC's hands following the previous
11 Court hearing. He stated that PC attacked him at the property in front of the boys and that
12 the boys were traumatised and upset by their mother's actions. JC states that he was
13 forced to call the police for assistance and that the police came and warned PC and
14 removed her from the property. In his oral evidence he stated that PC had hit him in his
15 head with a can of beans/tomatoes.

16
17 42. Mr. Holland was kind enough to obtain the relevant police report and produced it to the
18 Court. This report records a complaint by JC, including a complaint that PC used her fist
19 to hit him in his head and scratched him in on his back. It does not, however, confirm or
20 negate whether the children were present and it does not mention the can of
21 beans/tomatoes.



1 **PC'S EVIDENCE ABOUT AUGUST 2014 AND POSTS ON FACEBOOK AND ABOUT**
2 **PHYSICAL ATTACK**

3 43. In her affidavit of 2 July 2015 PC states that it was completely untrue that she left the
4 boys to go to Copenhagen for one week. Right up until a certain stage in the cross-
5 examination it appears to me that PC appeared to deny having any romantic or intimate
6 involvement with JTH and denied that he had played any role in her decision to return to
7 the UK. In her affidavit of 2 July 2014 she described JTH simply as: *"an old school*
8 *friend of mine and we grew up in the same town. I have known him for 27 years and he is*
9 *also a friend to my family."*

10
11 44. During the July hearing before me PC was cross-examined about the fact that JC said that
12 for about a week in August 2014 he was unable to reach her, that her mobile phone
13 indicated the kind of dial tone of a phone when out of the country, and that this was when
14 JC stated that PC's father had informed him that PC had gone away for a week, leaving
15 the children alone with her parents. She was shown the photo which she had posted on
16 her Facebook page online on 17 August 2014 depicting herself in Copenhagen, in exactly
17 the week JC claims to have been unable to reach her, and a second photo dated 15 August
18 2014 showing JTH also in Copenhagen. PC's explanation was that JTH was in
19 Copenhagen, but she was not. She claimed that she posted the photo of herself in
20 Copenhagen, which she claims was taken a year before, in August 2013, as "a romantic
21 thing". As Ms. Dobbyn pointed out in her written submissions, this was indeed the first
22 time that PC admitted that JTH was more than a friend.





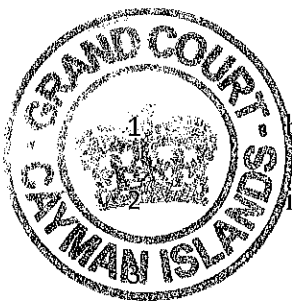
1 45. She claimed that she and JTH had separated about 9 or 10 months ago and they simply
2 remained good friends. In relation to the week in August when JC stated that he could not
3 reach her, PC claimed that she was only away at a wedding in Buckinghamshire for 2
4 days.

6 46. PC also admitted that JTH had visited her in the Cayman Islands in July 2013 and had
7 attended job interviews here. She had travelled around Europe with him in August and
8 September 2013.

10 47. PC denied that she attacked JC or that this took place in front of the children. She says
11 that they did have a negative conversation, were standing at opposite sides of the room
12 and JC called the police. She denied that the police removed her from the property. It was
13 PC's expressed view that this was all a strategic manoeuvre on JC's part.

15 **EG'S EVIDENCE ABOUT CONVERSATION WITH PC**

16 48. EG gave evidence in support of JC's case. She gave evidence about a conversation
17 between herself and PC which took place when she first met PC when PC came to her
18 place of work. EG states that they spoke candidly of the future and PC's relationship with
19 JTH who PC indicated she was looking to relocate with firstly in the UK and then either
20 Europe or Asia (Switzerland or Singapore), as soon as possible. This was because JTH
21 had not been able to secure employment within the Cayman Islands. She stated that PC
22 indicated that she was happy for there to be a relationship between EG and the boys



1 because she was keen to introduce them to JTH at the earliest opportunity as her
2 intentions were to marry JTH at the earliest opportunity.

4 **PC'S EVIDENCE ABOUT CONVERSATION WITH EG**

5 49. In cross-examination, PC conceded that the first meeting between herself and EG took
6 place when she went to EG's place of work in November 2013 without a prior
7 appointment. She denied that she said that she wanted EG to meet the children or that she
8 wanted JTH to meet them. She denied telling EG that she wanted to marry JTH or
9 planned to move with him to Switzerland .She does say however that EG met the boys in
10 August and not in December 2013 and that this was just a few weeks after JC met her as
11 he told her he was going to introduce the boys to her the following weekend.

12
13 50. PC also said that she went to talk to EG because JC had told her that EG was upset and
14 had accused him of still having relations with her, PC. She claimed she went to speak to
15 EG to reassure her that no such thing was happening.

17 **COURT'S ASSESSMENT OF CREDIBILITY**

18 51. I must say that I found the evidence from PC about the photos completely incredulous
19 and her explanation did not put her in a favourable light. It was obvious that she was not
20 speaking the truth. The background in the post regarding JTH on 15 August 2014 and the
21 background of the post of herself, which she claims took place in August 2013, but
22 posted as "a romantic thing" on 17 August 2014, is strikingly similar. It seems
23 incredulous that she would post this 2013 photo as a romantic sort of thing at precisely



1 the time when her father was saying (which I accept he did say) she was away for a week.

2 This also, as Ms. Dobbyn pointed out, instead of posting photos of herself that week at
3 one of her best friend's weddings which she claims was what she was attending at the
4 time. She also did not explain why her UK mobile phone was not receiving calls when
5 she was supposedly in Buckinghamshire, UK, during this time. It is also to be noted that
6 JC's evidence about his conversation with PC's father was not contradicted by any
7 evidence from the father.

8
9 52. PC's evidence on this point, and others, went to the root of her credibility and I'm afraid,
10 in other situations where PC's credibility was pitched against other witnesses, PC ended
11 up not emerging as a trustworthy witness. There were also a number of inconsistencies in
12 her evidence, for example when she was being cross-examined about her reasons for not
13 going to M's school during her lunch hour, and she gave evidence about being employed
14 for 6-8 weeks from the first or second week of January 2014. This contradicted her earlier
15 affidavit evidence that she became unemployed in November 2013, did not have a job
16 *"and did not even have money for general living expenses such as food"* before she left
17 for the UK on 19 March 2014.

18
19 53. I believe JC when he states that PC attacked him after the last hearing and that the boys
20 were aware of this hostile interaction. No doubt PC was very upset because of the Court's
21 Order and plainly emotions did, and continue to run high. However, whilst by itself it is
22 not determinative of anything, it certainly cannot be viewed as a positive development or
23 one that could put PC in a favourable light in terms of the parenting of, and setting of

1 example for the children as to how to behave in any circumstances, whether when things
2 do not turn out well, or indeed, in any circumstances.

3
4 54. I also believe EG when she described the conversation that she had with PC, and I reject
5 PC's evidence that she did not tell EG that she would like her to meet the boys or that she
6 intended to introduce the boys to JTH and intended to marry him at the earliest
7 opportunity and move with him to different places. Her evidence that she went to
8 reassure EG is rejected by this Court, given what she has said in evidence, and the nature
9 and tone of her WhatsApps and other evidence as to her feelings about EG and the fact
10 that she perceives EG disrespecting her and as attempting to displace her role in the boys'
11 lives. It just does not seem consistent with her going off to meet with EG uninvited in
12 order to reassure her and make her feel more comfortable.

13
14 55. I will now turn to examine the other matters that I consider relevant to this application.

15
16 (i) **Is the mother's application genuine in the sense that it is not motivated by some**
17 **selfish desire to exclude the father from the child's life?**

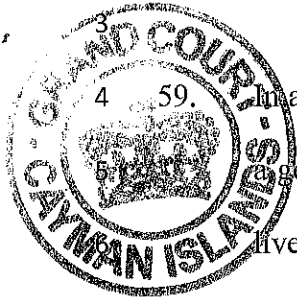
18
19 56. The evidence in my view plainly demonstrates that both PC and JC love their children
20 and it is clear that PC genuinely wants to have the boys reside with her during the major
21 part of the year, during school term time. It was PC's evidence that she left Cayman and
22 returned to reside in her homeland England, in January 2014 because she had lost her job
23 in Grand Cayman in November 2013 and her Immigration term limit was fast-

1 approaching, in December 2014. In my judgment, there is no evidence that PC is
2 motivated by a selfish desire to exclude JC from the children's lives.

3
4 57. PC has made a persistent allegation that she was in essence, tricked by JC into leaving the
5 Cayman Islands and relocating to the UK in March 2014. She has exhibited a number of
6 emails in that regard. However, I accept JC's evidence that throughout the period
7 between November 2013 and March 2014 there were several discussions between
8 himself and PC "to-ing and fro-ing", as to whether it was best for M and R to stay in
9 Cayman, or whether they should go to England. JC gave evidence that throughout these
10 negotiations, at times they agreed and at times they disagreed. I found JC credible when
11 he said that at one stage in principle he briefly accepted that the boys should go to
12 England, but that he quickly retracted that. I am satisfied that at the time PC relocated to
13 the UK she knew that JC did not intend to relocate. I accept Ms. Dobbryn's submission
14 that PC did not return to the UK because she had been duped by JC and that at the time
15 PC relocated to the UK she knew that JC did not intend to relocate and intended to
16 remain here in the Cayman Islands.

17
18 58. JC has given evidence that PC has told him that if the Court grants the application in her
19 favour, he will never see the children again. I do not find it incredible that PC may have
20 said that to JC because it does appear as if there is quite a degree of animosity flowing
21 from PC to JC. I would like to think, however, that PC appreciates that that is not right or
22 realistic, and I am going to attribute such a response as being an emotional one, and not

1 something that PC really intends or would act on. However, this approach does represent
2 a potential for a risk of harm to the boys which I discuss further below.



3
4 59. In all of the circumstances, overall and on balance, I am satisfied that PC's application is
5 a genuine one, and is not motivated by a selfish desire to exclude JC from the children's
6 lives.

7
8 (ii) **Is the father's opposition motivated by genuine concern for the future of the child's**
9 **welfare or is it driven by some ulterior motive?**

10
11 60. In my judgment, it is plain that JC's opposition to PC's application is motivated by his
12 real belief that the best interests of the boys lie in them continuing to live with him here
13 in Grand Cayman during term time, and he appears to have genuine concerns for the
14 future of both children. JC has also expressed a concern that he seems to hold with some
15 amount of conviction, i.e. that PC is disorganized, and lives a chaotic and disorderly life.
16 He has expressed the view that PC is unable to provide the boys with the steady and
17 stable environment and routine that they need. It is not my assessment that there is any
18 ulterior motive whatsoever for JC's opposition to PC's application to relocate the
19 children to the United Kingdom and I have formed the view that he is deeply concerned
20 about the welfare of the children.

21
22 (iii) **What would be the extent of the detriment to the father and his future relationship**
23 **with the children were the application granted?**

1
2 61. In my judgment, JC would be seriously and adversely affected if the application were to
3 be granted. When his Counsel asked him what the emotional impact on him would be, his
4 answer was as follows:

5 *"I would be absolutely devastated. The quality time is golden and precious*
6 *but aside from my own heart, the reality is - I would be anxious about the*
7 *boys during term time under the care of their mother when all of their*
8 *needs will not be met fully. I would be absolutely devastated."*
9

10 62. It is clear to me that JC would be very unhappy if the children were removed from his
11 care during school term time. He also expressed the view that he does not think PC would
12 foster a good relationship between himself and the boys and gave evidence that she has
13 upon numerous occasions shouted and screamed at him that he will never see his children
14 again.
15

16 63. On the other hand, if the Court declines to grant term time residency to PC, the boys will
17 still spend 3-4 months of the year with her for the major vacations, Christmas, Easter and
18 Summer.
19

20 (iv) To what extent would the detriment to the father if the application were granted be
21 offset by extension of the children's relationship with the maternal family and
22 homeland?
23



1 64. PC gave evidence that that she has a number of family members, including her parents,
2 brother and other relatives who live 3 hours away in Cheshire. Her younger sister lives in
3 Brighton, 30 minutes away from where she currently resides and her elder sister lives in
4 West Sussex, also about 30 minutes away by motor vehicle. PC also gave evidence that
5 JC's parents live in Salisbury which is about 2 and a half hours drive away. However, as
6 JC's Counsel points out, these distances away do suggest that it is doubtful that there
7 would be much room for interaction with family members during the week. Ms. Dobbyn
8 has also referred to the fact that despite emphasizing her strong family connections, PC
9 did not take the children to spend time with them at Christmas in December 2014.
10 Instead, she took the boys skiing in Austria.

11
12 65. Additionally, the evidence is that during the seven weeks that the boys were in the UK in
13 the Summer of 2014, PC did not take them to visit any of JC's family relatives. JC also
14 gave evidence that when he and the boys were going to London over Christmas, JC's
15 father was to pick him up. PC specifically asked JC not to have his father, the boys'
16 grandfather, meet them at the gates when arriving. JC says he respected PC's wishes, as
17 the boys' mother. His father instead waited for him in a café.

18
19 66. All of this evidence inclines me to think there would not be great potential of off-setting
20 the detriment of JC not being in the boys' lives on a day-to-day basis by availability of
21 interaction with extended family members.
22



1 (v) Is the mother's application realistic and founded on practical proposals both well
2 researched and investigated?

3
4 67. On the face of it, in my view, PC's proposals seem workable and realistic.

5
6 (vi) What would be the impact on the mother of a refusal of her realistic proposal? The
7 weight placed on this will increase if the child resides with the mother.

8
9 68. The children have been residing with JC during term time since March 2014 and not with
10 PC. In my judgment, PC greatly misses living with the boys day-to-day. It was her
11 evidence that she would be very distressed and she feels an understandable sense of loss
12 at not having the children with her during term time. However, the weight to be placed on
13 the impact on PC is less, given that the boys are residing and have been so doing with JC
14 since March 2014.

15
16 69. Further, I accept that JC was the person who provided primary care when the parties were
17 together under one roof. I did form the impression that PC was somewhat random and ad
18 hoc in her approach to the children's day-to-day care, and that indeed, she has at times
19 placed a disproportionate emphasis upon the boys having fun, as opposed to providing a
20 stable, regulated environment which these children need. I accept JC's evidence that it is
21 he who has been responsible for, and coordinated the boys' day-to-day routines and
22 activities.



1 70. Ms. Dobbyn has made an interesting point in her submissions that may have some
2 relevance to this issue. Counsel posits that, having left the Cayman Islands for more than
3 a year, since March 2014, JC would be able to seek employment again in Cayman if she
4 wanted to. Further, that having secured a position/obtained a new work permit, she could
5 remain here for a further 9 years, by which time the primary schooling of both children
6 would have long been concluded. As Counsel points out, nowhere in her evidence did PC
7 state that if necessary, or if the Court refused her application, she would be willing to
8 return to live in the Cayman Islands in order to be near the boys.

9
10 71. In my judgment, all of these are matters to be put in the balance when considering the
11 weight to accorded to this particular consideration of impact on PC.

12
13 72. I now intend to examine other relevant features and the welfare checklist considerations.

14
15 **THE ASCERTAINABLE WISHES OF THE CHILDREN**

16 73. These two boys are very young, and thus, the Court will not put great weight on their
17 expressed wishes as to the future. Any views expressed to the social worker have to be
18 regarded in the light of each child's age and understanding.

19
20 74. It is clear from both welfare reports that the boys love both of their parents and if they
21 could, would want to live with them both. Of course, that is now not an option.



1 75. In her report, Ms. Bodden indicated that M, who was the older of the two boys, and eight
2 years old at the time, indicated that whilst it is a hard decision because he likes both
3 Grand Cayman and England, he said he *"kind of like(s) the way it is right now"*. He did
4 also say that he would like to try school in the United Kingdom one day.

5
6 76. R, who was five years old at the time, told Ms. Bodden that he would like to go live with
7 his mother so he can attend ski school. Ms. Bodden's report continues:

8 *"However, due to his young age, he is under the false impression that he*
9 *will be attending Ski School on a regular basis which tops an educational*
10 *program anyday. When this worker explained that he would have to go to*
11 *a school like the one he was in, he insisted he would not".*
12

13 77. M's view that he would like things to remain the way they are is to be accorded more
14 weight than R's, given their difference in ages and also the fact that R's understanding is
15 not based on the realities of the situation, since he would not be attending ski school, but
16 instead would be attending regular schooling. In any event, I do not attach great weight to
17 the expressed wishes, given their ages.

18
19 **EMOTIONAL NEEDS**

20 78. PC gave evidence along lines which suggested that the children are suffering greatly
21 emotionally since they have been parted from her and that she is more able to meet the
22 boys' emotional needs than is JC. It is clear that the boys miss PC. There also is no
23 dispute that the boys completely enjoyed spending the last several holidays with her.



1 However, it would seem to me that both parents would be well able to meet the emotional
2 needs of each of these children.

3
4 79. Both schools seemingly told the first welfare officer information which suggests that
5 neither child is emotionally distraught or devastated since their mother left the island. The
6 feedback from R's preschool was that R seemed to be getting more of his needs met in
7 his home situation since JC had left the island. However, the boys clearly miss their
8 mother. Further, as Ms. Bodden reported, M said he liked to Skype with PC but that it
9 was not the same thing as seeing her in real life. Of course it is not. However, they seem
10 to be coping and adjusting well.

11
12 80. The school report from the school counsellor over which the parties originally had
13 contentions as to whether it should be admitted into evidence before me, was ultimately
14 submitted. The school counsellor had conducted a series of confidential meetings with M
15 and had conversations with him over the whole school year since 2014. The report states
16 as follows:

17 *"M talked about missing his mother quite frequently in our initial sessions*
18 *and then less so as time went on. He talked about her a little again at*
19 *Christmas time and around his birthday and again with lots of excitement*
20 *as her visit to Cayman approached in 2015."*

21
22 81. Over the past few months M talked about missing his mum occasionally, nerf guns (toys)
23 and sea creatures frequently, and quite regularly about his social interactions at school."



1 82. The school counsellor also observed that M's mood over the last few months had seemed
2 more positive, and brighter. She opined that M felt very sad over his parents' separation
3 and his mother's departure, however, that he seemed to have adjusted well to his new
4 circumstances and remains a friendly, happy, positive boy.

5
6 83. On balance, the children seem to be adjusting well to the situation.
7

8 84. I have noted carefully PC's complaint that JC has not facilitated proper contact between
9 herself and the boys, and that in essence, she is being, and would be further marginalized
10 from the boys' life if she was not awarded term time residence at this stage. She exhibited
11 a number of WhatsApp messages which she says support her complaint. JC on the other
12 hand, has given evidence that he has a good track record of arranging frequent Skype
13 calls or other opportunities for the boys to have contact with their mother.
14

15 85. I accept JC's evidence that he has been facilitative and that he has not stood in the way
16 of contact between the boys and their mother. Even looking at the WhatsApp messages, it
17 seems to me that at times PC was being unreasonable and overly demanding and the
18 messages themselves show the efforts made by JC to arrange Skype and other contact,
19 particularly having regard to the time difference between the Cayman Islands and
20 England.
21

22 86. I reiterate that I am of the view that both parties are able to meet the emotional needs of
23 the boys.



1 **PHYSICAL NEEDS**

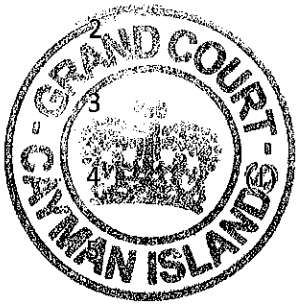
2 87. In terms of physical needs, it appears to me that JC is in a better position to take care of
3 the children's needs, given his relatively greater and more stable income and financial
4 situation. He has also been the one since March 2014 meeting the children's needs
5 without any financial contribution from PC.

6
7 **EDUCATIONAL NEEDS**

8 88. As regards educational needs, I agree with Ms. Dobbyn's submission that JC is by far the
9 parent who has shown the most active interest in, participation and support of the
10 education needs of the boys. This is in my view borne out by the schools' reports to
11 Social Worker Ms. Barnes. A few examples will suffice in relation to Ms. Barnes'
12 evidence on the schools' feedback:

- 13 (a) The only signatures appearing on M's school mandated reading record for him
14 were those of JC;
- 15 (b) M's school had met with both parties on more than one occasion due to his
16 learning difficulties. PC had been seen approximately three times at the school
17 since M enrolled and appeared to the school to be unaware of the responsibility of
18 parenting where education was concerned;
- 19 (c) JC over a period of several weeks took his lunch hour to do homework with M at
20 the school;
- 21 (d) The school records showed JC attended parent evenings and PC did not;





1 (e) PC never visited the school uninvited to check on her son. Since she did not come
2 to the school on her own accord she was therefore not well known to them and
3 they were more familiar with JC;

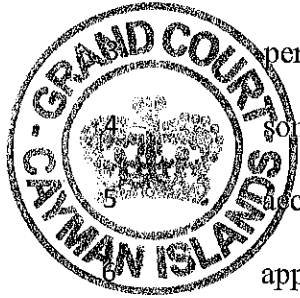
4 The school noted that PC did not seem to realize how far behind M was with his
5 work. They observed that PC did not seem to be aware of M's difficulties
6 educationally and may be more focused on M having fun;

7 (g) R's preschool was of the view that PC did not seem organized, and JC seemed
8 more stable, and that while PC was noted to have "*no lack of love*" they did not
9 consider her stable, and thought she could benefit from parenting classes;

10 (h) Both schools reported independently of each other that they were pleased with
11 JC's level of participation and interest in the boys' education.
12

13 89. PC justified not going to the school during the day by saying that her fixed lunch hour
14 between 12 and 2PM did not allow her to do so whereas JC had more flexible hours.
15 Whilst PC gave evidence that was sometimes inconsistent as to whether or not she was or
16 was not working during the period November 2013 to March 2014, it does appear to me
17 that there was plainly some period within that time span when she did not have a job and
18 she still does not seem to have thought it fit to visit the school during that time period,
19 despite the challenges that were being experienced by M.
20

21 90. Perhaps the most telling matter is that PC does not appear to have contacted M's school
22 at any point during the school year between September 2014 to May 2015. In addition, in
23 her first affidavit dated 19 June 2014 PC made no specific reference to M's educational



1 challenges or special needs, and included no details of M's current school or educational
2 performance. She also made no reference to R's pre-school, educational needs, or
performance. I agree with Counsel for JC, that the entirety of PC's evidence about her
3 sons' educational needs was four short paragraphs which focused on her arranging for
4 acceptance at primary schools in Sussex. Although it must be said that the schools
5 appeared to be good schools, based upon the Ofsted reports exhibited, the evidence is that
6
7 PC did not go and visit the schools themselves.

8
9 91. JC was criticized by PC as to his handling of M's psycho-educational assessment, it
10 being said that he did not provide funding when required for this test, and that this has
11 hindered M. However, JC in cross-examination was insistent that financial considerations
12 played no role in the decision to delay the assessment. Both he and Ms. Bodden gave
13 evidence that the assessment was only delayed after June 2014 on the recommendation of
14 M's school that they wanted to wait to do the assessment when M was more settled
15 emotionally, after a time of such transition and change, so that the results would not be as
16 likely to be skewed or less reliable.

17
18 92. JC was also criticized for saying, in the face of the school reports showing that M
19 continues to struggle in school, that M is making good progress. It is in my judgment not
20 irreconcilable that JC could hold the view that M is making good progress yet the school
21 has expressed a concern that M has still not caught up with his peers, despite
22 intervention. I agree with Ms. Dobbryn that in that regard JC does appear to be taking a
23 long view of things, or in her words, a "holistic" view, whereby he is not limiting the

1 factors to be considered to the grades or matters set out in the school reports. Further, the
2 school counsellor does appear to be expressing the view in her report that there has
3 overall been general improvement in M seen by her over the school year.
4

5 93. As regards M's assessment, in my view it does appear as if the main reason for the delay
6 of the assessment was in order to allow M to settle down and in order to do the testing at
7 a more optimum time. It is common ground between the parties that the assessment is
8 necessary to identify precisely what educational challenge and learning difficulties M is
9 facing and also that the assessment should take place as soon as possible. PC's position
10 was that the assessment could just as well take place in the UK, and that the relocation to
11 England would make no difference since as M's mother she would not be a new factor in
12 his life. JC and Ms. Bodden's shared the view that it would be best if the assessment took
13 place in the Cayman Islands, where M is surrounded by the familiar and where he now
14 appears fairly happy and settled. It was Ms. Bodden's opinion that if M were to relocate
15 to the UK, the assessment would need to be delayed until he had adjusted to all of the
16 new circumstances.
17

18 94. I agree that it appears best for the assessment to be performed here in the Cayman
19 Islands. In my judgment, this would be a factor pointing away from an order to relocate.
20

21 95. By all accounts R is thriving and doing very well at school, having regard to his school
22 report. R is doing very well in his studies and is described as "*an absolute pleasure to*
23 *teach*" and his behavior is termed "*impeccable*". Although it seems to me that R may



1 well perform well and adjust quickly, there is no gainsaying that he is thriving in his
2 familiar environment, with his current circle of friends and under the care of his father.

3
4 96. All told, I am of the view that JC is plainly more able to meet the educational needs of the
5 boys than is PC.



6
7 **OTHER RELEVANT PERSONS**

8 97. JC gave evidence in his affidavit sworn in June 2014 that after he had moved out of the
9 matrimonial home on 9 July 2013, he met EG and has been having a relationship with
10 her. His evidence is that EG is from the United States and has been working in the
11 Cayman Islands as an Electrologist for the last six years. EG has a thirteen year old
12 daughter, he continued, and is a wonderful and devoted mother. At that time, JC stated
13 that they were in the early stages of their relationship and saw each other once a week.
14 His evidence was that he and EG did not cohabit and had no present intention to do so.

15
16 98. However, things have moved on. In his affidavit filed 8 June 2015, JC states that EG
17 moved in to live with him in the second week of January 2015 at the former matrimonial
18 property where the boys and he reside. He states that the boys first met EG in December
19 2013 after discussions and agreement with PC. He indicates that EG and the boys have
20 developed a close relationship. It is JC's evidence that the decision to cohabit was not
21 taken lightly and that the boys' interests were and are always at the very forefront of the
22 decision. He states that this included having discussions with both boys about their



1 feelings. JC indicates that the boys have been and were still very excited about the
2 change.

4 99. JC also gave evidence that EG spent several years working at a preschool in the United
5 States and he opines that she is an entirely suitable and appropriate adult for the boys to
6 interact with.

8 100. He states that EG is cognizant that PC misses the boys and is nothing but respectful to PC
9 and her relationship with the children.

11 101. EG herself gave evidence. She indicated that she has a fourteen year old daughter who
12 recently returned to the United States to attend secondary school there. She indicated that
13 she is involved in a stable and committed relationship with JC and she has full intentions
14 to stay in the Cayman Islands with JC for the foreseeable future. EG indicates that she
15 has a good relationship with the boys and that she is as committed to the boys' happiness
16 and well-being as much as she is committed to JC. It is her evidence, which I have
17 accepted, that she first met the boys after JC consented to this.

19 102. EG also spoke of having discussions with the boys and JC before cohabiting. She also
20 states that since moving in, she has taken on additional responsibilities, subject to her
21 work schedule. She regularly collects the boys from school on Wednesday and Friday
22 afternoons. On those days the boys as a result do not have to attend the afterschool
23 programme and in her estimation, they are happy not to have to do so.

1 103. It is EG's evidence that on those afternoons, she and the boys spend further quality time
2 together on a variety of activities, including, but not limited to gardening, cooking,
3 homework, drawing and crafts. The boys also have the opportunity to have their friends
4 over to play during the week. EG indicates that she has also assisted in hosting the boys'
5 birthday parties and family dinners.

6
7 104. EG states her view that the boys have been completely comfortable with the cohabitation
8 arrangement and have benefited from it.

9
10 105. Ms. Bodden has confirmed that EG and the children get on very well, and that EG has a
11 good relationship with them. In her evidence reporting on her positive findings about the
12 home visits to see JC and the boys, Ms. Bodden said that what she observed shows that
13 JC and EG keep a tidy, organized environment for the boys. Importantly, Ms. Bodden in
14 cross-examination by Mr. Holland stated that sometimes continuing in a marriage can be
15 more detrimental to children than not maintaining the marriage. She also stated that
16 whilst moving EG into the home may be viewed as premature in that the matrimonial
17 proceedings have not yet come to an end, at the same time, those proceedings can be
18 lengthy, and quite often take 2-3 years to complete. She said that she would not see any
19 issue with this development if the person moving in was a positive influence and addition
20 to the home environment, and where, as here, that person was having a steady, regular
21 relationship with JC. She indicated that in her view the same was to be said if PC had a
22 significant other and wanted to introduce him to the boys, since the parties do have a
23 right to move on with their lives.





1 106. In my judgment, EG appears to have been a positive addition to JC's household and
2 appears well capable of supporting and adding value to JC's efforts and provision of care
3 in his important role of parenting the boys. I should just state that whilst EG appears to be
4 a positive addition to JC's family unit, I consider JC well able to provide for the
5 children's physical, emotional, educational, nurturing and other needs, on his own and in
6 his own right.

7
8 **ANOTHER RELEVANT CONSIDERATION - JC'S APPLICATION FOR PERMANENT**
9 **RESIDENCY**

10 107. As stated earlier in this Judgment, JC has applied for permanent residency. He did so in
11 December 2014. In his Judgment in July 2014, on the evidence then before him,
12 Henderson J. had expressed the view that JC's prospects of obtaining permanent
13 residency were "...at least doubtful". Henderson J. had also stated that JC could apply
14 for a permanent order when he obtains permanent residency. JC's actual proposal here is
15 for a continuation of the present situation.

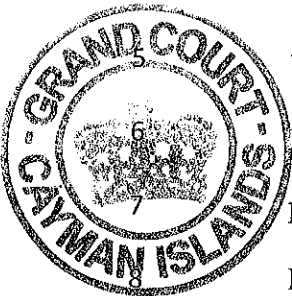
16
17 108. PC and her Counsel have criticized JC because he waited until December 2014 to apply
18 for this important change in status. JC's evidence was that he deferred filing his
19 application until December 2014 not because he was ambivalent about whether or not to
20 make the application, but because he was given clear advice from CML that it would be
21 best if he waited until his work permit was about to expire. JC cited three reasons for this
22 advice. Firstly, that it meant he could remain in the Cayman Islands during the unexpired
23 portion of his work permit, secondly, he was thereby afforded extra time to prepare all

1 the necessary supporting documents for the application, and thirdly, it allowed certain
2 ambiguities in the points system to be resolved by the relevant authorities.

3
4 109. PC's Counsel has expressed the view that, despite JC's confidence that he will
5 comfortably secure permanent residency, there are no guarantees. Further, reference was
6 made to the fact that EG now lives with JC and her own term limit is August 2016. EG
7 gave evidence that she and her employer are in discussion about her applying for
8 permanent residency. She stated that she does not have a "100% plan right now" in the
9 event that her Permanent Residency Application was to be refused. Since her evidence
10 was that she and JC intend to move forward in life together, and the evidence of both JC
11 and EG is that they are in a stable and committed relationship, the argument was made on
12 behalf of PC that there is no real certainty as to what the future will bring in terms of
13 whether JC and EG will be able to, or even intend to remain in the Cayman Islands for
14 the long-term.

15
16 110. CML has submitted a report showing that they expect JC to receive 119 points, well
17 above the threshold of 110 points required to obtain permanent residency. A letter from
18 Nicolas Joseph of HSM Chambers, a Specialist Immigration Attorney has been exhibited,
19 in which Mr. Joseph concurred with CML's opinion, and expressed "a high degree of
20 confidence" that JC will be granted permanent residency and expects him to be awarded
21 119 points.





1 111. In my judgment, it is not necessary for me to immerse myself in a detailed assessment of
2 JC's chances of obtaining permanent residency. Suffice it to say that, based upon the
3 evidence and opinions before the Court, it now appears that JC has reasonable prospects
4 of succeeding in obtaining permanent residency. CML's evidence also, importantly for
5 the purposes of the relocation application now under consideration, confirms that JC has
6 permission to continue working whilst his Permanent Residency Application is being
7 processed. It is common ground between the parties that the consideration of Permanent
8 Residency Applications has typically been a long, drawn-out process. So there does not
9 appear to be any likelihood of JC being required to leave the island imminently. Further
10 JC appears to be in very good, and highly valued, employment here in Grand Cayman;
11 his employers are fully supportive of his Permanent Residency Application. Although
12 PC's Counsel did attempt to probe the issue, there really is no evidence before the Court
13 that JC's continued and long-term employment as financial controller of his employer
14 company is at any risk of any kind.

15
16 112. I agree with Ms. Dobbyn's submission that since Henderson J. expressed the views which
17 he did in his July 2014 Judgment, there have been significant changes. Firstly, JC has
18 now applied for permanent residency, secondly, the points he would receive for his
19 history and culture test are now a matter of record (JC earning 17.5 points out of a
20 maximum 20 points) and thirdly, new legislation has now been published, or has now
21 come into effect, including changes to the points system. JC and his advisors consider
22 that these changes have significantly improved his position, notably to do with the factors
23 of local investments, and financial stability.

1 113. From the point of view of assessing the welfare of the boys, I am of the view that, based
2 upon the evidence before me, JC appears to be in a stable position here in Cayman for the
3 short-term, with good prospects in relation to the long term.
4

5 114. I am not in a position to assess EG's prospects of obtaining permanent residence in any
6 realistic manner. However, in my judgment, given the totality of the evidence, and JC's
7 evidence as to the priority he places on having the boys live with him during term-time
8 here in Grand Cayman, that is not a factor that need concern the Court at this time. I have
9 to deal with the realities as they present themselves now, and am not allowed to speculate
10 as to the future. I have to make the best decision that I can in this difficult situation as it
11 presents itself and in the circumstances extant at the time.
12

13 **LIKELY EFFECT OF ANY CHANGE IN CIRCUMSTANCES ON THE BOYS**

14 115. In my judgment, the boys are at a tender and delicate stage of development. They appear
15 to have adjusted well to the inevitably difficult circumstances that arise when parents
16 separate, and further, live in different places, far away from each other. JC has and is
17 providing a stable, nurturing environment for them. In my view, any change in the boys'
18 circumstances, of such large proportions as represented by a move to England to live with
19 their mother, in the absence of their father, would represent a major disruption and
20 dislocation in the children's lives.
21



1 116. Although both boys have visited England, indeed whilst the parties were still married,
2 and both parties are in fact UK citizens, the boys have known no place other than Grand
3 Cayman as home.

4
5 117. Additionally, in relation to M, I am of the view that because of his special educational
6 needs and the current need for assessment and evaluation of those precise needs, which I
7 think can best be carried out here in Cayman, it would be detrimental for M to be moved
8 now. It would also likely affect M adversely from the point of view that it might cause
9 delay in having the evaluation done if the necessary period of "wait and see" and
10 adjustment time is followed, and if not followed and the assessment is carried out, this
11 might possibly cause the assessment to be unreliable or skewed. I agree with Ms.
12 Dobbyn's submission that the natural resilience and adaptability of young children does
13 not mean that it would mean that it would be in their best interests to be deprived of the
14 stability and continuity they do have in their lives, when it is far from clear that any
15 change would be for the better.

16
17 **ANY HARM THE CHILDREN ARE SUFFERING OR MAY BE AT RISK TO SUFFER**

18 118. There is no evidence that the children are presently suffering or have suffered any harm.
19 However, I am of the view that moving M at this time may cause harm in the sense that it
20 may detrimentally affect his special educational needs.

21
22 119. In addition, I have noted with some concern JC's evidence that PC has told him that if the
23 children are ordered to live with her during term time he will not see them again. I found

1 JC credible on this score. His evidence that PC would not even allow his father to see the
2 children when they were coming through the airport in London with JC for hand over to
3 spend time with her, supports his views and concerns. I am not on balance convinced that
4 PC would carry out such a threat, but I am also not satisfied that PC would foster, or do
5 as much as JC has, in fostering a continuing relationship with JC if I were to order term-
6 time living with PC. I believe that a whole-scale, sudden disruption or withdrawal, or
7 potential or threatened, whole-scale sudden disruption or withdrawal would not at all be
8 in the best interests of these boys.

9
10 **HOW CAPABLE EACH PARENT IS, OF MEETING THE BOYS' NEEDS**

11 120. I have expressed the view that both of these parents are capable of meeting a number of
12 the boys' needs. However, in my judgment, JC is by far the parent most capable of
13 meeting all of the boys' needs, including physical, educational, emotional and other
14 needs.

15
16 **RESOLUTION**

17 121. It is not easy for a loving parent to hear that there will not be an order for them to have
18 their children residing with them for the majority of the year. I am conscious of how
19 much the ruling on this application will affect the parties, particularly the parent who will
20 not be ordered to have term-time residence. Nonetheless, as Headley J. said in *Re Y* in
21 the passage that I quoted from earlier, "... but decision there has to be." The effect of the
22 decision will of course be tempered by the fact that these parties, admirably conscious
23 and ad idem that they both love their children and of the needs the boys have to see both

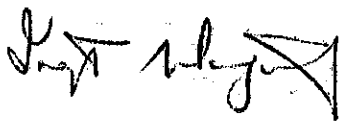


1 of them, have agreed to a shared residence order, and have agreed that the other parent
2 will have the children reside with them during the holiday periods, which constitute
3 considerable blocks of time, particularly the Summer break.

4
5 122. Having carefully considered all of the evidence, the welfare check-list and guidance from
6 the authorities on relocation, I was satisfied that the welfare of M and R was met by PC's
7 application being refused. The boys seem well settled in their lives in Cayman and JC
8 plainly has provided reasonable routines and a positive environment in which the boys
9 can grow and develop. EG appears able to provide support to JC in that role. There would
10 be a detrimental impact on their time and potential relationship with their father, and
11 possibly irreparable harm, if the boys were to relocate to the UK and go to live with PC.

12
13 123. On the other hand, the boys will continue to spend considerable periods of time with PC
14 during vacation periods and JC and PC must continue to make the best use of the
15 technology currently available, such as Skype and other means, to allow the boys to have
16 regular and consistent contact with their mother.

17
18 124. I trust that both parents will make every effort to make this Order and its arrangements
19 work, as I am satisfied they both love the boys dearly, and are genuinely concerned to see
20 that their children thrive and flourish.

21
22 

23 **The Hon. Justice Ingrid Mangatal**
24 **JUDGE OF THE GRAND COURT**

