

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

**CAUSE FAM 300 OF 2020
(Formerly JC 0020/2014 and SMA 0025/2020)**

BETWEEN

SE

APPLICANT/RESPONDENT

AND

AB

RESPONDENT/APPLICANT

Before: Hon Justice Gunn (Actg)
Appearances: Miss S Brooks QC for SPE
Mr G. Hampson and Miss Y Mullen for AJB
Date of Hearing: 23-25 June 2021 and 1 July 2021
**Draft Judgment
circulated:** 20 July 2021
Date of Judgment: 30 July 2021



Headnote

***Family Law – Section 10 orders – discharge of orders on child’s 16th
birthday - making of orders beyond age 16 – exceptional
circumstances***

JUDGMENT

1. SE and AB are parents of T, who was born on 30 December 2004. I shall refer to the parties as “Mother” and “Father” respectively. The parties were never married and separated in 2007 when T was 2 years old. T is now 16 years and 7 months old. Throughout T’s life he has resided in the Cayman Islands where both his parents reside also. He has been enrolled in local private schools his entire school life. T has been attending Cayman International School (“CIS”) for the past 8 years, and just completed Grade 9. Mother is now desirous that T completes his education in the UK at ACS Hillingdon (“ACS”) in England. Father opposes this proposal, wishing for T to complete his studies at CIS. This is Father’s application for a prohibited steps order (“PSO”) prohibiting

Mother from removing T from the jurisdiction and a linked application for the variation of the financial provisions order (“FPO”) in the event that his application for a PSO is unsuccessful. Mother seeks a declaration that she is permitted to remove T from the jurisdiction and a variation of the FPO to reflect her increased cost of living in the UK.

2. This application is of some urgency as Mother wishes to travel with T to the UK on 12 August for T and her to commence their studies in the next term.



History of proceedings

3. The first proceedings relating to T were in 2014 when Father applied for parental responsibility, a contact order and a prohibited steps order preventing Mother from removing T from the jurisdiction. These proceedings were filed with the Summary Court and resulted in a consent order being made on 9 September 2014 that –
 - (i) gave Father parental responsibility
 - (ii) settled T’s residence with Mother and contact with Father;
 - (iii) arranged the timely delivery of T to school and other activities;
 - (iv) made financial provisions; and
 - (v) prohibited either parent from removing T from the Cayman Islands without the other’s consent.
4. In April 2015 father filed a fresh application in the Summary Court for a residence order in his favour. That application was abandoned in September 2015.
5. In February 2018 father made an application in the Summary Court for an order permitting T to travel to Florida with Father which was granted.
6. In April 2019 Mother applied for an order varying the 2014 consent order to allow T to relocate with her to the UK. This application was also made in the Summary Court. These proceedings were adjourned sine die when Mother abandoned her application.

7. Mother filed a fresh application in August 2020 for a specific issue order for T to attend school in the UK and a variation (increase) of the FPO. In November 2020 Mother advised the court that she is only pursuing variation of FPO as she believed the existing PSO would automatically be discharged on T's 16th birthday in December 2020 thus lifting any restrictions on relocation.
8. On 2 December 2020 Father filed an application for a PSO prohibiting T's relocation, extension of the residence/contact order to age 18, variation of the FPO and a transfer of proceedings to the Grand Court.
9. On 8 December 2020 the Summary Court transferred the proceedings to the Grand Court. The matter was first mentioned in the Grand Court on 10 December 2020. Directions were given and the matter was set down for hearing in June 2021.



The Law

10. Pursuant to section 2 of the Children Act (2012 Revision) ("the Law") a "child" means a person under the age of 18.
11. One of the first issues to be raised was the status of the 2014 order given that T is now 16 years old. Mother submitted that all orders, save for the FPO expired on T's 16th birthday and, consequently, there is nothing preventing T from relocating to the UK. Father argued that the court should make a fresh PSO once again prohibiting Mother from removing T from the jurisdiction. Father's argument raises for the first time in this jurisdiction what powers the court has to make section 10 Children Act orders ("section 10 orders") after a child's sixteenth birthday and in what circumstances it should do so.
12. Section 10 of the Law sets out the various private law orders the court can make in relation to children, those being residence orders, prohibited steps orders, contact orders and specific issue orders. A "residence order" settles the arrangements to be made as to whom a child is to live. A "prohibited steps order" is an order prohibiting a parent from taking such steps as they would normally be permitted to take in meeting his or her parental responsibility for a child without the consent of the court. A "contact order" is an order requiring the person with whom a child lives

to allow the child to visit or stay with the person named in the order or for that person and child to otherwise have contact with each other. A “specific issue order” is an order giving directions for the purpose of determining a specific question which has or may arise in connection with any aspect of parental responsibility for a child.

13. Section 11(4) provides that

“A court shall not make any section 10 order which would have effect for a period which will end after the child has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional”.

14. Section 84(10) further provides that

“A section 10 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of 16, unless it is to have effect beyond that age by virtue of section 11(6).”



15. Notably there is no subsection (6) of section 11 in the Law. The only relevant provision in section 11 is subsection (4). On review of the UK Children Act on which our Law is based, their equivalent of section 84(10) (s.91(10)) refers back to their equivalent of section 11(4) (s.9(6)). The logical inference is that the reference to subsection (6) in section 84(10) is erroneous and the drafters intended to reference subsection (4) instead.

16. By virtue of section 11(4) and 84(10) all section 10 orders expire on the child’s 16th birthday unless the court finds that, at the time of making the order, there are exceptional circumstances. As a consequence of these provisions the residence and contact order and PSO made in 2014 came to an end on T’s sixteenth birthday on 30 December 2020.

17. Section 11(5) provides that -

“A court shall not make any section 10 order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional”.

18. By virtue of this provision, the court has the power to vary or discharge a section 10 order previously made to have effect beyond the child's 16th birthday (exceptional reasons having previously been found to exist) or make a fresh order only in cases of exceptional circumstances.
19. The E&W Court of Appeal in *Re C (Older Children)* [2015] EWCA Civ 1298 (at paragraph 2) observed-

*"A further and central element of the situation is that the children of this family are in fact young persons, being boys now aged 17 and 15. The case illustrates the particular caution that should be felt by any court seeking to make arrangements for children of this age. In the first place, it is likely to be inappropriate and even futile to make orders that conflict with the wishes of an older child. As was memorably said in *Hewer v Bryant* [1970] 1 QB 357 in a passage approved in *Gillick v Norfolk and Wisbeck Area Health Authority* [1986] 1 AC 112: "... the legal right of a parent to the custody of a child ends at the eighteenth birthday and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, the older he is. It starts with a right of control and ends with little more than advice." Nowadays, the 'no order' principle goes even further and requires the court to justify making any order at all, regardless of whether it is in support of the child's wishes or in opposition to them. With an older child, the court's grasp cannot exceed its reach, any more than a parent's can, and attempts to regulate something that is beyond effective regulation can only create a forum for disagreement and distract the family from solving its own problems."*



20. Section 10 orders are usually expressed in mandatory terms vis-à-vis the parents, but from the standpoint of the child they are not mandatory. Section 10 orders are based on the premise that younger children will fall in with adult rules. However, the law recognises the common experience that older children can in the end vote with their feet.
21. It is for the applicant of the section 10 order, in this case Father, to establish exceptional circumstances.

22. Mr Hampson, for Father, has drawn my attention to the Explanatory Note to the UK Children and Young Person Act 2008 which cited learning disabilities as one example of an exceptional circumstance.
23. There are no local cases on what constitutes “exceptional” in the context of the Law. Mr Hampson has provided one case from Australia **Martyn v Martyn [2020] FamCA 526** in which the court held that the COVID-19 pandemic was an exceptional circumstance. As to what constituted “exceptional” the court stated (at paragraph 42) that -

“The expression “exceptional circumstances” has frequently been interpreted in a number of different contexts. In ordinary usage the expression “exceptional” means “unusual or out of the ordinary” or unusual or extraordinary. It has been said that:

We must construe “exceptional” as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or even very rare; but it cannot be one that is regularly, or routinely, or normally encountered.”



24. The court’s observations are consistent with the use of the word “exceptional” in many other areas of the law also. I find that “exceptional” in the context of section 10 orders means there must exist some unusual, uncommon, out of the ordinary, special or extraordinary characteristic which significantly impacts the welfare of the child and which necessitates the making of a section 10 order to prevent harm to the child or to promote their welfare.
25. Father’s application is framed as one for a Prohibited Steps Order prohibiting the removal of T from the Cayman Islands. Likewise it could be framed as an application for a specific issue order determining where T should study or a residence order settling where T should live. They all lead to the same question: should T be allowed to relocate to the UK? Consequently, the considerations applicable in relocation cases apply here. Williams J in **B v B [2013(1) CILR 271]** set out the applicable principles (at paragraph 88-92) which were approved by the Court of Appeal (at [2014 CILR 234]) -

“88 The first and overarching principle must be that the child’s welfare is paramount. It takes precedent over any other consideration.

89 The next principle is that the court should have regard to the guidance handed down in case law when considering what factors are to be weighed when determining what is in the child’s best interests. It is important to note that the guidance should no longer be confined by labels given to the category of care...

90 When the court considers the guidance, the following questions, in a case such as this involving an application made by the mother, should ordinarily be raised and addressed:

- (i) Is the mother’s application genuine, in the sense that it is not motivated by some selfish desire to exclude the father from the child’s life?*
- (ii) Is the father’s opposition motivated by genuine concern for the future of the child’s welfare or is it driven by some ulterior motive?*
- (iii) What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*
- (iv) To what extent would the detriment to the father, if the application were granted, be offset by extension of the child’s relationship with the maternal family and, if applicable, homeland?*
- (v) Is the mother’s application realistic and founded on practical proposals that are both well researched and investigated?*
- (vi) What would be the impact on the mother of a refusal of her realistic proposal?
The weight placed on this will increase if the child resides with the mother.*

91 Another principle arises from the fact that the circumstances in each case vary infinitely and the court should not, therefore, be unduly fettered in its approach when deciding what is in the best interests of the child. The court should regard the guidance, which can promote consistency, as helpful in determining the best interests of the child, but not feel that it has to be applied rigidly.

92 Finally, there is no legal principle, or even legal or evidential presumption, in favour of an application to relocate by a primary carer.



26. Section 3(5) of the Law provides that “where a court is considering whether or not to make one or more orders under the Law with respect to a child, it shall not make the order or any orders unless it considers that doing so would be better for the child than making no order at all”.

Mother’s motivation for relocation

27. Mother asserts that her primary motivation for relocation is to provide T with better education and that her opportunity to study at an UK University was secondary. She gave an account in evidence as to how the proposal of the relocation came about –

“I used to watch lots of Vlogs on London. [T] asked me whether I like London. I said I do. He said he never travels with me. I asked whether he wants to go and he said yes. I asked [Father] if I could take him. That was before 2017. Then in 2017 I asked whether I could take [T] to London. [Father] refused in 2016. I asked to take [T] to New York and he agreed. In 2017 [T] asked me to go on another trip. I said okay. I told [T] I was travelling to London with friends in 2017 and he got slightly upset with me. I said I will find out from your dad if you can come with me. That is when I discovered the University. I said to T that mom found a University. I always has a passion about nutrition. University required that I be resident in the UK. I hadn’t applied for University. I mentioned to [T] that I had to be resident. I said I don’t know how you would feel about that. He said “I want to go with you mom. Can I go?” I said on that trip to London I visited the University. [T] encouraged me to apply. He feel like he is happy for me. I told [T] I am not sure what that means for you. He said “I want to get out of here. I want to live in London.” This was before [T] had been to London. He said “Please apply. I want to go.” I said I wasn’t sure if I was eligible. I wrote and it took a couple of months and I found out at the end of 2017 that they considered my application and I got an offer. That is when he wrote a letter to his dad. I was waiting on [Father] to give me an answer. He refused my letters but that is when I seek legal guidance in 2017. I mentioned to [T] that I found a school for [T] that he would have to visit. I asked [Father] whether I could take [T] to London and



he refused. He shut down ACS Cobham. When I found ACS Hillingdon I showed [T] and asked him whether he wanted to go there and he said “Yes. Yes.” [Father] refused so I went to [Brooks and Brooks Attorneys] to get help taking [T] to London. He visited the school in June 2018 ... When I planned the London trip [T] insisted on seeing the school.”

28. Mother admitted that she did not tell T that Father had refused her request for relocation, instead keeping his hopes up by saying that they were in discussions.

29. The correspondence between the parties sheds some more light on Mother’s motivation. In October 2017 Mother wrote to Father in the following terms –

“I am writing to let you know that I’ve applied to the University of West London (UWL) to pursue a Bachelor of Science Degree in Nutrition for January 2018 entry. However, despite of my efforts to have this arranged at an earlier date, the university just recently contacted me to finalise my placement and I expect to receive written confirmation from then the 1st week of November, which I will forward to you as soon as its available. They’ve also advised that I am expected to be settled in the UK on or before the course commences.

For that reason, I would like to say that Nutrition has always been a strong passion of mine. As a result, it has led me to the decision to pursue a career in this field and having researched a pathway to facilitate this; I’ve learnt there is no University or College in the Cayman Islands that offers a BSc Degree in Nutrition...

Further, after careful consideration, I not only believe that this opportunity will enable me to better myself but also provide [T] with the best opportunities for the future.”

30. Mother went on to describe the prospect of relocation as being temporary. A 5-year move to complete her course, would have taken T through to grade 11, which is one year off graduation. It was only days before this letter to Father that Mother had made inquiries with ACS as to availability of spaces for T for January 2018. Father replied with a flat refusal to consent to relocation, citing amongst many reasons, that a change in school would be detrimental to T’s education. Mother wrote a further letter on 29 November 2017 –



“As you know I have always wanted to further my studies, which again the Social Enquiry Report confirms, and now that I have been given the opportunity to do so, I really do not want to pass this up as I will probably regret that decision for the rest of my life.

However, despite the passion which I have to further my education, it is with even more passion that I love our son and I am determined not to abandon him as you indicate in your letter, as his interests comes first with me.

...

In closing I would note that I only knew that I was accepted to further my education on the 9th of November 2017 and with [T]’s welfare in mind, I almost immediately provided you with a copy of the acceptance and put forward my initial proposal to you for him to accompany me to the United Kingdom whilst I am pursuing my studies, when he would also be pursuing his studies.”



31. There is further insight into mother’s motivation from Mother’s C-1 filed for the application for a SIO in April 2019. Mother wrote –

“The Applicant has been offered a position at University in the UK to further her studies and the child has expressed his wish to accompany her and complete his High School there”.

32. In her affidavit in support Mother stated –

“3. I make this Affidavit in Support of my application as outlined in the Summons filed herein on my behalf on 19 April 2019 to have [T] attend school at ACS Hillingdon International School ... commencing 19th August 2019.

4. If this application is successful, I would also be accompanying [T] as I have been accepted to study in the United Kingdom. [T] would in fact be residing with me during his time in the United Kingdom if this application is successful.”

33. Mother’s evidence was that she did not reach out to potential schools for T until after she had been offered a place at UWL.

34. Mother has explained that if the court prohibits T from relocating she will cancel her plans to relocate and remain in Cayman with T.

35. From the forgoing I am satisfied that Mother's primary motivation for this application is her own desire to pursue her studies in the UK and that secondary to that she wishes for T to continue to reside with her. Putting it differently, T's educational betterment is not her primary reason for the relocation.

36. The question arose as to whether Mother could pursue the same qualification through distance learning. Mother's offer letter from UWL does confirm that her position on the BSc course is conditional on her being a resident in the UK. It is a 5-year course. Father asserts that Mother could do the course through distance learning thereby avoiding the need to relocate until after T has graduated from High School. He relies on emails between UWL and Paternal Grandmother to support this proposition. What those emails confirm is that, instead of joining the BSc programme immediately, Mother could first complete the DipHE in Nutritional Therapy by distance learning over 4 years before taking a final additional year on the BSc course which would be the point at which Mother would have to be located in the UK. Mother has not spoken as to why she has not pursued that option and instead had chosen to repeatedly defer her place on the BSc course. Her position is, simply put, that the BSc course is her course of choice and that it requires her presence in the UK throughout; it is a course designed for mature students who are working or caring for a family but they must be resident in the UK to qualify for the course.

37. I am satisfied on the evidence before me that there is an option for Mother to achieve the same qualification by another route which would allow her to remain in Cayman with T until he finishes High School and, consequently, the court prohibiting T from leaving would not, in the long-term, be detrimental to mother's plans.

Father's motivation for the application

From the first letter exchanges Father has opposed the idea of T moving to the UK. In his first letter her set out his objections in some detail: -



“[T] is settled in school and to move him, away from the curriculum, friends and established teachers would not (on my view) be best for him.

This is even more so when you clearly are proposing to send him to a boarding school in the UK – [T] has never lived in the UK let alone boarded there and the change for him might be very difficult indeed. I don’t think he has any concept of what boarding school would be like.

Saying [T] can attend ACS Cobham to give an “easy transition” is not a conclusion I agree with at all. [T] will likely struggle with such a sudden transition. He is used to seeing one or either parents on a daily basis, his grandparents and cousins on a regular basis, and I do not see any real thought and consideration for [T] in your proposal as it relates to him and his well-being. I honestly don’t think that it takes into account sufficiently his educational or other needs.

You have no plan of where to live or how you will provide for [T] and this makes any plan hard to agree to.

[T] has already missed a year of school (having been held back a year) due to his consistent lateness while in your care (about which there has already been litigation brought by me). He cannot (in my judgment) risk being put at further jeopardy with his education, especially as his last report shows that he is still arriving at school late (when in your care) an unacceptable number of times. This diminishes my level of trust that if [T] was in your care in the UK that his needs would be addressed. That is not happening with him now in Cayman.

The UK school says that there is space for [T] in grade 8, however (and this is just an observation [T] is currently in grade 6.

As almost all [T]’s schoolwork is currently monitored by me, I’m afraid that at this time I don’t have faith that you will be able to cover all his needs in this regard especially as you will be studying and working yourself. You will have little time for [T]’s needs.

I do not believe that the cost of boarding school in the UK can in reality compare with the cost of day school in the Cayman Islands as you allege. In this regard I think your plan is lacking in concrete detail.

These are but some of my concerns and objections and there are many more that I do not set out specifically here. However the overriding objection is that that the move (in my considered and careful view as [T]’s father) is not in [T]’s best interests. I thus do not agree that [T] should relocate with you to the UK.”



In his second letter refusing consent Father stated –

“...What you propose/say is simply not in [T]’s interests at this time. [T]’s education has already been compromised enough as I have previously set out. I do not accept that going to the UK or attending school in the UK is in his best interests and I repeat that going to the UK or attending school in the UK could be difficult enough for him, let alone then having to cope with a different education system. I am certainly not in agreement to sending our son to boarding school at the age and stage of development that he is, and what he has been used to. I don’t think that he has any informed view of what life would be like for him.”



Father has maintained his objections on the grounds of education throughout these proceedings. I am satisfied that father’s main motivation for his application is to ensure T’s educational progress is not undermined. It is noteworthy that despite education being Father’s primary concern, Father admitted that he has done little research into ACS and the services it offers. This suggests Father is close-minded about his son’s wishes to which I will now turn.

T’s wishes and feelings

38. T has been asked by social workers on three occasions how he feels about a move to the UK with his mother. In 2014, when T was 9, Miss Wynter-Young reported that -

“...[T] made it clear that he did not want to be in the midst of the conversation between his parents. He declared that he was neutral. He spoke fondly of his 8 year old sister with whom he said he gets along well. He said, “She can be a pain at times” but qualified his statement by saying’ “that’s what siblings do.”

[T] shared that he has a “a great relationship” with both parents. In making reference to the matter before the Court, he said he was not offering an opinion to either parent; his stance is that as long as he is with a parent, he is fine.”

39. In December 2020 T told Miss Miller that he had given the situation considerable thought over the preceding two to three years and that he has always wanted to live in the UK. He described Cayman as being “boring”. He impressed upon her that he wanted the move for himself and that no one had influenced his decision. T said that if he did not get to go this time he would be disappointed and would not want to go again.

40. T was interviewed by Miss Bailey in April 2021. She reported –



“[T] shared that he wishes to relocate with his mother to England, as he would prefer to reside with his mother. He also stated that the Cayman Islands is small and he does not wish to remain “stuck in a little bubble.” He wishes to meet new persons and have new experiences. He is looking forward to the experience of having new teachers and new classes. He commented that he would be able to see the persons that he misses during his visits to the Cayman Islands and would also make video calls to them. He noted that he would be able to spend time with his friends, while participating in online video games, as they are able to communicate during the games.

[T] explained that at the time Social Work Manager Wynter-Young met with him, he was more confused and had not yet decided on his desire in relation to the relocation. Since then, he has thought about it for “quite a long time” and has decided that he prefers to relocate with his mother. He stated that he shared his current position with Social Work Manager Miller.”

41. As has already been alluded to, in October 2017, at the age of 12, T wrote a letter to Father setting out his wishes for the future –

“Dear Dad

I want to live with Mom in the UK because I can’t stay away from her for a long period of time. I will miss her a lot and I think that the University is good because she is going to her dream.

I’m so excited to live in the UK because I can meet new people and probably learn their accent. I also want to go on the biggggggg! ferris wheel and go to the big toy shop and ice skating in london.

I want to go to school in the UK so I can meet new people and teachers.

I'm going to miss you Dad and I promise to face time you every night before I go to bed. I get to spend special time with you on my school breaks when I'm in the UK.

Love [T]"

42. Mother's evidence was that "[T] wishes to attend a school which can meet his educational needs regardless of jurisdiction. His wishes are aligned with his educational needs".

43. Father stated that he has never discussed the relocation with T. He does not accept that T genuinely wants to go -

"Everything he says and does is contrary. He speaks of playing rugby next year. Someone who thinks they are going away wouldn't say these things. I don't think he wants to go but he feels guilty and doesn't want to disappoint [Mother] because she has wanted to go for so long.



44. When he later returned to the subject he said -

"I believe [T] has been coerced into saying these things by [Mother]. She has taught him what to say. He knows [Mother] wants to go and doesn't want to disappoint her. He is protective of his mom. When we go on vacation he has never asked to call her. That is not someone who can't live without his mom. He speaks of playing rugby next year or speaking about staying at his grandparents' house after it is built. These are not statements of someone who thinks they won't be here next year."

45. Father described T as "well prepped" and opined that "The current arrangements work. He is a happy child." Interestingly, Father and T have discussed T relocating for University. It seems T is keen to study in either the UK or US and so it cannot come entirely as a surprise to Father that T is now expressing a wish to relocate to the UK. T has told his paternal grandmother that he wanted to move to London "because he didn't want to live in a bubble" but they have not discussed relocation in any further detail as it caused T distress doing so. CIS reported that T has been discussing relocation at school since grade 8.

46. Both Miss Miller and Miss Bailey describe T as being a mature individual. T's paternal grandparents and Father describe him as immature, naïve and unable to properly consider the

consequences of a move. Father stated, “He has [matured] somewhat but I don’t feel he is at the level of a normal 16-year old.” Later he said “[T] is not a normal 16 1/2 –year old kid. His difficulties have an effect on his maturity.” Paternal Grandfather describes T as having the maturity of a 14 or 15-year old and that “[T] is not an independent thinking child. He is still developing. He is naïve. He is not attuned to new environment risks. He needs a lot of attention and guidance to ensure his safety... He is easily swayed with ideas of new friends.” Paternal Grandfather admitted that he has never discussed the potential relocation with T.

47. While it is clear to me that Mother engineered T’s interest in moving overseas, I am satisfied that T wishes to continue living with his mother and that now he is excited about the prospect of living in London and studying at ACS. For him, living in London would be an adventure with exciting new opportunities to do things which he cannot do in the Cayman Islands.

48. When Father was asked how he would explain to T that he was not going to London if the PSO was granted, Father replied,

“I will tell him it is not in his best interests and he will be fine about it. There was no resentment the last three times he was told he wasn’t going. He was neutral until he got to 16 and it was put in his mind.”



49. Miss Bailey disagreed with Father. She believes T will likely feel resentment towards Father if relocation is refused.

50. I am satisfied that refusing T the opportunity to relocate will inevitably cause disappointment and feelings of resentment as T has wanted this relocation for quite some time. The feelings of resentment will likely be directed at Father as T is all too aware that it is Father who is objecting to the relocation. These feelings will likely undermine T’s relationship with his father in at least the short-term but maybe longer.

Exceptional Circumstances

51. Father submits that there are 3 factors which make this application exceptional warranting the making of PSO at the age of 16 –

- (i) T's learning difficulties;
- (ii) The extent of the COVID-19 pandemic in the UK and
- (iii) The financial unviability of relocation.

Learning challenges

52. From a young age, Mother and Father noticed that T has some educational difficulties. In 2019, on the recommendation of CIS, Father had T assessed by clinical psychologist Dr Laurence van Hanswijck de Jonge. She identified several learning difficulties. She diagnosed T as having Attentional Deficit Hyperactivity Disorder combined type, moderate dysgraphia, mild dyslexia and poor visual spatial perception and orientation. She made recommendations for the school which both parents advise that CIS has implemented. Dr van Hanswijck de Jonge re-tested T in 2021 for these proceedings and her diagnoses were the same; however, she did note some improvements between his testing in 2019 and 2021. T has just completed Grande 9 at CIS. Having retaken Grade 2, T is now one chronological year behind his peers but he is two academic years behind his peers in Maths (currently at grade 8).

53. Father contends that T's learning difficulties are such that to move him to a new school would adversely affect his learning for the remainder of his school life. Father submits that T has made great improvements at CIS over the past 2 years since the school implemented Dr van Hanswijck de Jonge's recommendations, while ACS is an unknown factor and which may not be able to adequately accommodate T's special needs. He said –

“Before the assessment [T] struggled a lot. Some homework which should take 30 minutes took 2 hours. [T] would get stressed out and took a toll on him. He would call himself stupid and have thoughts about self-harm. Once we had the diagnosis the stress lifted and he became the old kid again. His grades lifted.”

And further that -

“He has learning support every day. I assist him with homework. CIS have done a great job to accommodate him. All tutoring is done in-house without any additional costs.”



54. Mother argues that ACS is better equipped to deal with T's specific needs, and that it will generally provide a better learning environment for T. Mother submits that in addition to better educational support, T will have access to an extended arts curriculum which is better suited to his interests. Mother commissioned a report by clinical psychologist Miss Shannon Seymour to give an opinion of ACS's ability to meet T's specific needs.

55. Dr van Hanswijck de Jonge's 2021 report confirmed that –

- (i) T's visual spatial ability is low but increased since 2019. His overall score was in the Low Average range.
- (ii) T's numeracy is now borderline rather than below average. His fluency is mostly in the norms although addition is borderline.
- (iii) T diagnoses of dysgraphia and mild dyslexia stand.
- (iv) While T still has indicators for ADHD, T is managing it better.



56. Miss Seymour confirmed the diagnosis of ADHD –

“Based on the review of reports completed by Dr. van Hanswikck [sic] de Jonge and consultation with additional information obtained from current administration it is this clinician’s opinion that [T] meets diagnostic criteria for a student with Attention Deficit Hyperactivity Disorder – with a combined presentation. There is evidence in both standard neurocognitive performance tests and clinical observations that [T] experiences gross motor restlessness, difficulty with sustained attention and vigilance to tasks, impulsivity and can at times exhibit emotional reactivity that causes both behavioural and social problems. He reports having difficulty with initiation of tasks, particularly those for which he is less motivated or reinforced by.”

57. Father and Mother both describe T's dysgraphia and dyslexia as mild although Father opines that *“together they cause a lot of trouble”*. T's ADHD appears to be moderate.

58. Neither Dr van Hanswijck de Jonge nor Miss Seymour have spoken directly on how common or uncommon T's difficulties are. Miss Bailey describes them as “not typical” while Father says they are exceptional. Neither Miss Bailey nor Father are experts in this field and so I must draw my own conclusions from the reports submitted. These reports are highly technical and detailed and

so I will not rehearse the details in this judgment, although I can assure Mother and Father that I have given them careful consideration.

59. From my own knowledge, ADHD is a frequently occurring condition. Many children, adolescents and adults are diagnosed with ADHD every year. Some require medicating and therapy while others do not. I note that T manages his ADHD without the need for medication. According to Dr van Hanswijck de Jonge, T is managing his condition better in 2021 than he was in 2019. While T's end of year school report discloses some difficulties in Math, English and US Global which could be attributable to his particular difficulties, T's grades are otherwise C and above. I do not consider T's ADHD at the level described by the psychologists to be in and of itself an exceptional feature.

60. The DSM-V defines dyslexia as "an impairment in reading". Dr von Hanswijck de Jonge found that—

"[T] still shows a weakness in his reading accuracy and specifically word reading and word reading fluency. He is better apt to decode nonsense words, although he shows decrement under times conditions. Equally his phonetic proficiency is still hesitant, and he shows errors on rapid naming. There are still the indicators of dyslexia, specifically more on the side of orthographical dyslexia, as previously assessed in 2019 equally.

This orthographical weakness will also play into decoding, as such his spelling. Although slightly better than 2019 it is still on the low average side (23rd percentile vs 14th percentile)."¹

61. The DSM-V defines dysgraphia as being "an impairment in written expression". Dr van Hanswijck de Jonge concluded in 2019 that T's difficulties were "moderate". In 2021 she stated –

"[T] shows weaker writing abilities, both in his visuomotor skills as well as his expression in writing, grammar and semantics. [T] shows inappropriate capitalisation use, no regard to punctuation and a general lack of stamina in writing as well as weak spelling."²

¹ 2021 report at page 7

² 2021 report at page 7



62. As to T's visuospatial abilities, Dr van Hanswijck de Jonge stated that –

“It was previously indicated that executive function and visual special ability play into math ability. Although still weak, [T]’s ability to mentally rotate shapes has improved (from 0.1st to 9th percentile), and equally his ability to judge direction has improved (0.1st to 9th percentile currently). Equally this is seen in his WISC-V scores where he went from below average to borderline (5th to 14th percentile). This could play into his improvement seen in his math achievement on the WIAT-4.”³

63. As to T's math abilities Dr van Hanswijck de Jonge concludes –

“...[T]’s math skills and fluency have improved since 2019 as compared as always to his peers. His numeracy is now borderline in contrast to below average. His fluency is mostly in the norms now, although addition is borderline though stronger than 2 years ago.”⁴



64. While the dyslexia, dysgraphia and visuospatial deficiencies are clearly causing T some difficulties at school, by all accounts these are being well managed and are improving with intervention. His grades are reasonable in the circumstances. I do not consider these conditions, either individually or cumulatively, to be exceptional.

65. I do consider T's status as being 1 years behind his class mates in math⁵ when he is only 3 years away from graduation to be unusual and should be given careful consideration when I consider whether a change in school and jurisdiction in T's best interests. I must consider whether ACS is able to deal with T's difficulties as well as CIS is and whether now is the right time for a move, if ever.

66. Dr van Hanswijck de Jonge concluded that -

“[T] has a mix of learning disabilities which take the correct structure to be able to support him. So far it seems CIS has managed this. This needs to be held into careful consideration if any move is considered. It is never ideal for any teenager to move

³ 2021 report at page 5

⁴ 2021 report at page 7

⁵ 2 years behind for his chronological age.

school in the teenage years, especially with regards to social relationships. It is even harder to move a teenage child away from a tight knit family and structure that has supported him with his learning differences and are giving him a platform to thrive.”

She further opined that -

“Moving [T] from school incurs exposure to a whole new learning system and support. At his age, time and energy goes into creating a new social network which detracts from academics, which are going to need significant continued dedication and time. [T] has been supported currently and has been offered a hybrid approach in which he is working very well. This together with his network of friends and family needs to be taken into strong consideration.”



67. Father places great weight on Dr van Hanswijck de Jonge’s caution about a move and encourages me to conclude that relocations at this stage would be detrimental. I have some reservations about Dr van Hanswijck de Jonge’s opinion. I do not believe that Dr van Hanswick de Jonge intended to give a definitive answer on the appropriateness of T’s relocation to the UK. Firstly, she makes a very general statement about the difficulties with teenagers changing schools and taking them away from close knit families, rather than speaking about T in particular. From my own knowledge, dozens of High Schoolers leave Cayman every year, around grade 8 and 9 to continue their education in the US, Canada and the UK without great difficulty. This is a common occurrence which Dr Hanswijck de Jonge does not address. Also, Dr van Hanswijck de Jonge appeared to be under the impression that T’s relocation would involve a change in school systems. I believe that has she known that ACS and CIS share a common system that she would have been less concerned. Finally, Dr van Hanswijck de Jonge did not ascertain and, therefore, did not weigh in the balance T’s wishes and feelings or consider what learning support could be offered by ACS, or whether mother could provide adequate support at home. The absence of these considerations means that Dr van Hanswijck de Jonge’s opinion is of limited assistance.

68. My next focus must be on the ability of ACS to deal with T’s particular educational needs. Miss Bailey has helpfully correlated the available information from ACS’s website about the learning support available at ACS schools. According to their literature, ACS schools are able to serve students with mild to moderate learning needs at all grade levels. They strive to ensure that most students’ individual learning needs are successfully catered for within the mainstream classrooms

with the help of a learning support teacher or during pull out sessions that are one-to-one based or during small group intervention sessions. Mother has provided confirmation that T has been accepted into the Learning Support Programme and that he will receive in-class one-to-one support. This appears to be a higher level of support than T is currently receiving at CIS.

69. Mother commissioned a report from clinical psychologist Shannon Seymour to provide an opinion of ACS's ability to accommodate T's specific needs. Miss Seymour did not contradict Dr van Hanswijck de Jonge's diagnoses and concluded that either school is well placed to deal with T's difficulties. She opined –

“There is limited evidence that any specific academic programme is more superior than others. What is well documented in ADHD literature is a set of guidelines and environmental conditions which when combined [with] strong family support can ensure a student with ADHD the best possible opportunity for academic success.

As per questions of academic placement and removal of a minor from their home jurisdiction this report has obvious limitations. The writer has not assessed parental capacity; nor has the purpose of scope of the report been to provide an opinion with regards to custody or access.

What has been requested is a clinical opinion on the proposed International School in the UK's ability to meet [T]'s academic needs in light of a diagnosis of ADHD. With confidence this writer can confirm that the International School system, regardless of regional jurisdiction is an ideal academic framework for a student with [T]'s learning and behavioural needs; it is a framework which supports curiosity and self-exploration within the structure of academic rigor and support.”

70. While it is said that T's personality is well suited to making new friends, his successful transition to a new school will be dependent on the academic support and the attitude of students at ACS towards persons with learning disabilities. I am satisfied that ACS has a well-developed learning support system that can adequately support T and his needs; it is at the very least equal to the support offered by CIS. Whether students will accept T or whether he will be subject to bullying is of course an unknown factor but given that T wants to study at ACS and is so personable I do not think that these unknowns should stand in the way of an adolescent's wish to change schools.



Nor do I believe that T will be so distracted by the need to make new friends that his education will be negatively affected.

71. Father and Paternal Grandmother gave evidence that T struggled with schoolwork when schools in Cayman turned to remote learning during our lockdown from March to June 2020. They believe that T's education will suffer if he has to undertake remote learning again. Mother asserts T coped well with remote learning. I accept Father and paternal Grandmother's evidence that T struggled with remote learning in part because of his learning difficulties. For this reason I do have some concerns that T's educational progress may be set back if he has to undertake remote learning on any major scale again. Missing anymore school will generally undermine his education further.

72. Father and paternal Grandparents all claim that if T were to relocate he would lose their day-to-day support, particularly with his schoolwork. I accept Dr van Hanswijck de Jonge's evidence that family support is an important factor for a child with T's learning difficulties to reach their full potential. As I have already pointed out, Dr van Hanswijck de Jonge has not had the opportunity to assess mother's ability to support T. Neither has she considered whether maternal grandmother, who has offered to relocate with T and Mother, can provide the emotional and educational support that T needs. Interestingly, paternal Grandfather alluded to the fact that he helps T with his math homework over FaceTime, something which could continue if T were to move to the UK.

73. I am satisfied that ACS' learning support together with Mother's in-person support and, I would hope, continued support of his extended family (via technology) would provide ample support for T. But I must consider whether T's education might be interrupted by the ongoing COVID-19 pandemic to the extent that it will cause harm to his welfare.

COVID-19

74. Neither party called any expert evidence on the COVID-19 situation in the UK or Cayman Islands. At my invitation, the parties were permitted to rely on open source material to support their submissions.



75. As at 17 July 2021 the UK had 5,281,102 confirmed cases of COVID-19 and 128,593 deaths within 28 days of a positive COVID-19 test⁶. By comparison, the Cayman Islands have only had 622 positive COVID-19 cases and only 2 deaths⁷. It has been approximately one year since our last community transmission of SARS-CoV-2 (the coronavirus that causes COVID-19).

76. It is widely accepted by the medical community that SARS-CoV-2, including the Delta variant, poses minimal risk to children and adolescents. Only those with significant pre-existing conditions are believed to be at risk of complications and death. Most children who contract SARS-CoV-2 will be asymptomatic or have mild symptoms. T is a healthy 16-year old and has had both doses of the Pfizer vaccine, therefore, the risk to his health if he were to contract COVID-19 is very minimal. Father, quite rightly, has not sought to argue that the presence of COVID-19 in the UK poses an increased risk to T's health. Father has instead concentrated on the impact COVID-19 might have on T's educational development.

77. Father submits that the UK is still struggling to cope with the Delta variant of the COVID-19 virus and that future lockdowns are likely. Father opines that in the event of further lockdowns T will likely have to undergo one or more periods of remote learning. I have already expressed my concerns for T's educational development should he have to undertake multiple periods of remote learning.

78. Mother submits that the UK has a strong handle on the Delta variant. On 19 July all COVID-19 lockdown measures were lifted in England. Mother's position is that future lockdowns are unlikely.

79. Recently, Chris Whitty, England's chief medical officer, stated that the UK should brace itself for two further waves of COVID-19 infection⁸ -

"It's going to take quite a long time I think to get back to normality and I certainly would be surprised if we got back to what most of us see as a kind of status quo before next spring."

⁶ Figures from the World Health Organization - <https://covid19.who.int/region/euro/country/gb>

⁷ Figures from the CI Government www.gov.ky

⁸ The Times 7 July 2021



80. The UK Department of Education has stated that –

“There is a clear and equivocal evidence that missed attendance in education is detrimental to children’s cognitive and academic development and their long-term productivity. The most robust studies suggest that time out of attending education leads to lost learning which can meaningfully affect the attainment and life chances of children if not addressed. Meta-analysis of learning loss shows that every further day missed matters and will likely lead to further reduced attainment.”⁹



81. The OECD proposes that the effects of 2 months of disrupted learning may fade out by the time the students complete their school education¹⁰. Research has shown that multiple lockdowns can cause mental illness, including trauma, PTSD and anxiety¹¹.

82. Addressing the issue of the COVID-19 pandemic has been difficult. It is an ever changing situation globally. On 17 July 2021, in the UK, there has been 48,161 new confirmed cases of COVID-19 and 316,691 over the preceding 7 days which constitutes a 43.3% increase over the week before¹². Death rates have increased by 39.4% over the past week. On 19 July the UK lifted most of their internal restrictions; however, the UK Government admits that the number of infections and deaths will increase significantly as a result. The UK Government has not ruled out imposing further lockdowns in future. The Cayman Islands are moving towards reopening its borders by the end of 2021. Opening up of the borders will inevitably lead to the reintroduction of the virus to our shores. It is likely that there will be further mutations of the coronavirus but there is no way to predict how virulent and deadly future viruses may be. This makes my task all the more difficult.

83. Currently, schools in England are operating a bubble system in which a class or year are placed into “bubbles”. If one or more students test positive for the SARS-CoV-2 virus the entire bubble must self-isolate for 10 days. According to official records¹³ as at 6 July 2021 10.4% of students (or 641,000 students) from state-funded secondary schools were self-isolating as a result of a

⁹ “Evidence summary: COVID-19 – children, young people and education settings” Department of Education published 22 February 2021

¹⁰ “Education and COVID-19: Focussing on the long-term impact of school closures” OECD published 29 June 2020

¹¹ “Lockdowns leave half of teenagers battling anxiety and trauma” The Telegraph published 29 June 2021

¹² <https://coronavirus.data.gov.uk>

¹³ “Attendance in education and early years settings during coronavirus (COVID-19) outbreak” published 29 June 2021 by UK Government (www.explore-education-statistics-service.gov.uk)

positive test either themselves or within their school/home bubble. In the absence of statistics for public and private schools it is inferred that the rate will be similar. However, the UK government announced on 6 July that it will be abolishing school bubbles from 16 August in favour of COVID-19 testing through the NHS track and trace system¹⁴. Under these new arrangements, from 16 August students will only have to isolate if they test positive for COVID-19. T has had both doses of the Pfizer vaccine and is, therefore, less likely to contract the coronavirus himself (although not impossible). Consequently, the likelihood of T having to self-isolate is significantly diminished. The abolition of the bubble system strongly suggests that the UK does not expect to resort to large scale school closures or at least is aiming to avoid student absences in England in future. However if there is a new more virulent form of coronavirus in the UK its Government may well impose further lockdowns which could require schools to close. However, things may not be better in the Cayman Islands. That same risk of school closures and lockdowns will arise in Cayman once our borders reopen later this year¹⁵.



84. While Cayman’s private schools have demonstrated that they can effectively transition to remote learning at short notice, I have no evidence before me as to what the contingency plans are for ACS. However, unlike Cayman schools, UK schools have had over a year to adjust to this way of learning which leaves me confident that ACS should be well able to return to remote learning should the need arise.

85. The evidence also touched upon the issue of travel between the UK and the Cayman Islands and whether T would be able to visit his family in Cayman as a result of ongoing global travel restriction. T’s ability to spend time with his family in person is very important to sustain the close bond that exists between T and his sister, Father and grandparents. Regular visits are critical. At present the Cayman Islands are on the UK’s “green list” for travel meaning that travellers from the Cayman Islands can travel to the UK without the need for quarantining as long as they can produce a negative PCR test no more than 3 days before travel and another one 2 days after arrival. Currently only essential travel is permitted to the Cayman Islands. We have a very limited number of flights in and out of the jurisdiction. According to a recent announcement most travel restrictions should be lifted by 18 November paving the way for regular travel over the Christmas period. This timeline is based on the Cayman Islands achieving an 80% vaccination rate by September 2021. If that rate cannot be achieved then the reopening may be delayed. However,

¹⁴ “Covid bubbles to be axed in England’s schools” BBC News website 6 July 2021

¹⁵ The CI Government intends to allow limited introduction of tourism from 9 September 2021 should the Cayman Islands achieve an 80% vaccination rate.

even if reopening was postponed, returning students are considered to be undertaking essential travel and, therefore, T would be eligible to travel on one of the regular repatriation flights from the UK. Consequently, if T were to relocate to the UK there would be an avenue available for him to return for visits with family and friends during school holidays. The issue of who pays for these flights would have to be determined.

86. Mother has also extended an open invitation for Father and T's sister and grandparents to visit with T in the UK. I found this to be a genuine offer to accommodate further contact, although they are unlikely to be able to take up the offer while travel restrictions remain in place.

87. I conclude from the foregoing that COVID-19 pandemic is an exceptional world event which has affected everyone's lives in some way. The progress of the pandemic cannot be predicted. Repeated or prolonged school closures are likely to affect T's educational performance just as it has many other students. I am satisfied that the UK has taken all reasonable steps to prevent future school closures. Consequently, I am satisfied that there is no greater risk of T having to undertake remote learning in the UK than he would in the Cayman Islands. All things being equal I have to conclude that a relocation to the UK does not increase the risk of harm to T's educational development.



Emotional support

88. I must address the other aspect of loss of family support. Currently T benefits from much emotional support from his extended family. If he is permitted to move to the UK he will lose the frequent in person contact he currently enjoys. Miss Bailey observed –

“If the application for relocation were to be approved by the Honourable Court and [T] were to move to England, he would experience significant changes in routine, peer relationships, relationships with his father and his paternal and maternal relatives. Given the extent to which [T]’s routine involves regular contact with the father and other relatives and given the positive relationships they have, he is likely to experience feelings of loss. The feelings of loss may be offset by the ongoing communications that is possible with his father, other relatives and peers via social media and telephone contact; however, these forms of contact are unlikely to replace the

dynamic nature of face-to-face relationships. [T]’s close relationship with his mother is also likely to provide support during the period of emotional transition. Both parties and all collaterals have spoken about [T]’s outgoing and engaging personality. It is expected that his personality will also assist in his transition, as he is likely to build new relationships easily.”

89. I must acknowledge that the current generation of children and young adults communicate much more freely and with ever more frequency with each other and family through the use of technology, even when they live close by. Vast distances can now be bridged through the use of video calling, messaging, gaming platforms and social media. Many young people would argue that this has become their primary way of communicating with friends and loved ones, even those they may see on a daily basis. T seem comfortable with such communication. For this reason, I am confident that were T to move to the UK, there are plenty of ways for T to keep in regular contact with family and friends in Cayman which, while not in person, are just as effective in maintaining the bonds already forged.



Tardies

90. Father complains that T is regularly late to school when he is in Mother’s care. Mother denies the frequency of these absences and asserts that T is also late when he is in Father’s care. This is relevant because Father believes that T’s tardiness is undermining his schoolwork and that if Mother is unable to ensure T’s timely attendance at school in Cayman that this would continue in the UK and continue to undermine T’s educational progress. The parties produced T’s report cards which do reveal T being tardy at times and that this is affecting his schoolwork. Father reports that Mother was late dropping T off to one of his exams last month. Mother accepted that T was dropped off later than normal but she denies T was late for the exam. I have also been provided with T’s tardies and absence record. This confirms that T is tardy and absent on more occasions while in Mother’s care than she admits to. Mother’s inability to consistently get T to school on time does give cause for concern as T moves into his final years of education. Mother has given assurances that T will not be late for school in future. This concern could be addressed if maternal Grandmother were to relocate with T and Mother.

The Social Worker's Recommendation

91. Miss Bailey completed the final report. She did not consider the COVID-19 pandemic in any great detail save to say that it may cause difficulties with travel between the two jurisdictions. In summing up her assessment she stated -

“As an adolescent, [T] is at a critical stage of development that is forming the foundation for adult life. Any decisions that are made in relation to the relocation can impact him significantly. Balancing [T]’s desire to relocate with his mother, who wishes to pursue her tertiary education with the need to ensure that his developmental and educational needs are adequately met is vital.

... In this matter, [T] is clear about his wish to relocate. Additionally, [Mother’s] plans are well researched and ACS International School Hillingdon appears to have the structure and means to meet [T]’s learning disabilities. However, there are two main issues that need to be carefully considered: (1) the concerns that have been raised about [Mother’s] more relaxed approach to parenting and 2) the concerns that have been raised by Dr. Laurence van Hanswijck de Jonge about the impact of the relocation on [T]’s educational needs. It should be noted that if [Mother’s] mother were to accompany [Mother] and [T], the adolescent would benefit from additional support and supervision, which may balance [Mother’s] parenting style. However, it is not possible to confirm this postulation.”



Ultimately, Miss Bailey declined to make a final recommendation.

The Welfare Checklist

92. I have already set out many of the welfare checklist considerations in detail above. I will only briefly summarise them below.

The wishes and feelings of the child

93. I am satisfied that T has a well-settled wish to reside with his mother. He supports her desire to live in London and he is himself keen to live in a city and study at ACS. A relocation to a larger and

varied jurisdiction would provide T with a great many experiences he would not gain in the Cayman Islands. He is 16 years and 7 months old. I am satisfied that he has the maturity to understand the consequences of a relocation and that he does so understand. If relocation is refused T will be disappointed and possibly feel great resentment towards his father. Great weight should be afforded to T's opinions. Unless there is a good reason to decline his wish, the court should not prevent T from relocating.



The physical, educational and emotional needs of the child

94. T is physically healthy. “[T] appears to be a well-balanced young man who has positive relationships with his peers and with the adults in his life”¹⁶.

95. T has just completed grade 9. T has moderate ADHD, dysgraphia, poor visuo spatial perception and mild dyslexia. He is one chronological year behind his peers in school and two years behind his peers in math (grade 8). CIS is currently able to address his educational needs. ACS has a learning support system that could also adequately support T.

96. Any significant interruption to T's education is likely to undermine his progress. The risk of harm to T's educational development from educational interruptions due to COVID-19 is the same in either the UK or the Cayman Islands.

97. Currently T's physical and emotional needs are being met by his parents. T requires additional educational and emotional support from family to achieve his full potential. If permitted to relocate, Mother and possibly maternal Grandmother will be the only in-person support for T outside of school.

The likely effect on him of any change

98. T wishes to relocate. Permitting relocation would be meeting T's wishes. T would be able to attend his desired school and remain in the care of his mother. T will be pleased that he can support his mother in her endeavour to further her education. If the court prohibits relocation then Mother will abandon her plans and the status quo will remain.

99. T may struggle to transition into ACS and a new jurisdiction. T will be able to take advantage of ACS's extensive arts programme which is in line with his interests.

¹⁶ Miss Bailey's report paragraph 82.

100. If relocation is permitted then T will lose the frequent in-person contact he has with his father, paternal sister, and most of his grandparents. He is likely to experience feelings of loss. This could be offset by frequent contact with his family and friends by video call, messaging and social media as well as return visits in the summer and winter holidays. T's close relationship with his mother is also likely to provide support during the period of emotional transition. T's outgoing and engaging personality mean that he is likely to build new relationships easily.

101. Miss Bailey also observed that “[T] is likely to experience emotional discomfort if his standard of living were to change significantly.”

The age, sex, religious persuasion, background and any characteristics of which the court considers relevant

102. T is an adolescent male for whom peers are becoming more and more important. His outgoing personality will likely assist him in making new friends which will facilitate a transition into a new environment. Because of T's learning difficulties he needs specialist support which both CIS and ASC can provide.

Any harm which he has suffered or is at risk of suffering

103. There is no risk of physical harm from approving or refusing relocation. Refusing relocations will cause T some emotional distress and is likely to undermine his relationship with his Father.

How capable each parent, or any other person is of meeting his needs

104. Either parent is capable of meeting T's emotional needs. Mother and Father's financial ability to meet T's physical and educational needs will be discussed below. Currently paternal Grandparents are meeting T's educational expenses, but they are unwilling to do so if T relocates.

The range of powers available to the court

105. The court has the power to make a PSO preventing T's removal from Cayman or a SIO settling where T should be educated if there are exceptional reasons for doing so.



Detriment to Father's relationship with Child

106. If Father's application is granted, T is likely to feel some resentment towards his father. This may pass with the passage of time. If T is permitted to relocate T and Father's contact will be limited to video calls and electronic messaging for most of the year with twice annual in-person visits. This loss of daily support could be offset by support from Mother and maternal Grandmother.

Preliminary view



107. This has been a very challenging case. There are both advantages and disadvantages for T to either remain or relocate. This case is on a knife edge. However, I find that, in principle, T's wishes would be the deciding factor. I am satisfied that to allow T to leave the jurisdiction is better for him than to prevent him from leaving. However, this finding is only on principle and will depend on whether financially a move can be afforded.

Realistic prospects of mother's plan

108. Mother has provided an estimate of her expenses in the UK. By her calculations she needs £6,549 per month to cover her and T's expenses. In her evidence, Mother asked that Father be ordered to pay half the monthly school fees at £1,058 pm (approx. CI\$1,200) and £1,206.50 pm (approx. CI\$1,360) as general maintenance for T. This is an increase from the current FPO. In final submissions, Mother asked for the FPO to be increased to CI\$4,000 pm. Mother also asked that Father be made to make a lump sum payment of an unspecified amount from the sale of his BMW motorcar.

109. Mother believes that she can secure employment once she is settled in the UK. Mother asserts that she will be able to secure employment earning between £20,000 and £30,000 per annum. She has not provided any evidence of the type of work she will be able to secure at that salary, whether part-time or full-time. While Mother has said that she is entitled to apply for jobs at UWL she has not provided evidence that such vacancies exist, whether she meets the qualification requirements or how much these positions will pay. Mother has also suggested that she might be

able to secure employment at her current employer's London office. To date she has not approached her employer about this possibility and, therefore, this avenue is truly unknown. The complete lack of any real plan for Mother's employment is of some considerable concern. Given that many people in the UK are still furloughed it is questionable how soon Mother would be able to secure employment, if at all.

110. For the purposes of the assessment as to means I will assume for the moment that Mother is able to secure employment at the level she suggests, this will result in a gross salary of between £1,666 – £2,500 per month. That salary will be subject to deductions for Income Tax and National Insurance. I have to be pessimistic about Mother's potential income as to over-estimate it would be risking financial insecurity should I permit the relocation and the higher salary does not come to fruition. For that reason I will estimate that her net income from salary would be £1,500. She would receive up to £885 per month from renting out her property in the Cayman Islands. Mother's income would, therefore, fall almost £1,800 short of the sums she needs to maintain herself and T even if Father contributes £2,400 pm. Mother would have to rely on her savings. Mother has produced evidence that she would be able to withdraw some CI\$7,600 from 2 small pension funds some 6 to 8 weeks after she leaves Island. Her larger Silver Thatch pension is locked in for two years and after that only transferrable to another pension plan; it cannot be withdrawn. In addition to the pension funds, Mother has approximately CI\$33,000 in savings. Maternal Grandparents have also offered their life savings of CI\$40,000 to help Mother and T in the UK. I note that the funds would have to stretch further if maternal Grandmother relocates as well.

111. In her evidence, Mother claimed that if necessary she could maintain T, including meeting his school fees, on her own should the court find that Father is unable to contribute. On close examination that is simply not realistic. Mother's annual expenses would be in the region of £78,500 (approx. CI\$88,600) inclusive of school fees. With a net income of £2,385¹⁷ (assuming that mother finds employments which is a great uncertainty at this time), even with savings, she would not have sufficient funds to meet her expenses over three years. Putting it differently, the school fees for the remaining three years of High School total £77,600 which would itself exhaust Mother's savings and leave her woefully short for her daily living expenses. This is all without any funds being set aside for flights to Cayman. I have to conclude that if left to cover all expenses on her own, Mother would be left in significant deficit which would risk T's placement at ACS if Mother cannot meet his fees.

¹⁷ £1,500 (salary) + £885 rental income



112. Despite Mother's assertions to the contrary, the reality is that this relocation is entirely dependent on Father making either a lump sum or periodic payment towards school fees and/or maintenance.

Father's Finances



113. Father manages a business. He usually has 3 staff. The business makes money from the work performed by its staff. Once commissions and other business overheads are paid the balance of income is available to Father as salary. Pre-pandemic, Father used to earn between CI\$4,000 and CI\$7,000 per month. Due to the closure of Cayman's borders Father has had to downsize the business. The loss of tourist business has led to a 40% reduction in income for the business. Over the past year, Father has had to take out an overdraft facility as well as a loan and obtain a small business grant to pay staff. Father hopes that the business will be back in pre-pandemic financial security by 2022.

114. Father was cross-examined at great length about his financial circumstances. I accept Father's evidence about the state of the business and that the business' income is unlikely to return to pre-pandemic levels until 2022. According to Father his monthly income for the past 6 months averaged to CI\$2,860 pm while his expenditure is CI\$6,654 pm. From closer examination of Father's bank account statements during cross-examination it became apparent that his average income is closer to CI\$4,600 per month leaving a deficit of approximately CI\$2,000 per month. Father says he has been meeting his personal financial obligations by loans and the goodwill of his parents. Father has already alluded to the fact that his father pays his share of the mortgage which is CI\$1,262 pm. It was noteworthy that Father conceded that his wife earns CI\$5,000 per month but claims that she does not financially contribute to the household expenses. This seems to be contradicted by the payments made by his wife into his account during the 6-month period under consideration. But there was one transaction that was most striking. Father claims to be in deficit and having to use overdrafts, loans and grants to keep his business afloat. He claims to personally be in considerable deficit every month. Yet in 2020 Father sold his Land Rover Discovery for CI\$38,000. There was no finance on the vehicle so that sum was cash. He then withdrew between CI\$19,000 and CI\$22,000 from his pension. Father then used those combined funds to purchase a BMW M3 for \$50,000 in January 2021, one month after filing an affidavit in

which he claimed to have insufficient funds to pay T's school fees. Father's actions wholly contradict his words. This transaction can only be described as a reckless extravagance which is wholly unjustifiable. Father continued to live a comfortable lifestyle, regularly eating out, having a staycation and even placing a CI\$1,000 bet on a fight. Father's lifestyle far exceeds his declared income. The logical inference is that he is being supported by another source, most likely his parents and wife.

115. I accept Father and paternal Grandparents' evidence that while the current FPO calls for Father to pay T's school fees, in reality it has been the paternal Grandparents who have paid these. Father has also received cash loans from his parents and his parents also pay Father's share of the mortgage on his house. In **Thomas v Thomas [1995] 2 FLR 668** (as cited by Mostyn QC in **TL v ML [2006] 1 FLR 1275**) the court held that in certain circumstances the court can take into consideration unidentified resources –

“the court is not obliged to limit its orders exclusively to resources of capital or income which are shown actually to exist. The availability of unidentified resources may, for example, be inferred from a spouse's expenditure or style of living, or from his inability or unwillingness to allow the complexity of his affairs to be penetrated with the precision necessary to ascertain his actual wealth or the degree of liquidity of his assets. Another is that where a spouse enjoys access to wealth but no absolute entitlement to us (as in the case, for example, of a beneficiary under a discretionary trust or someone who is dependent on the generosity of a relative), the court will not act in direct invasion of the rights if, or usurp the discretion exercisable by, a third party. Nor will it put upon a third party undue pressure to act in a way which will enhance the means of the maintaining spouse. This does not, however, mean that the court acts in total disregard of the potential availability of wealth from sources owned or administered by others. There will be occasions when it becomes permissible for a judge deliberately to frame his orders in a form which affords judicious encouragement to third parties to provide the maintaining spouse with the means to comply with the court's view of the justice of the case. There are bound to be instances where the boundary between improper pressure and judicious encouragement proves to be a fine one, and it will require attention to the particular circumstances of each case to see whether it has been crossed.”



116. In this instance the sources are close family members. The paternal Grandparents have categorically refused to pay for T's education if he is permitted to attend school overseas. The paternal Grandparents have a right to decline to fund T's education at any time under any circumstances, just as they can also decline to further support Father. It is with some reluctance that I must proceed on the basis that these funds are not available to Father. Father's wife is a different situation. It is evident from the bank statements that she has financially contributed over the past 6 months, approximately CI\$1,200 pm. Her financial situation was not examined but I can infer that CI\$1,200 is available every month for wife to contribute to the household expenses therefore freeing up some funds for Father. However, even at that rate, Father will likely remain in deficit until 2022. Father does have potential access to significant sums of cash if he liquidates his most recently acquired asset. The BMW could be sold and replaced with a more modest car suited to his current means. This could provide for a lump sum payment which could offset grade 10's school fees. However, this is not a long term solution. Even at pre-pandemic income levels, Father will not be in a position to provide maintenance to the level that Mother requires to ensure that she can afford to keep T at ACS and still meet all of her and T's other expenses through grades 11 and 12.

Conclusion

117. As I have already stated, in principle it would be appropriate to allow T to relocate with his Mother. The critical issue is the financing of the move. The court must be confident that there is a way to finance T through the last three years of High School at ACS. Moving T now for grade 10 allows T time to adjust to his new environment and settle before he starts working towards his exams in earnest. However, to move him again at any future point would most likely be detrimental to his education as he would be so much closer to his exams. Also, it may require a change to an English state school systems if T remains in the UK, which Dr van Hanswijck de Jonge cautioned against.

118. Returning to Mother's finances. I find that there are too many uncertainties surrounding Mother's employment prospects. This court is not at all confident that she can secure the employment she claims she can. What Mother needed was a concrete plan or at least confirmation from UWL or her employers that there was a realistic prospect of employment for her in London. The evidence was all just too vague. This alone is sufficient to throw some considerable uncertainty over her

plans to finance the relocation even with financial support from Father. Furthermore, the reality of the situation is that Father cannot afford to provide the financial support over the next three years that Mother requires, even if she secures employment. I am bound to conclude that allowing T to change schools and jurisdiction now in such uncertain circumstances, would run the great risk that he will suffer significant harm to his education. This does constitute an exceptional circumstance.

119. For the forgoing exceptional reason, I find that it is better for T that I make an order that secures his continued education at CIS than make no order at all. I make a specific issue order that T shall continue to be educated at CIS. This order will expire on T's 18th birthday. As Father's application was successful it is not necessary to reconsider the FPO. The FPO made as part of the 2014 consent order shall continue to have effect.

120. I make one final recommendation: Without a doubt T and Mother will be disappointed with the court's decision. T will need the emotional support of his family in the coming weeks and months. However, I recommend that neither of the parties disclose the court's reasons for making the SIO to T as doing so is likely to significantly harm his relationship with Father and possibly also paternal Grandparents.



Hon Justice Kirsty-Ann Gunn (Actg)